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CONH could discourage owners from renovating



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The Certificate of No Harassment (CONH) pilot program, which took effect September 27, 2018, has expanded requirements for building owners in certain districts to apply for a CONH before the Department of Buildings (DOB) will issue permits to alter or demolish their buildings. The expanded CONH program will function as a 36-month legislative pilot, focusing on recently rezoned or soon-to-be-rezoned neighborhoods which the city determined are the most susceptible to harassment based on socio-economic conditions, including threats or fear of deportation of residents, or neighborhoods with lower income residents targeted for redevelopment.

While the CONH pilot program is designed to protect tenants from harassment, the ambiguity and scope of the law, as well as the extended “lookback” time frame for the Department of Housing Preservation and Development (HPD) to investigate, could have a chilling

effect and discourage owners from renovating properties.

Harassment constitutes any conduct intended to force tenants to give up rights to which they are entitled, or cause them to vacate their apartments. Intentionally shutting off heat or hot water, or using intimidation tactics to force tenants to leave their apartments, are readily identifiable.

However, the standard is subjective. Tenants can claim a landlord’s actions or failure to act was intended to get them to vacate their apartment. Since people’s perceptions can vary, people could claim harassment while no harm was intended.

While interrupted services do not necessarily evidence an intention to pressure someone to leave their apartment, landlords who are repairing their buildings may have to defend themselves against accusations under the ‘catch-all’ of the current harassment definitions, because their outmoded building requires maintenance or is undergoing repairs.

Older buildings are particularly susceptible to service issues caused by old pipes, outdated HVAC and aging mechanical systems. Landlords who are

making reasonable attempts to provide building services may not have the capital to perform all of the repairs they want to make, or their repair efforts may be stymied by governmental agency approvals, or a tenant’s refusal to provide access to address conditions. Renovation efforts may spark claims that landlords are attempting to render buildings uninhabitable as they re-floor or repaint buildings’ lobbies. Tenants can claim harassment because their faucets leak, because of slow building elevators, or because of a temporary service interruption while repairs are being made and old, faulty pipes and elevators are upgraded or replaced. These service interruption complaints can deflect attention from legitimate claims of harassment.

The new pilot program process requires an expanded five-year look back “window period” of tenant occupancy. HPD may interview with every tenant who vacated the property during that period to assess whether they voluntarily left their apartment or were subject to harassment. In large buildings with frequent turnover, finding past residents is a time-consuming process.

Meanwhile, construction work on buildings cannot proceed, which delays repairs needed to maintain safe and habitable buildings. HPD processing of applications currently takes at least six months, and the new law can only delay application processing time.

While owners should ask vacating tenants to sign statements acknowledging their receipt of services and voluntary vacatur, they may thereafter claim not to have understood what they signed, leaving the landlord back on the defensive. Clearly, it is difficult, if not impossible, to defend such claims absent taping every conversation.

In the event HPD determines a landlord is guilty of harassment, DOB will not issue or renew permits for covered categories of work for 60 months after such finding. Alternatively, to redress the conduct, the law allows the landlord to set aside 25% of the building for low-income housing, giving priority to tenants who the landlord allegedly harassed.

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