

How the Landlords Weakened Our Rent Laws

How Tenants Lost – And How We Can Win Back What We Have Lost

By Michael McKee

Preface

May 1, 2008: Tenants in New York State are in a remarkable position at the moment. After fifteen years of legislative defeat in the State Legislature, and in the New York City Council, we have a chance to reverse the tide, restore tenant protections, and preserve affordable rental housing in the city and suburban counties.

Winning is contingent on two undertakings. First, tenants must help the Democrats take control of the New York State Senate in the statewide election on November 4 – a mere six months away. Second, tenants must engage (now, not later) in serious lobbying of legislators for our program, so that when the Democrats control both houses, they are primed to act. Neither of these things will simply happen. We must make them happen.

I began writing this history because many people have asked me to detail the protections we have lost, and when, and why. These questions made me realize that many activists have only a fuzzy grasp of the events of the last fifteen years – or the last 40 years.

How did it happen that we have lost so much ground? What could we have done better? How did tenants succeed so well in the early 1970s, winning repeal of the 1971 Vacancy Decontrol law in only three years? How did we get stuck with another form of Vacancy Decontrol twenty years later? Why have we (so far) been unable to reverse the tide?

In order to win, we need to learn from our past. This history and analysis is intended to help in that necessary discussion, to help us take back our rent laws.

Above all, it seems to me, tenants need to understand that we can never relax our defense of the vital laws that protect us and preserve affordable housing for the future. To my way of thinking, the most important difference between our times of victory and our times of defeat has been the level and intensity of organizing by tenants – when we do a good job of organizing and mobilizing, we win; when we slack off, we lose. (We did a bang-up organizing job in 1997 and still lost ground, when by rights we should have triumphed – a brief account of 1997 is contained in this narrative.) For most elected officials who support tenants, their political will is stronger when we push them.

The views expressed in this document are my own, and others may have reasonable disagreements with my analysis. My purpose is not to impose my interpretation of events. Rather, my hope is that this history and analysis will help the tenant movement engage in an evaluation of where we have been, where we are, and how we move forward.

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The current rent regulation system, in all its inadequacies

In order to shorten this document and concentrate on the last 15 years when tenants began to lose ground (1993-2008), I have eliminated several pages of history of the 1970s and 1980s. This includes the energetic campaign to repeal vacancy decontrol (1971-1974), the 1977 sunset fight, the 1983 Omnibus Housing Act, and the termination of “real estate industry self-regulation” of the New York City rent stabilization system.

For those readers who wish to read this earlier history (which I believe will help put this document into better context), it will soon be available on the Tenants PAC web site (www.tenantspac.org). Or readers can request a hard copy by writing Tenants PAC, 11 Park Place, Suite 814, New York, NY 10007.

Before getting to the year 1993, it is necessary to explain what we are fighting for, what it is that we have lost through the decontrol enactments of 1993, 1994, 1997 and 2003.

In 1970 there were 1.265 million rent-controlled apartments in New York City, and 350,000 rent-stabilized units, for a total regulated universe of 1.615 units (*source: U.S. Census Bureau, 1970 New York City Housing and Vacancy Survey, as reported in Housing and People in New York City, George Sternlieb, January 1973*).

In the most recent HVS, the Census Bureau reported that there were 1,015,655 stabilized units and only 43,317 controlled units, for a total regulated universe of 1,058,972 units (*source: U.S. Census Bureau, 2005 New York City Housing and Vacancy Survey*).

This loss of more than 500,000 regulated units in that 35-year period is due to a number of factors – there are additions to, and losses from, the regulated stock every year – among them abandonment (especially in the 1970s), conversion to cooperative or condominium status, and more recently high rent vacancy decontrol.

The major loss is no doubt the result of a wave of coop and condo conversions from the late 1970s to the mid 1980s, and vacancy decontrol arising from conversion. The rent regulated constituency shrank, and the constituency of coop shareholders and condo owners grew. Further, the tenants who bought tended to have higher incomes than the tenants who remained renters. To many legislators, coop and condo owners have become more important than renters – this is a change from the 1970s.

