

COURT WATCH

A Market Reinvigorated:

The Impact of *Regina Metropolitan* on the Rental Building Market

By Arun Perinbasekar

Following the passage of the Housing Stability and Tenant Protection Act (HSTPA) on June 14, 2019, investors in residential rental properties collectively discovered that the value of their buildings were substantially diminished. Since all rental histories were subject to review under HSTPA, neither a seller nor a buyer could have security about the reliability of a building's rent roll. Effectively, all rental histories were subject to scrutiny and the potential for rent overcharge liability was devastating. Without perfect recordkeeping it was hard make representations as to the reliability of rents.

This potential for damages, combined with the fact that deregulation is no longer available,

and that rental increases through improvements are negligible, at best, led to the inescapable conclusion for many sellers and buyers that the residential rental market was substantially riskier and a less attractive investment strategy. Owners could not sell their buildings as investors were not interested in the added risk and lower returns.

In a seminal decision, however, New York's highest court, the Court of Appeals, found that rent overcharges committed prior to June 14, 2019, are not governed by the newly enacted HSTPA, but rather by the prior laws governing rent overcharge [see *Matter of Regina Metro. Co.*

(continued on p. 2)

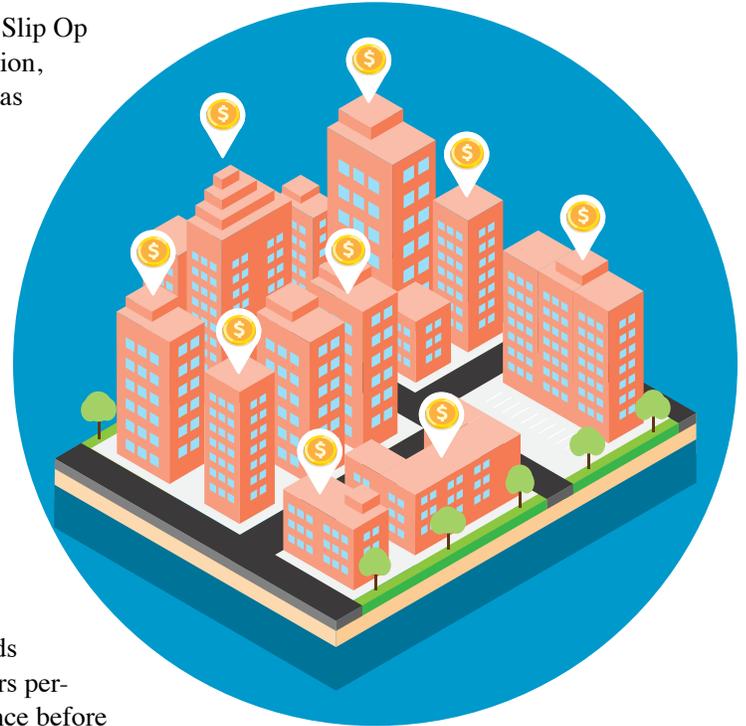
v. NYS DHCR, 2020 NY Slip Op 02127 (2020)]. This decision, issued on April 2, 2020, has had a profound impact on the rental property industry because potential liability for rent overcharge has been substantially curtailed and more easily defined.

In the short period of time since the decision it has become evident that residential rental properties are now much more marketable. However, HSTPA is still applicable after June 14, 2019, and this demands that both sellers and buyers perform adequate due diligence before any transactions.

Before and After Regina

Prior to the decision in *Regina Metropolitan* one of the myriad concerns for landlords, created by the passage of HSTPA, was the radical amendment of the then existing laws governing claims of rent overcharge and potential damages. Whereas previously rent records could be disposed of after four years, HSTPA granted both the courts and the DHCR the ability to review records without any time limits to determine the proper rent. Effectively, HSTPA provides both courts and the DHCR total discretion to search for any records to determine a proper rent. The only limit on the courts' and DHCR's discretion was reasonableness.

Now, the Court of Appeals decision in *Regina Metropolitan* breathes new life into the residential rental market by limiting rent overcharge liability. But, to be clear, not all of the market's problems were resolved by the decision. Going forward, deregulation through high rents is still not available, nor is there a possibility of rent increases through improvements.



But now the current rent roll of a building is substantially more secure. The fact that owners discarded records after four years, as they were permitted to do, is not a basis to challenge rent. Therefore, in most cases lease histories that span June 14, 2015 (four years prior to the passage of the HSTPA) to present are more than sufficient.

Of course, there are exceptions to all rules. An owner is still required to prove deregulation when challenged. However, even if an owner cannot prove deregulation in a proceeding, the rent will be based on a recalculation from the base date of review, not some earlier date in time.

It must be noted that a finding of fraud prevents the use of the aforementioned formulation. Instead, the “default method” of establishing the rent is utilized to calculate the rent. In most cases, if the default method is employed, the rent will be based upon the lowest rent for a similarly sized apartment in the building.

So, with leases going back to June 14, 2015, no basis for fraud, and sufficient

(continued on p. 3)

**IT'S MORE
CRITICAL
THAN EVER TO
EVALUATE YOUR
BUILDING'S
RENTAL
HISTORY.**

records to prove deregulation of units, a potential buyer or seller can have reasonable certainty of the value of a building's rent roll.

Review Records Back to 2015

While *Regina Metropolitan* provides some relief to owners, HSTPA still governs overcharges from June 14, 2019, onwards. Therefore, while it is paramount to comply with all the relevant registration and documentation requirements imposed by the new law, it is also imperative that owners review their rental histories now, and make sure there are sufficient rental records.

Without taking proper recordkeeping measures, the passage of time inevitably leads to the loss, misplacement, and destruction of records that may ultimately be needed to secure the viability of rent rolls going forward. Without a solid anchor of records reaching back to at least 2015, an owner exposes itself to substantially more risk in the future, whether that be six years, 10 years, or 20 years down the line, as HSTPA governs future claims.

By way of example, if a tenant files his rent overcharge claim in 2026, that claim will be governed by HSTPA. While damages will be limited to a six-year period going back to 2020, the tenant will be permitted to search the record going back to at least June 14, 2015. If the records from 2015 onward are not in order, then the owner will be subject to a potentially drastic lowering of the legal rent, damages, treble damages, and attorney's fees.

Therefore, whether it is to determine the value of your current rent roll, perform research for a potential transaction, or provide documentation for a refinancing of a mortgage, it is more critical than ever to properly evaluate your building's rental history. This is the best time to determine the true value of an investment or potential investment through a thorough due diligence. ◆

Arun Perinbasekar is a partner with Sidrane, Schwartz-Sidrane, Perinbasekar and Littman, LLP, based in Rockville Centre, NY.