

'Certificate Of No Harassment' Pilot Casts Wide Net For Tenant Claims. Is It Too Broad?

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In December, the expanded Certificate of No Harassment pilot program [became law](#). The law, which takes effect Sept. 27, expands the current CONH requirements and requires building owners in certain districts to apply for a Certificate of No Harassment before the New York City Department of Buildings will issue permits to alter or demolish their buildings.

The expanded CONH program will function as a 36-month legislative pilot, with a focus on recently rezoned or soon-to-be-rezoned neighborhoods. These neighborhoods were determined by the city to be the most likely to need heightened protections to prevent tenant harassment.

While the CONH pilot program is designed to protect tenants from harassment, the ambiguity and scope of the law, as well as the lengthy time frame required to conduct harassment investigations, could create a chilling effect for owners trying to make a good-faith effort to renovate properties, Rosenberg & Estis managing member [Luise A. Barrack](#) said.

"I don't know that this law will achieve what it set out to do," Barrack said. "It casts a wide net. Is this the net you have to set out to catch the bad landlords? Is there a streamlined way that is more likely to catch the bad actors than this type of legislation?"

Although most landlords are ethical and law-abiding, there have been instances of harassment that have prompted the need for this type of legislation, Barrack said. Najary Torres, [a former rent-control tenant](#) at 94 Franklin Ave. in Williamsburg, still lives with her daughter in a Brownsville shelter three years after the landlord bricked up her kitchen windows and blocked emergency exits, rendering it uninhabitable.

The same month the pilot program went into effect, Steven Croman, [a long-controversial landlord](#), agreed to pay \$8M to tenants he allegedly [bullied out of rent-controlled apartments](#). A civil suit accused Croman of filing baseless lawsuits against tenants and sending an intimidating investigator to accuse tenants of living in their homes illegally.

Torres' situation and Croman's practices are extreme and apparent cases of harassment, but it is often not as cut and dried. Harassment constitutes any conduct intended to force a tenant to give up rights that they are otherwise entitled to, or would cause them to vacate their residence as a result of that conduct. Instances like intentionally shutting off heat or hot water, or using intimidation tactics to force tenants to abandon their apartments, are readily identifiable.

But tenant harassment claims can extend to any situation where a tenant feels uncomfortable or where they feel their quality of life has been impacted in an attempt to get them to vacate their apartments.

"The perception of what conduct constitutes harassment varies from person to person," Barrack said. "Someone who is thin-skinned could feel that a landlord's tone of voice while talking to them in the elevator is harassment. Is that harassment? No, but could somebody claim that it was? Yes."



Intent to cause discomfort also constitutes a gray legal area. Older buildings are particularly susceptible to service issues caused by old pipes, outdated HVAC and aging mechanical systems. A landlord who is making reasonable attempts to provide building services may not have the capital to address all issues or make improvements to the building. Renovation efforts can also spark harassment claims from tenants, who can claim that the landlord is attempting to render the building uninhabitable.

"Not every instance of an interruption or discontinuation of a service constitutes harassment or an attempt to get someone to leave," Barrack said. "Tenants can complain that they are being harassed because their elevators are old and slow or their faucets leak, or because services are temporarily interrupted while repairs are taking place. It is unfortunate that landlords are blamed under the 'catch-all' of harassment simply because a building is old and requires maintenance or is undergoing repairs, but those interruptions of services make up all of the tenant harassment claims I see."

When the property owner applies for a Certificate of No Harassment, the new pilot program process requires an expanded look back into [five years of prior tenant occupancy](#). During the investigation, NYC Housing Preservation and Development will conduct interviews with every tenant who vacated the property during that time period to assess whether they left voluntarily.

For buildings with many units and frequent tenant turnover, finding past residents becomes a time-consuming process. Meanwhile, construction work on the building cannot move forward, which can stall repairs needed to maintain a safe and habitable building for residents.

HPD processing of applications currently takes at least six months, but the advent of the new law will likely increase application processing time, Barrack said. Barrack often advises owners to request that tenants sign a document upon surrender of the apartment stating that their departures were voluntary and that they were not harassed. While this could expedite the application process, the tenant still could claim that they did not understand what they signed and leave the landlord back on the defensive.

“In a lot of these instances, it is one person's word against another's,” Barrack said. “If a tenant alleges that their landlord made threatening — or even unpleasant — statements over the phone, how do you defend against that claim? Unless you tape every conversation, you can end up on the receiving end of totally unfounded claims with no proof to dispute it.”

In the event the HPD finds a landlord guilty of harassment, the DOB shall not issue or renew permits for covered categories of work in the building for a period of 60 months after such denial or cancellation. Alternatively, there is a remedy: The landlord has the option to set aside **25% of the building for low-income housing** and give priority to tenants the landlord allegedly harassed.

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