Rent control as it existed in 1970 was far superior in terms of tenant protections to rent stabilization, especially in the area of eviction protection. While tenants succeeded in the Emergency Tenant Protection Act of 1974 in repealing vacancy decontrol outright for rent-stabilized apartments (virtually all of the controlled and stabilized units that had been vacancy decontrolled were put back under ETPA at the rent tenants were paying at the time ETPA was enacted, in May 1974), the Legislature left a modified form of vacancy decontrol in effect for rent control.

Under the ETPA, when rent-controlled apartments become vacant, the landlord can raise the rent to market, and the unit then becomes subject to rent adjustments adopted annually by the New York City and suburban Rent Guidelines Boards. The new tenant

can file a Fair Market Rent Appeal, challenging the initial rent, but few tenants are aware they have this right and even fewer file challenges.

In the 34 years since its enactment, ETPA essentially phased out rent control and greatly increased the rent-stabilized stock. A weak system took the place of a strong system.

Another way to look at this transition: More than 1.2 million rent-controlled apartments in New York City turned over in the 35 years between 1970 and 2005. Cite these statistics the next time you hear someone claim that no one ever moves out of a rent-regulated apartment. And all these apartments were raised to market rents as a result of this transition, and then landlords received generous rent increases from the landlord-friendly rent boards. What's their beef?

The NYC Rent Stabilization Law of 1969 – and the Emergency Tenant Protection Act of 1974 that was essentially cloned from the RSL – have been widely criticized by academics and researchers as the weakest form of rent control in the United States. The reliance on lease renewals as a form of tenure protection, rather than using the form under rent control, statutory tenancy (the right to remain as long as you want without a lease), gives landlords a huge advantage, in that this system makes tenants uncertain of their tenure rights. To this day, thousands of rent-stabilized tenants mistakenly believe that if the landlord does not renew their lease they can be evicted.

There was also an insidious element of class bias at work in the design of the RSL. In the early years, tenants of rent-stabilized apartments were encouraged to think of themselves as different from their rent-controlled neighbors. The stereotypical rent-controlled building was viewed as a walk-up tenement occupied by grubby working class types, while the stereotypical rent-stabilized building was a white brick box with 24-hour doormen servicing affluent upper class residents.

The fact that neither of these stereotypes captured reality didn't much matter. In general rent-controlled advocates stuck to a rent freeze mentality, while rent-stabilized tenants expected to pay regular rent increases, thinking the rent control crowd old-fashioned, radical, even a bit crazy.

A news release of 1976 announcing the creation of a new city-wide coalition representing only rent-stabilized tenants stated that rent-stabilized tenants have “very different problems” from rent-controlled tenants. This coalition was extraordinarily short-lived, but its psychology was representative. The founders of this new alliance really thought they were superior to their rent-controlled brethren.

In the post-ETPA years, these distinctions diminished and have now essentially disappeared. As rent control was phased out on turnover, the rent stabilization system grew enormously due to the addition of formerly rent-controlled pre-1947 units. Very soon the pre-1947 rent-stabilized universe outnumbered the post-1947 universe by significant numbers. In 2005, there were 726,070 pre-1947 and 289,584 post-1947 stabilized units in the city (*source: U.S. Census Bureau, 2005 New York City Housing and Vacancy Survey*).

Some of the worst weaknesses of the ETPA/RSL were corrected in the Omnibus Housing Act of 1983. OHA made some concessions to landlords but on balance was a pro-tenant bill. Its major change was to transfer administration of NYC rent stabilization from the real estate industry (the NYC Rent Stabilization Association) to a state agency, the Division of Housing and Community Renewal, which already administered ETPA and rent control outside the city. Administration of city rent control was also transferred to the state, from the NYC Department of Housing Preservation and Development to DHCR.

