

Appeals court hands landlords major victory in rent-stabilization case

Lawyer says this will keep tens of thousands of apartments from being re-regulated

BY KATHRYN BRENZEL

In a decision that attorneys say will impact tens of thousands of apartments in the city, a New York Appeals court ruled that apartments deregulated between 1997 and 2011 didn't need to strictly meet the \$2,000 rent threshold when their apartments were vacated.

The State New York Court of Appeals ruled on Thursday in favor of Alan Wasserman's S.W. Management Acquisitions, finding that the landlord properly deregulated 285 West 4th Street in 2005 even though the rent was \$1,829.49 at the time tenant Keno Rider "vacated" his apartment in the building (his subtenant, Richard Altman, signed a new lease with the landlord following nonpayment proceedings). An attorney for Altman, Lawrence Rader, said he and his client disagree with Thursday's ruling. Altman called the decision "unfortunate."

"I think it's a bad day for tenants, and it's just going to increase the depletion of the rent-stabilized housing stock," he said.

The court agreed with S.W. Management that a 20 percent vacancy increase — allowed under the Rent Regulation Reform Act of 1997 — could be included in the calculation of the legal rent of the apartment. At the time, apartments could be deregulated if the legal rent exceeded \$2,000 when the unit was vacated. That threshold



is now just over \$2,700.

The decision goes against a 2015 appellate court ruling, which found the 20 percent increase couldn't be included. The landlord warned that decision would mean the re-regulation of more than 100,000 market-rate apartments in the city. The state Supreme Court in Manhattan had also awarded Altman \$165,363 for alleged overcharged rent, which the appeals court vacated on Thursday. Outside parties on both sides of the debate — including the Real Estate Board of New York, which filed an affirmation in support of the landlord — agreed that the case could have implications beyond Altman.

"The New York State Court of Appeals, the state's highest court, has reaffirmed the long-standing

legal practice and widely held understanding of the application of the Rent Stabilization Law's vacancy decontrol provisions," REBNY's president John Banks said in a statement. "This means that the owners of thousands of rent-stabilized apartments which have been deregulated over the last two decades can rest assured that the rules were followed and these units can remain deregulated."

Tenant advocates and public officials have long criticized the 20 percent vacancy allowance. Back in 2016, Public Advocate Letitia James told the Bronx Ink that the 20 percent boost likely had a hand in the city's high level of evictions. Three bills are currently held up in the state Senate that seek to close loopholes in the rent-stabilization laws, including the 20 percent increase. In February, amNew

York reported that the bills lack the necessary support, despite increased pressure from advocacy groups on Gov. Andrew Cuomo to make these bills a priority.

"The problem here is that the original law is bad and opened the door to widespread fraud," said Edward Josephson, director of litigation and housing at Legal Services NYC. "The appellate decision maybe made landlords think twice, but now the door's wide open again."

He noted that to pass, the stalled bills would likely require the Democrats to gain a majority in the Senate — a lost hope given Sen. Simcha Felder's decision to stick with Republicans — and would further require that all the Democrats "act like Democrats" and aren't swayed by private real estate interests.

"Frankly, I've long since stopped holding my breath," he said.

An attorney for the landlord, Jeffrey Turkel, said the decision means that landlords and prospective buyers won't have to worry that tenants will turn around and demand reimbursement for overcharging on rent. He noted that many landlords after 1997 included the 20 percent vacancy increase in their rent calculations.

"Everybody did this," he said. "If they had any apartments that fell into this category, they are safe. Those apartments are deregulated and that's it. It's over." TRD