

Judge Janet DiFiore
and attorney
Deborah Riegel



HIGH COURT HEARING RENT OVERCHARGE CASES PUTS LAWYERS ON THE SPOT

Tenants pin hopes on new law, old ruling on J-51

BY GEORGIA KROMREI

With untold millions of dollars at stake for landlords and tenants, the Court of Appeals in Albany grilled attorneys for three hours Tuesday to determine how the 2019 rent law should apply to pending and future rent-overcharge cases.

Both sides made impassioned arguments for and against the retroactive application of the Housing Stability and Tenant Protection Act in such cases.

The statute, passed in June, bumped up what landlords would have to pay in the case of rent overcharges — treble damages for six years, instead of four. The law also greatly lengthened the amount of time a court may search back for a base rent upon which to calculate and assess damages, and mandated that landlords who lose their cases

pay court fees for tenants. Under the new statute, courts could potentially go back decades, leading to large judgments.

The tenants' cases before the court all cite a 2009 Court of Appeals ruling that landlords receiving J-51 tax benefits could not deregulate an apartment in two ways they had used for years: when the legal passed

a certain threshold and the unit was vacant or occupied by high-income tenants. State regulators had until then allowed deregulation in those situations.

But the application of the law going

forward was, largely, not debated in the courtroom Tuesday. At stake were scores of J-51 lawsuits with pending claims, which tenant attorneys say should be covered under the new law.

Landlord attorneys, on the other hand, say the legislature failed to specify that "claims" includes acts and proceedings. Allowing all pending cases, including appeals, could

potentially open up the floodgates to apply the new law to previously dismissed cases.

Adam Parkoff, of the Parkoff Organization, made the trip to Albany with a coterie of attorneys to

hear the oral arguments on the case targeting his firm. In 2016, tenants of 18 apartments in a Bronx building owned by Parkoff sued the landlord for charging unregulated rents while receiving J-51 benefits. An attorney for Parkoff argued Tuesday that the multi-plaintiff action should be heard at the state's Division of Homes and Community Renewal, which does not have the power to demand discovery, rather than all at once in state court. The attorney for the tenants countered that the forum for rent-overcharge cases are "subject to the tenant's choice."

Chief Judge Janet DiFiore, who called the new rent stabilization law a "sea change," spoke less than her colleagues on the bench, but raised a question to Darryl Vernon, a partner at law firm Vernon and Ginsburg who argued for tenants in two cases on the issue of retroactive application of the law.

"Should there be an expectation that [landlords'] liability should change retroactively?" the jurist asked.

Deborah Riegel, an attorney at Rosenberg & Estis, argued for appellants Belnord and Extell in a case brought by a tenant who signed a market-rate lease on a four-bedroom apartment and eventually paid \$20,000 in monthly rent. The previous owner had improperly deregulated the apartment, raising a question of what the new landlord should pay.

The cases heard by the high court involved tenants who were not the poor or working-class renters that the law seeks to protect, noted Nativ Winiarsky, a partner at Kucker Marino Winiarsky & Bittens. One of the tenants, Winiarsky pointed out, was an award-winning screenwriter.

"These were all wealthy individuals," Winiarsky said, although the income of the tenant was not included in the record. "Oscar award-winning screenwriters command significant fees."

But the new law, unlike the one it replaced, does not provide for means-testing. A person's wealth no longer has any bearing on his eligibility to pay a stabilized rent in New York.

The high court of seven jurists, all appointed by Gov. Andrew Cuomo, appeared divided on its interpretation of the new law. But few could disagree with Justice Eugene Fahey's observation that "the law changed because the politics changed" in favor of tenants.

He added, wryly, that perspectives on the issue depend on whether someone is receiving damages or paying them. "One man's ceiling is another man's floor," Fahey said. **TRD**

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