The major accomplishment in OHA was implementation of a rent registration system. Prior to 1983, landlords were not required to register rents, and rent overcharging was rampant. Instead, they were required to keep copies of all leases. If a tenant filed a complaint of rent overcharge, the landlord was then required to produce the leases going all the way back to the base date (1968 in some cases, 1974 in others), to allow the enforcement agency to ascertain what the legal rent was and if the tenant had been overcharged. Many landlords claimed they were unable to produce leases: fires, floods...

The Omnibus Housing Act required landlords of rent-stabilized apartments in the city and suburbs to register all units with DHCR by April 1984, and to register all units annually thereafter. Unfortunately rent-controlled apartments were required only to be registered one time, in 1984.

OHA provided for significant penalties for failure to register. Landlords who failed to register were barred from collecting any rent increases, and could face rent rollbacks and the likelihood of having to pay large sums of money back to their tenants. Essentially, failure to register created a de facto rent overcharge. This was a powerful incentive for landlords to comply.

The other significant change was to end the failed experiment in “industry self-regulation.” The OHA and a second bill in 1985 severed the NYC Rent Stabilization Association from any enforcement or administrative role in the rent stabilization system, assigning these functions to DHCR and converting RSA into a private trade association representing landlords – albeit one with a counter-intuitive name (see Tenants & Neighbors fact sheet, “How the RSA Got Its Name”).

Thus New York City’s miserable experiment with real estate industry self-regulation came to an end.

The Dark 1990s, when tenants started losing ground

Every time the state rent laws come up for renewal in Albany, pro-landlord forces in the State Legislature use the sunset as an opportunity to force pro-tenant forces to agree to weakening amendments as the price of an extension of the laws for another period of years.

In 1985, 1987, 1989 and again in 1991, tenants successfully beat the regressive landlord forces and achieved a “straight extender” of the laws. In each of these years, the Senate Republican leadership used the threat of allowing the laws to expire as a weapon to

extract pro-landlord concessions, but backed down each time – although often waiting until a perilous last moment. Often the state rent laws were renewed a scant few moments before midnight of the sunset date, in one year requiring Governor Mario Cuomo to sign the bill on the back of a state trooper at the Albany airport after his plane landed.

It became increasingly hard to mobilize tenants for these biennial sunset fights. Many tenants refused to believe that the laws would not be renewed, and failed to understand that the real danger was that tenant protections would be weakened as the political price of another extension. Some tenants accused tenant advocates of crying wolf.

The landlord strategy was unchanged from sunset to sunset. Stealth and cash: copious campaign contributions to state legislators and a behind-the-scenes attempt to negotiate weakening amendments.

As the June 1993 sunset deadline approached, tenants began to be aware that this year would likely be different. Privately, landlord lobbyists told Republican Senate Majority Leader Ralph Marino (R-Nassau/Suffolk) at the beginning of the year that they would cut off their generous campaign contributions if the Senate allowed the rent laws to be renewed once again without decontrol amendments.

Two legislators played central roles in the 1993 struggle, which resulted in the first weakening amendments to the rent laws since enactment of Vacancy Decontrol in 1971. Assembly Speaker Saul Weprin (D-Queens), although well-intentioned, botched the negotiations. Senate Housing Committee chair Kemp Hannon (R-Nassau County) skillfully manipulated the reporting and amending of one decontrol bill after another during the last weeks of the legislative session, keeping the pro-tenant forces in the Legislature off balance.

Unfortunately, Pete Grannis was no longer chair of the Housing Committee (he had negotiated the OHA of 1983). For the first time, the Assembly Speaker did the negotiating with the Senate, rather than delegating this task to the committee chair – a precedent which then became the norm.

The result was the Rent Regulation Reform Act of 1993. Far from being a “reform” bill, the measure made five pro-landlord changes to the rent laws, including high-rent vacancy decontrol and the first income-based eligibility provision. Defining “high rent” as \$2,000 per month, the RRRRA provided for decontrol of vacant units at that level, and required tenants in high-rent apartments to go through annual income certification and face immediate decontrol if the household income exceeded \$250,000 for the last two consecutive calendar years.

