

ETPA Changes Approved by New York State

In June 2011, the Emergency Tenant Protection Act (ETPA) was extended with modifications. This extension came after the statutes were technically permitted to expire.

The essential changes in the statute were the following:

1. The high rent vacancy decontrol amount was increased from \$2,000.00 per month to \$2,500.00 per month. The net effect of this change is that in order for a landlord to exempt an apartment from the ETPA or Rent Stabilization by improvements to the apartment, the Landlord must expend an additional \$20,000.00 (in buildings with under the 35 units) and \$30,000.00 (in buildings with 35 or more units). The disparity based on number of units was another change such that improvements in buildings of 35 or more units can now only add 1/60 of the cost of an apartment improvement to the monthly rent while buildings with fewer than 35 units can still add 1/40 of the cost of an apartment improvement to the monthly rent.
2. The income limit for high income decontrol was raised from \$175,000.00 per year to \$200,000.00 per year.

The net effect of these changes to the ETPA, as pertains to apartments in Westchester, is to render many apartments virtually not subject to deregulation by high rent, whether a result of vacancy or income. The practical consideration is that in Westchester most earners of over \$175,000.00 are not seeking to maintain ETPA apartments. Moreover, vacant apartments which could be subject to deregulation with substantial capital improvement investment may not command rents in excess of the required \$2500.00 threshold.

Therefore, Landlords may opt not to make capital improvements to the apartments thus continuing the downward spiral of the quality of the housing stock available via the ETPA.



COURT FINDS DENIAL OF ACCESS A NUISANCE ENTITLING LANDLORD TO SUMMARY JUDGMENT IN HOLDOVER CASE

The Appellate Term recently held that a Tenant's denial of access to the Landlord for repairs and inspection constituted a nuisance. The Court held that the tenant was

"consistently refusing to allow landlord, DHCR and court personnel access to his apartment to inspect and repair the conditions, and that this conduct continued during the pendency of the instant proceeding. Tenant failed to dispute these facts, maintaining only, incorrectly, that his refusals to provide access were justified. As landlord established tenant's commission of a nuisance (cf. *Cabrini Terrace Joint Venture v. O'Brien*, 71 AD3d 486 [2010]; *12 Broadway Realty, LLC v. Levites*, 44 AD3d 372 [2007]) and as tenant raised no triable issue in opposition to landlord's motion, landlord's motion should have been granted."

Pefko Realty, LLC v. Nissim, 2010-2576QC, 2011 WL 6440927 (N.Y. App. Term. Dec. 19, 2011)

The Court in the above case granted the Landlord summary judgment, and presumably a warrant. In this case the lack of access seems to have been corroborated by DHCR and Court personnel but Landlords should document lack of access cases with witness, video, and multiple attempts.

COURT DECLINES TO DISMISS PET CASE

The Appellate Term recently confirmed that the failure to enforce a no pet provision with regard to one pet does not extend the waiver to a subsequent pet. The Court held:

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NEW YORK LANDLORD ALERT

January, 2012, Vol.3

“Landlord's failure to enforce the “no pet” provision in the governing lease agreement in connection with tenant's first dog, Gogo, did not constitute a waiver of the lease clause—requiring landlord's written consent “in each instance”—as to tenant's second dog (see 1725 York Venture v. Block, 64 AD3d 495, 496 [2009]; Park Holding Co. v. Emicke, 168 Misc.2d 133, 134 [1996]).”

EQR-Hudson Crossing A, LLC v. Kalouf, 33 Misc. 3d 140(A) (N.Y. App. Term. 2011)

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The law firm of Finger and Finger, A Professional Corporation was founded in 1974 by Kenneth J. Finger. Currently the firm has four principal attorneys: Kenneth J. Finger and Dorothy M. Finger, Carl L. Finger and Daniel S. Finger.

Currently Finger & Finger represents Landlords with free market, Section 8, HUD, ETPA, and other regulated properties throughout Westchester County. The firm processes numerous cases and appears regularly in all of the City Courts and many of the justice courts in Westchester County. The firm drafts notices to cure, notices to terminate, combined notices, three day demands, holdover petitions, non-payment petitions, leases, and other landlord tenant related documents on a consistent basis. Most important to clients is the regular and effective communication system in place at Finger & Finger, which includes not only contact with clients upon a change in status of any case, but a weekly update listing all pending cases and the status of each.

Further, the firm is counsel to the Builder's Institute of Westchester County and its subsidiary, the Apartment Owners Advisory Council. The attorneys work daily on issues involving all areas of rent regulation and Landlord-Tenant work.

Finger & Finger practices in all aspects of real estate law, including all matters relating to landlord tenant law such as the drafting and negotiation of leases for commercial, retail, office, and residential premises. Additionally, the firm provides services in eviction proceedings and other lease related litigation thus allowing for a particularly relevant perspective to the transactional work regarding leases.

The firm represents clients in considerable litigation in real estate and related areas as well as homeowners' associations, cooperatives, and condominiums. The firm has been successful in matters involving developers, homeowners' associations, individual shareholders, contractors, Sponsors and private water districts. The firm has also represented sponsors of cooperatives, homeowners' associations and condominiums as to offering plans and thus is quite familiar with the legal requirements and also engages in collection matters against delinquent homeowners, unit owners and shareholders involving both city and local court and foreclosure proceedings.

Directly related to Landlord Tenant law, the firm has previously drafted a form “plain language” lease to comply with a change in the law at the time, written articles on Landlord-Tenant law, drafted and litigated commercial lease matters, engaged in the collection of delinquencies and holdover proceedings and other residential and commercial matters. Members of the firm have litigated matters in Federal and State Courts pertaining to housing issues, Section 8, and other HUD and Fair Housing Act related matters. The firm also represents clients in building, housing, and health violations cases, DHCR matters, and discrimination cases.

The principals write articles for legal publications, Impact - the monthly newspaper of the Builders' Institute of Westchester County, Habitat Magazine, and have been retained by other attorneys on landlord-tenant issues in federal court. They also speak at seminars and lectures in Landlord-Tenant, Cooperative, Condominium, and Homeowners' Association matters.

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