

# REAL ESTATE WEEKLY

WEDNESDAY, NOVEMBER 6, 2019

## Owners, tenants lament flaws in rent regulation overhaul

By SABINA MOLLOT

Five months into the city's new rent regulations, the industry continues to digest the sweeping changes to how landlords can and can't raise rents.

At a seminar hosted by the New York Bar Association last week, panelists argued over the pros and cons of the legislation, with freshman New York State Senator Zellnor Myrie, who pushed hard for the reforms in Albany in June, saying, "I will never apologize for standing up for tenants.

"There were way too many incentives for bad behavior and we have increased protections against bad behavior."

Myrie was joined on a panel that included RuthAnne Visnauskas, commissioner and CEO of the state housing agency, Homes and Community Renewal and Luise Barrack, a managing member of Rosenberg & Estis, a real estate industry law firm. Daniel M. Bernstein, member with Rosenberg & Estis, P.C. and co-chair of the NYC Bar Association Committee on Housing & Urban Development, led the morning seminar.

Barrack warned about unintended consequences of the reforms, such as making landlords less inclined to take tenants with spotty or no credit histories, pet owners or people who are unemployed.

The problem, she said, stems from the fact that owners are no longer allowed to charge more than one month in rent as a security deposit.

"If someone has potential credit issues, the landlord no longer has

that cushion (of advance rent)," she said. She also said this could impact would-be renters from overseas, including students, who commonly have paid or have had their parents pay their rent for a semester or even a year in advance.

"It was a system enjoyed by both sides," said Barrack. "You can no longer do that and owners with properties near NYU or Columbia or other schools in New York City may no longer rent to overseas tenants, especially students, since the problem is their parents are also overseas. Common sense tells us no one is going to put their properties at risk to the extent that they don't have to. You will likely not see that money and you will be chasing them and never recovering the money. There are no consequences for things done wrong by tenants."

But attorneys representing tenants worries the new laws aren't far-reaching enough.

David Hershey-Webb, a tenant attorney and partner at Himmelstein, McConnell, Gribben, Donoghue & Joseph, brought up another change in the law, the elimination of tenant blacklists.

Throughout his career, he said he's encountered tenants with legitimate claims against their landlords who wouldn't litigate out of fear they'd end up on one of the lists, unable to find a new place to live. But, he said, such lists "may or may not still be an issue."

Another attorney, working for the Legal Aid Society, Ellen Davidson, agreed, saying there isn't any enforcement she's aware of with

regards to the lists, which makes the law as it applies to the matter rather toothless.

"It is to be enforced by the attorney general, but it's my understanding the attorney general has a lot of stuff on her plate," said Davidson. "If there is no private right of action, it is honored by some people who want to follow the letter of the law, but there are other people who understand there are no consequences."

Davidson was also concerned the new law still allows landlords to require credit checks, though the cost of credit/background checks for tenants is now capped at \$20.

"My clients do not have good credit ratings," said Davidson. "The law still allows discrimination based on a credit report."

Barrack, meanwhile, said she new laws are likely to lead to landlords leaving the businesses and more foreclosures.

"In real estate, you have to be profitable or you don't do it, anymore," she said.

But Davidson disagreed, at one point saying a forum she wanted to hold on the topic of MCIs (major capital improvements) and IAIs (individual apartment improvements) and landlords' concerns about hardships got no interest from owner interest groups.

"The landlords who are struggling overpaid for their buildings," she said.

When it was his turn at the podium, Myrie, who was one of several new lawmakers who'd helped shift the balance of power in Albany, where the State Senate turned blue last year, defended the new laws.

He told the crowd at a packed lecture hall that when he was running for office the issue voters consistently told him was most important to them was housing affordability. He also said he thought other New Yorkers should have the opportunity he had, to grow up in a rent-stabilized apartment.

The affordability of his home in Brooklyn is what he said allowed him, as the son of an immigrant factory worker, to go to college and eventually get elected to office.

He also dismissed predictions

by real estate professionals that the new laws would lead to warehousing and an inability to keep buildings in good shape.

Myrie said he hadn't heard about apartments being hoarded anywhere, saying instead rent regulated apartments are hard to come by but always had been.

Myrie also said he didn't believe properties would go on the decline, arguing that the industry has railed against rent controls since their inception.

"It had been a speculative, predatory industry," he said. "There was a business model based on displacement. The use and misuse of MCIs and IAIs, vacancy bonuses, were all used to displace people with profit at the top of the motives."

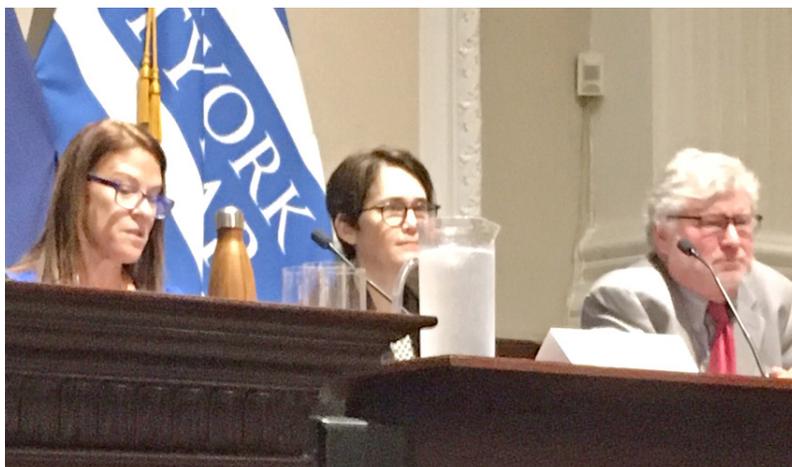
"There were way too many incentives for bad behavior and we have increased protections against bad behavior. I will never apologize for standing up for tenants."

Visnauskas said the impact of the new laws have already reached beyond the city limits, since one of the changes in the Housing Stability and Tenant Protection Act is that it allows municipalities upstate to be covered under the Emergency Tenant Protection Act, allowing them to do studies to see if they have a vacancy rate below five percent (which is officially considered a housing emergency). They can also now establish their own Rent Guidelines Boards that vote on rent increases.

"Kingston, New York is already in the process and they hired a consultant to do a study," said the commissioner. "We may see as we roll into 2020, other municipalities start the process of vacancy studies."

Visnauskas added, "We are incredibly excited about the protections. It is hard to get really meaningful legislation passed. I think the legislature did an excellent job in making generational changes."

Those changes are currently being challenged by litigation filed by two groups that represent owners, but those in attendance at the seminar were told not to ask about any pending lawsuits, with the explanation that it could create a conflict for some of the panelists.



Luise Barrack, Ellen Davidson and David Hershey-Webb