Penalties for failure by landlords to register their apartments every year were basically eliminated. Rent-stabilized apartments in coops or condos in the suburban counties were deregulated. The state laws were extended for another four years, until June 1997.

There was another factor that led to the 1993 defeat. Compared to the muscular grass roots campaigns of the 1970s, the tenant movement mounted a lobbying effort leading up to the June 1993 sunset that was feeble to say the least.

The RRRA of 1993 allowed landlords to avail themselves of the two forms of decontrol for a limited three month period. Landlords could deregulate apartments when they became vacant if the rent was \$2,000 or more, and tenants in apartments renting at or above \$2,000 per month could be required to file annual income certification statements and face high income decontrol.

But these two mechanisms could only become operative if the legal rent reached \$2,000 on or before October 1, 1993. Very few apartments were deregulated in that brief window.

Then Democratic members of the New York City Council sold out to their leader, with disastrous results.

Peter Vallone Achieves Permanent Vacancy Decontrol

In the wake of the RRRA of 1993, the city rent laws were due to come up for renewal the following March. City Council Speaker Peter Vallone (D-Queens) was planning to run for mayor and was counting on support from the real estate industry.

Vallone's chief of staff, Joseph Strasburg, resigned his position in January 1994 to become president of the Rent Stabilization Association, at a salary rumored to be \$250,000 annually. He was legally barred from lobbying the City Council for one year, but in the weeks leading up to the March vote on renewing the rent laws he was quite visible at City Hall; in fact he was a daily presence.

To court support from the landlords who later funded his unsuccessful run for Mayor in 2001, Vallone decided to remove the October 1, 1993 deadline for apartments to be subjected to high rent vacancy decontrol and high income rent decontrol (incorrectly referred to as "luxury decontrol" even though that phrase appears nowhere in any law).

Vallone pushed Intro 220 through the Council, which renewed the rent control and rent stabilization laws for three more years, and which greatly expanded the opportunities for permanent decontrol of apartments. Under Intro 220, all vacant controlled and stabilized units were permanently deregulated, and tenants would have to go through annual income tests, if the legal rent reached \$2,000 per month by April 1, 1994 or at any time in future.

Tenants learned of Vallone's plan only at the end of January, and had little time to organize an opposition campaign by the mid-March deadline for a vote on a renewal bill.

Vallone pitched this bill as a minor tinkering, telling his members from Brooklyn, Queens and the Bronx that it would affect only a small number of "rich Manhattan tenants." In lobbying Council Members against this proposal, tenant advocates found that few of them understood the rent regulation system, or the true significance of the bill.

Council member after Council member dismissed tenant concerns about the bill with the ubiquitous phrase, "I don't have any apartments in my district renting for \$2,000 a

month.” Tenants replied, “Just wait ten years and you will.” Of course, tenants were right.

Tenant pressure on Council members was spotty at best. At least two Council members who were wavering ultimately voted no after hearing from tenants. But a major counter-offensive was not mounted. The tenant movement had been caught asleep at the wheel.

On Monday, March 21, Intro 220 passed the City Council by a very narrow margin, 28 to 18, only two votes more than needed to pass any bill. Mayor Rudolph Giuliani signed it into law on March 30, pronouncing it a “reasonable compromise.”

It is essential to understand that the first serious damage to the rent regulation system was not imposed by Albany Republicans, but by New York City Democrats. Indeed, unlike Albany – where every big issue is negotiated between the leaders of the two houses, and individual legislators can then vote for it or against it but cannot normally affect the outcome – in this 1994 showdown, just three City Council members could have prevented the decontrol amendments from being enacted if they had changed their votes from yes to no.

With one exception, all Manhattan Council members, including the two Republicans, voted against the bill. Only three Brooklyn members voted no, while eleven voted yes. In Queens, it was four no votes and nine yes votes. In the Bronx two voted no and five yes. Two Staten Island members voted yes (a third Staten Island seat was vacant).

