New York State Senate Standing Committee on
Housing, Construction and Community Development
Public Hearing on Rental Housing and Tenant Protection Legislation
May 22, 2019

Testimony of Michael McKee, Treasurer

My name is Michael McKee, treasurer of Tenants Political Action Committee. I am also an honorary member of New York City Loft Tenants.

I want to express our thanks to Majority Leader Andrea Stewart-Cousins, Housing Committee chair Brian Kavanagh, and the Senate Democratic conference for taking a forthright stand for stronger rent and eviction protections, including expanding tenant protections statewide, and closing the worst loopholes in the rent regulation laws.

Senate & Assembly must work together; Andrew Cuomo must be excluded from negotiations over rent and coop/condo conversion laws

We are 24 days away from the sunset of the rent and coop laws. There are 13 session days remaining between now and June 19. Winning stronger and expanded tenant protections in the remaining time represents a formidable challenge for you, and for us.

It is essential that the two houses work together for stronger and expanded rent and eviction protections. It is also essential that Governor Andrew Cuomo be excluded from these negotiations, as it is clear given his history that he would work actively to water down every goal we have set for 2019.

We understand that there is an inherent competition between the two houses, and that just because the Democrats control both houses doesn't mean that this institutional tension disappears. But there are larger issues at stake here than who gets the credit.

We urge that the Senate work closely with the Assembly to help us win, and win big. There will be plenty of praise and thanks from tenants for all of you, I can promise you.

We urge you most urgently to negotiate with the Assembly but to leave Governor Cuomo out of the negotiations. If Andrew Cuomo is allowed to participate in three-way negotiations, that will inevitably lead to a Big Ugly with other things Andrew wants, such as lifting the cap on charter schools, and a watered-down package of rent "reforms" that he would call a great tenant victory and that we would call a sellout.

Andrew will also use capital funds and member item funding as a cudgel, threatening to eliminate them unless the legislature gives in and weakens the rent laws. If you want to do the right thing for tenants, if you want to win real protections for tenants all over the state, if you want to do the right thing for the restoration of our rent laws and the preservation of our ever-shrinking supply of affordable rental housing, you should tell him to take his funds and stick them where the sun don't shine. You should have no difficulty explaining to your constituents who the Grinch was who stole the funds for the Little Leagues.

The Senate and Assembly must work closely together to counter Andrew Cuomo's behind closed doors efforts, and to make sure that the real estate lobby's "stealth and cash" tactics do not result in weakened provisions in the final negotiated bill. The same goes for Airbnb, who clearly intends to insert itself into negotiations to enhance their ability to continue the conversion of residential rental housing to illegal hotels.

We very much hope that Assembly Speaker Carl Heastie will also agree to exclude Andrew Cuomo from negotiations. If he does not, tenants will be screwed once again.

Pass all nine bills

Tenants PAC is a member of the Upstate/Downstate Housing Alliance. We support all nine bills on the Housing Justice for All platform. Seven of them close the worst loopholes in the existing rent control and rent stabilization laws, including repeal of vacancy decontrol and re-regulation of deregulated units; ending the preferential rent scam; repeal of the 20 percent statutory vacancy bonus; providing rent relief for rent-controlled tenants; eliminating MCI and IAI increases; and fixing the four-year ban on looking back to determine the legal rent.

An eighth bill repeals the arbitrary geographic exclusions in the Emergency Tenant Protection Act of 1974, so that any municipality anywhere in the state would have the

right to opt into rent stabilization if it chooses to do so, and if the local net vacancy rate is five percent or less.

The ninth bill would prohibit evictions without good cause, which is a crucial measure for tenants who do not have the protections of the various rent regulations laws, all of which prohibit evictions without good cause.

These bills represent not only the logical solution to our ever-worsening statewide housing crisis, but also the necessary response.

Loft tenant protections

But first, in the interest of equity, I must advocate for a tenth bill not on the official platform. This is S3655-B, introduced by Senators Julia Salazar, Brad Hoylman, Gustavo Rivera, and Jose Serrano, to protect tenants who occupy live/work spaces in formerly commercial buildings such as warehouses and factories, which are not in compliance with building or fire and safety codes. Loft tenants are given commercial leases, and thus are subject to arbitrary eviction.

Currently many buildings are ineligible to apply for coverage because the 2010 Loft Law included punitive exclusions intended to pre-empt coverage. These exclusions were inserted at the insistence of Mayor Mike Bloomberg and Governor David Paterson, who threatened to veto the bill if the legislature did not accommodate the mayor.