And some of these people are still in public office in various capacities. One decontrol supporter, Thomas White, Jr. of Queens, was re-elected to the Council in 2005 after being term-limited off in 2001.

It was especially depressing that only four of the 22 members of the Black and Latino caucus voted against the Vallone bill. The four who supported tenants were Guillermo Linares (D-Manhattan), Helen Marshall (D-Queens, now Queens Borough President), Adam Clayton Powell IV (D-Manhattan, now a member of the State Assembly), and Israel Ruiz, Jr. (D-Bronx).

Four caucus members promised their constituents that they would oppose the Vallone bill, then reneged on their promises and voted yes: Martin Malavé-Dilán (now a State Senator), Una Clarke, and Lloyd Henry, all Brooklyn Democrats, and Democrat Antonio Pagán, the only Manhattan member to vote for decontrol.

Four days before the vote, Pagán’s chief of staff sent a letter to Good Old Lower East Side promising that he would vote against Intro 220. On the floor of the Council, Pagán denied that he had ever made such a promise and referred to tenant leaders as “liars.” Apparently impressed with his talent for oratory, he intoned, “A lie is a lie is a lie.”

Other Caucus members (all Democrats) who voted for decontrol: Lucy Cruz, Wendell Foster, José Rivera (now a State Assemblyman) and Lawrence Warden of the Bronx; Archie Spigner, Juanita Watkins and Thomas White, Jr. of Queens; and Mary Pinkett,

Annette Robinson (now a State Assemblywoman), Victor Robles, Enoch Williams and Priscilla Wooten of Brooklyn.

Among the 18 members voting with tenants were four Brooklyn Democrats: Sal Albanese, Stephen DiBrienza, Howard Lasher, and Joan Griffin McCabe; three Queens Democrats: Karen Koslowitz, Sheldon Leffler and Morton Povman; Democrat June Eisland of the Bronx; Manhattan Democrats Thomas Duane (now a State Senator), Ronnie Eldridge, Kathryn Freed (now a judge), and Stanley Michels (who led the fight against Speaker Vallone); and the two Manhattan Republicans, Andrew Eristoff and Charles Millard.

Supporters of decontrol included three Queens Republicans – Michael Abel, Thomas Ognibene and Al Stabile – and three Queens Democrats – Julia Harrison, Walter McCaffrey, and Speaker Peter Vallone. Democrat Michael DeMarco of the Bronx also voted yes.

Three other Brooklyn Democrats who have been the recipients of large landlord contributions voted for decontrol: Herbert Berman, Kenneth Fisher, and Anthony Weiner, who was elected to Congress in 1998 with landlord money.

No one should forget Weiner's 1994 vote for the landlords when he runs for Mayor again in 2009. In justifying his vote, Weiner claimed that this bill would be "good for tenants" because it would stop attacks on rent regulation laws. What foresight!

Four Democratic Council members were absent: Noach Dear of Brooklyn, Virginia Fields of Manhattan, David Rosado of the Bronx, and John Sabini of Queens (now a State Senator). This unusual Monday meeting of the Council had been called on short notice and some Council members were out of town. Before her Saturday departure for Brazil, Virginia Fields (who later was Manhattan Borough President) lobbied her fellow caucus members, urging them to oppose the Vallone bill.

Along with the legislative leaders in Albany and Governor George Pataki, the 28 Council members who voted for this "minor" 1994 amendment are the politicians most responsible for the gutting of our rent regulation system. They are much, much guiltier than rank and file members of the State Legislature who voted for, or voted against, weakening of the rent laws – because of the way Albany works, actual votes on the floor of the State Senate or State Assembly usually do not matter one way or the other.

Albany legislators of the majority parties (Democrats in the Assembly, Republicans in the Senate) are guilty of ceding their authority to their leaders, and allowing their leaders to dismantle the rent regulation system. But the 28 City Council members, unlike their colleagues in Albany, had the power to prevent the gutting of the rent regulation system with their votes. They failed the test.

The organized tenant community must accept its share of the blame. By going to sleep we allowed the 1993 and 1994 weakening amendments to happen. Our organizing efforts were weak.

In the aftermath of the 1993 and 1994 defeats, tenant advocates started planning seriously for the fight over the June 1997 rent law sunset in Albany.

The Great Rent War of 1997

The election of George Pataki as Governor in November 1994 was a signal that trouble lay ahead. Pataki had been endorsed by the Westchester Tenants League when he first ran for State Assembly in 1984, which helped him defeat a pro-tenant Democratic incumbent, William Ryan. It is hard to imagine how the Westchester Tenants League (which no longer exists) could have been so naïve, as Pataki was a known right-wing ideologue who opposed all rent protection laws. Once elected to the Assembly, he consistently voted against renewal of the rent laws every two years.

Fast forward: After leaving a couple of dead bodies in his wake, including his former mentor State Senator Mary Goodhue (whom Assemblyman Pataki defeated in a Republican primary in 1992, thus ascending to the State Senate); Pataki launched a campaign for Governor. He beat incumbent Mario Cuomo, who ran for a fourth term, largely on his support for restoring the death penalty, which Cuomo opposed. The Cuomo campaign was so confident of victory, and so disorganized, that it failed to make an issue of Pataki's opposition to rent regulation with tenant voters. As a result many tenants voted for the newcomer, not knowing of his anti-tenant positions – in effect they voted for the death penalty for tenant protections.

A mere couple of weeks after his election as Governor, Pataki and his mentor U.S. Senator Alfonse D'Amato engineered a coup in Albany, ousting Ralph Marino as Senate Majority Leader and installing Joseph Bruno (Rep. Rensselaer) in that position.

For some years before this Senator Bruno had been, along with Kemp Hannon, the leading anti-rent regulation member of the State Senate. With Pataki as Governor and Bruno leading the Senate, it was clear that tenants would face a major struggle in 1997 to renew the rent laws.

In 1995 and 1996 tenant groups met frequently to get ready for 1997. A large tenant mobilization to Albany in May 1996, in which more than 3,000 tenants from New York City and suburbs participated, was quite successful. In 1996 tenant groups in New York City formed the Showdown 97 Coalition, in an effort to achieve and maintain unity around program and strategy. It was an uneasy alliance.

Then Joe Bruno dropped a bomb. The keynote speaker at a December 5, 1996 breakfast meeting of the Rent Stabilization Association at the Sheraton Hotel in Manhattan, Bruno torpedoed the landlords' traditional sunset-year stealth strategy.

Bruno made an announcement that morning that was featured on every TV and radio newscast, and showed up on the front pages of every newspaper the next morning. The day before, tenants had sent out a media advisory about the RSA breakfast, predicting that Bruno would say something about the rent laws. To the dismay of the RSA, a large number of reporters showed up.

As 75 tenants demonstrated outside in the cold with posters reading “Joe, Who Bought Your Breakfast?” and similar slogans, Bruno told the assembled landlords that he would not renew the state rent laws which were due to expire on June 15 unless the Assembly agreed to phase the laws out in two years. “On June 15, 1997, the rent laws sunset,” Bruno declared. “And on June 16, I am here to share with you, the rent control laws and the rent stabilization laws will no longer exist.”

When asked how his downstate Republican members who represented tenants would react to his proposal, Bruno replied, “I don’t need any votes,” explaining that he would simply refuse to allow a renewal bill out of committee. Because the Senate Majority Leader controls the flow of all legislation (as does the Speaker in the State Assembly), even Republican Senators who favored renewal would be powerless to act as the clock ticked toward midnight, reduced to watching as the laws ceased to exist.