Bloomberg was not motivated by safety concerns, but by a desire to prevent tenants from applying for the protections of the Loft Law. He then turned his back on the problem, taking no enforcement action against landlords who continued to convert their empty warehouses to live/work spaces.

The basic purpose of S3655-B is to repeal these arbitrary exclusions, thus allowing tenants to apply for legalization and in the meantime be protected from eviction.

Because of the Bloomberg exclusions, hundreds of loft tenants have been evicted since 2010, or forced to give up their legal fight after spending thousands of dollars on legal fees. Just last month, a founding member of New York City Loft Tenants and his family were evicted from their home of 26 years because of one of the Bloomberg exclusions. He not only has lost his home, but his business as well, because he had to rent a garage to store his woodworking equipment when it became clear that he would be evicted. He has had to turn away clients of his furniture design business as he has no location to operate. He was the last resident in his building; all the others were evicted earlier, or

turned in their keys when it became clear that the law would not be changed in time to save them.

Four more loft tenants who are not eligible under the current law are facing imminent eviction. They are also the last residents in their building. The landlord has already begun converting the property into a WeWork-type office operation. Ten families in another building, several of them with children, are in the same boat.

Just yesterday, as she was preparing to leave Albany after a day of lobbying for this bill, Kristine Malden, one of the four tenants I just mentioned, received a call from their lawyer informing her that the Housing Court judge had issued a decision granting their landlord possession of their lofts. They are now waiting for a city marshal to serve them with a five-day notice of eviction. If they are still in possession when this bill is signed into law, their homes can be saved. If they are physically evicted before the bill is enacted, they cannot be restored to possession.

Attached to my testimony is a copy of Kristine Malden's testimony at this committee's hearing last Thursday in Brooklyn. I attach it because most of you were gone by the time she was called to testify. I urge you to read her statement which I think is a perfect illustration of the situation in which unprotected loft tenants find themselves.

The Assembly has passed the "same as" bill A5841-A sponsored by Deborah Glick and others. Further delay by the state senate in passing this bill would be immoral. You must pass this bill before more tenants are evicted.

Vacancy Decontrol repeal

S2591-A, sponsored by Majority Leader Andrea Stewart-Cousins and 24 other senators, repeals Vacancy Decontrol going forward, but also re-regulates most of the apartments that have been deregulated in the 25 years since VD went into effect in New York City (1994) and in the 22 years since it was extended to Nassau, Westchester and Rockland Counties (1997).

The bill, which is sponsored in the Assembly by Linda Rosenthal (A1198) and 56 other members, would return apartments to rent stabilization if the current tenant is paying less than $5,000 per month in the city or less than $3,500 in the suburban counties. These numbers were established when the bill was first introduced in 2007, and it might make sense, thirteen years later, to adjust them a bit upwards.

The original bill also had a provision for a modest rent rollback, but several years ago then-Speaker Sheldon Silver forced the sponsor to remove the rent rollback from the bill. This is worth another look.

One thing is clear: if we succeed in closing the major loopholes in the rent laws, we cannot completely undo the hit on affordability that the downstate region has endured since the State Legislature began weakening the rent laws in 1993, and the New York City Council compounded the damage by enacting permanent vacancy decontrol in 1994. A modest rent rollback could help.

Median monthly contract rents in New York City in 1996 were $600 (all renters), $428 (rent control), $600 (rent stabilization) and $690 (unregulated). *Source: U.S. Census Bureau, 1996 NYC Housing and Vacancy Survey*

In 2017, the most recent available, these numbers were $1,337 (all renters), $915 (rent control), $1,269 (rent stabilization) and $1,700 (private non-regulated). *Source: U.S. Census Bureau, 2017 NYC Housing and Vacancy Survey*

Statewide local option rent and eviction controls

S5040 by Senator Neil Breslin and 22 other senators would repeal the arbitrary geographic restrictions contained in the Emergency Tenant Protection Act of 1974, which restricted rent stabilization coverage to New York City and the three suburban counties of Nassau, Rockland and Westchester. The Assembly same-as, A7046, is sponsored by A.M. Kevin Cahill and 38 other members.

This bill would allow any municipality anywhere in the state to opt into the ETPA by a vote of the local legislative body. First the city, town or village would have to commission a vacancy survey to determine the net vacancy rate; if the net vacancy rate is five percent or less, the municipality can declare a housing emergency and opt into ETPA. This bill would not impose rent control anywhere; a municipality could choose to opt in, or not.

Suggestions that only certain counties should be added to the ETPA jurisdictions this year are unacceptable. This must be a statewide local option system. While there will be many municipalities that will not opt into the system, they should have the right to choose.

Tenants all over the U.S. are organizing for rent control and tenant protections. The reason for this is clear: the housing crisis has become much more severe and people are

suffering. The New York State Senate should get with the program and not fall behind the times.

Prohibition of evictions without good cause

Not every municipality across the state will opt into ETPA, just as not every municipality in the three suburban counties has opted in. In addition, ETPA applies only to buildings with six or more units built or first occupied before 1974. That means that a huge number of tenants are and will be without basic protections. This is why good cause eviction is so important.

S2892-A by Senator Julia Salazar and 23 other senators would bar evictions not justified by non-payment of rent, creating a nuisance, damaging the apartment, or similar reasons. It would also prohibit "unconscionable" rent increases, without which the landlord could easily get around the law by doubling or tripling the rent.

This is not rent control. I wish it were. The Assembly bill, 5030-A by A.M. Pamela Hunter and 54 other Assembly members, creates a "rebuttable presumption" that the rent is unconscionable if the increase exceeds 1.5 times the rate of inflation as measured by the Consumer Price Index. The landlord could justify a larger increase by citing a major repair job or similar costs.

In other words, this bill gives tenants a defense against unjust eviction and excessive rent increases, <u>if the tenant chooses to contest the eviction or rent increase.</u> The burden is on the tenant to challenge the landlord's action.

Most tenants will not contest rent increases if they are within reason. Why would they? To fight a rent increase would require withholding rent, resulting in the landlord's suing them, going into court without an attorney in most parts of the state, and then ending up on the black list, making it hard to rent another apartment. Not to mention taking time off from work and disrupting one's life.

It is where predatory landlords impose huge rent increases that this law will likely come into play. For example, a national predatory landlord recently bought a mobile home park in Akron in Erie County and promptly doubled the rents. These residents own their manufactured homes, but rent the land under them. Under our current weak laws, they are at the mercy of their landlord. This is happening all over the U.S. as predatory landlords buy mobile home parks from families that owned them for many years. Manufactured housing is a major source of affordable housing in many parts of New York State, and leaving these tenants unprotected would exacerbate the housing crisis.

There are more than 1.6 million tenants in New York State who would benefit from this bill, including those who live in smaller buildings in New York City and the three suburban counties.

We have heard talk that some legislators want to exempt "mom and pop" landlords and have the bill apply only to corporate owners. I submit that you cannot craft a bill that will make it possible to enforce such a law. There are many ways that landlords can disguise concentration of ownership.

And consider this: if you were to exempt single-family houses that are occupied by renters, you will be leaving 406,484 households statewide right where they are now – at the mercy of the landlord. If you exclude 2-family homes, 459,872 more households would have no protections. Excluding 3- and 4-unit buildings, another 419,807 households would be left out in the cold. Total households in 1-4 unit buildings potentially covered by good cause evictions: 1,286,163. (These numbers do not include owner-occupied 2- and 3-unit buildings, which are exempt from the provisions of this bill.) *Source: U.S. Census Bureau, American Community Survey*

Strengthen laws governing coop & condo conversions

In a typical sunset year no one pays attention to the laws governing conversion of rental property to coop or condominium status, even though they expire on the same date as the rent and eviction protection laws. This year the coop laws (General Business Law §352-eee applicable to the three suburban counties & GBL §352-eeee applicable to NYC) cannot be an afterthought, because if we succeed in closing the loopholes in the rent laws, that will stimulate a wave of coop or condo conversions, further depleting the supply of rental housing.

These conversion laws are notoriously weak. I suggest that you ban eviction plans entirely, and that you amend the provisions governing non-eviction plans to require 51 percent of bona fide tenants in occupancy to sign purchase agreements before the plan can be declared effective. The current standard requires that the sponsor sell 15 percent of the apartments, and it doesn't matter if they are sold to tenants in occupancy, or outside purchasers who buy vacant or occupied apartments. The result is that many of these buildings become "counterfeit coops" where the shareholders have little power and the building remains under control of the sponsor for many years. Shareholders and non-purchasing tenants suffer.

You might also try to craft a solution to what is probably the most unenforced provision of real estate law, which is the requirement that coops and condos have the same managing agent for the coop or condo and for the non-purchasing tenants. Sponsors flout this law at will and no one does anything about it. Consequently, non-purchasing tenants who remain under rent regulation frequently suffer discrimination and poor conditions.

Restore the rent registration system

The original rent stabilization system had no requirement for rent registration. Instead, landlords were required to keep copies of all leases in case tenants filed rent overcharge complaints. You can imagine how well this worked. Rent overcharging was rampant. When tenants filed complaints of rent overcharge, there were an astonishing number of fires and floods in real estate offices that made the leases supposedly unavailable.

The state legislature finally implemented rent registration in the Omnibus Housing Act of 1983, effective April 1, 1984. Landlords of rent-stabilized properties were required to file an initial registration with the state housing agency in 1984, and an annual registration thereafter. Owners were required to register legal rents including explaining changes in rent from year to year, and all required services. The OHA imposed stringent penalties for failure to register, or for filing a fraudulent registration. Landlords could have their rents rolled back, and/or could be found to owe tenants three times the amount of a rent overcharge (treble damages). Plus, landlords who failed to register were barred from collecting any rent increases allowed under the law.

In 1993, only ten years after tenants finally won this change, the state legislature and Governor Mario Cuomo enacted amendments that gutted the rent registration system, repealing the 1983 statutory penalties and substituting a $5 fine. At this point, the rent registration program basically became a voluntary system. Landlords clearly understood that they would not be punished for failing to register or filing a fraudulent registration. The $5 fine is rarely imposed and even more rarely collected.

This 1993 change, combined with the 1997 amendment prohibiting lookbacks more than four years from the date a tenant files a rent overcharge complaint, made illegal rent overcharging and illegal deregulation easy for dishonest landlords to achieve.

The rent registration system must be restored to its pre-1993 status, and the four-year lookback rule must be reversed. On the four-year rule, S4169 is sponsored by Zellnor Myrie, and in the Assembly by Jeffrey Dinowitz (A5251). There is currently no bill to restore the rent registration system to its pre-1993 status.

And you should require that landlords register rent-controlled apartments as well as rent-stabilized ones, an oversight in the OHA of 1983.

Another point, this one administrative: The rent and services registration forms that landlords are required to send every year to rent-stabilized tenants used to have information on them explaining the context, and informed tenants that they had a right to challenge the registration and how to go about it. All this language was stripped out under the administration of Governor George Pataki, who basically turned the Office of Rent Administration over to the real estate industry. Consequently, tenants have no idea why they are receiving this form and what it means. (Of course, many landlords do not bother sending the forms to their tenants, and get away with it because of lack of enforcement.)

This pro-landlord policy has never been reversed under a series of Democratic governors, including the incumbent.

As long as we are touching on administrative issues, let me make this observation: The Office of Rent Administration certainly needs more staff and better infrastructure, and we commend the legislature for recognizing this and acting on it in the budget.

<u>But what is really needed is a culture change</u>. ORA needs to be told by the governor that it is their job to enforce the laws, to protect tenants and to stop the erosion of rent-regulated housing, instead of cutting it down the middle and letting landlords off the hook for their bad behavior. This problem is not new; it goes back to 1984 and the state takeover of rent administration under Governor Mario Cuomo. But it has become worse over time, and by now the agency is virtually ossified, unable even to imagine a new way of functioning.

Rent Guidelines Boards

If we succeed in enacting local option rent control statewide, you need to amend the Emergency Tenant Protection Act of 1974 to allow municipalities to establish their own rent boards. The current structure of the ETPA provides for a county to establish an RGB if a municipality opts in, even if only one municipality does so, and choose the members of the board. This was a deliberate design in 1974 (when both houses were controlled by the GOP) to guarantee landlord-friendly rent boards. Of course, since 1974 the three suburban counties have become much bluer, but back then the GOP was in solid control and for many years the suburban rent boards were dominated by pro-landlord

appointees. It makes no sense for the Monroe County Legislature to establish a rent board for the City of Rochester, for example.

While no bill has been introduced, we have drafted such bill language in collaboration with Sen. Neil Breslin.

Another necessary reform is to pass S5482/A4229 by Sen. Julia Salazar and A.M. Gary Pretlow, which prohibits RGBs from enacting any vacancy allowance. In the past, the NYC RGB has enacted annual vacancy allowances as high as 15 percent, and the Westchester RGB enacted a "highest comparable" vacancy allowance for 11 years in a row, which in effect was vacancy decontrol.

Since the 1997 enactment of the 20 percent statutory vacancy bonus, the RGBs have refrained from adopting any vacancy allowances. But if you repeal the 20 percent statutory vacancy bonus as in S185/A2351 by Sen. Jose Serrano and A.M. Victor Pichardo, the RGBs will likely revert to their earlier practices.

Thanks again for this opportunity to testify. We hope that we will all be celebrating a new day in tenant protection in a few weeks.

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