This announcement by Bruno unleashed a firestorm. Tenants who had never been active before began beating down the doors and tying up the telephone lines of tenant organizations to ask how they could help make sure the laws were renewed. Checks came in the mail by the bushel, and some tenants hand-delivered checks. Unhappily for the RSA, Bruno single-handedly motivated thousands of tenants to get involved in the fight.

Another important player weighed in, responding to Bruno’s ultimatum. Sheldon Silver (Dem. Manhattan) had become Speaker of the Assembly following the untimely death of Saul Weprin in 1994. He challenged Bruno, declaring that he would insist that the rent laws be renewed.

The basic posture of the three Albany leaders was thus cemented: Bruno for the landlords, Silver for the tenants, and Pataki pretending to be in the middle – saying little, refusing to comment substantively, and planning to play the role of last-minute mediator, engineering a compromise as the June 15 sunset date approached.

The “compromise” that Pataki had in mind was a phaseout of the rent laws – hardly a compromise.

Some believe that Bruno and Pataki had worked out a strategy: Bruno would be the lightning rod, the target of tenant wrath, deflecting anger away from the Governor. Bruno’s upstate district contained no rent regulated apartments, so he had nothing to fear directly, whereas Pataki was planning to run for re-election the following year and had to fear tenant voters in the downstate region. Bruno repeatedly denied this theory, insisting that he acted independently of the Governor.

Well before Bruno’s speech, tenants had met with several Albany players, including Speaker Silver, to discuss strategy for the 1997 legislative session.

By 1996, tenants had already adopted a strategy of targeting Republican Senators from New York City and suburban counties who represented districts with significant numbers of voters living in rent-controlled or rent-stabilized apartments. Prime targets were Nick Spano of Westchester; Guy Velella, whose district stretched from the Bronx to

Westchester County and back to the Bronx; Serphin Maltese of western Queens; and five Senators from Nassau County: Michael Tully, Carl Marcellino, Kemp Hannon, Norman Levy and Dean Skelos.

Tenants did not target Roy Goodman (Manhattan) and Frank Padavan (Queens) because they were considered reliable votes. Indeed, more than once during the session Goodman and Padavan were the only Republican Senators to vote against Bruno on the issue, or even speak out on behalf of tenants. Tenants did not target John Marchi, because his Staten Island district contained so few apartments, although tenant advocates went to several community meetings on Staten Island to recruit for the campaign.

Speaker Silver essentially became the leader of the campaign to renew the rent laws. He announced that he would not agree to a state budget (due by April 1) unless the rent laws were first renewed. This was an unprecedented move: never before had a legislative leader held the state budget hostage to a non-budget issue.

If Silver had not used the budget as leverage, the outcome of the 1997 fight would without doubt have been worse. The budget was finally adopted in August, the latest ever, following renewal of the rent laws on June 20.

Shelly Silver also used his clout to muster resources for the fight. In early January, he convened a meeting in his office of representatives of major labor unions, where he introduced them to tenant advocates and asked them to support the rent law fight. Over the next six months, for the very first time labor unions both large and small engaged in organizing and lobbying for rent protections, and also provided material support – financial and other – for the campaign.

Without Silver's intervention, labor union involvement in this campaign never would have occurred. At the first meeting in January, the expressions on the faces of most of the union representatives made it clear that they were there only because they had been summoned by the Speaker, not because they wanted to get involved in the issue.

At the May 20 Tenant Lobby Day, perhaps one-third to half of the 8,000 people who traveled to Albany were mobilized by labor unions. Many union members rent, of course.

Over the next few months Silver raised substantial funds, from labor unions and from Democratic members of the Assembly, to run television ads against Pataki and D'Amato. These ads, even though they were used for a fairly limited TV advertising campaign, had a real political impact, especially on D'Amato. Ignoring Bruno, the ads placed the blame for any potential damage squarely in the hands of the Governor and the U.S. Senator.

Local 1199 lent its computerized phone bank to the campaign. A couple of unions lent staff. Several unions contributed funds directly to tenant organizations.

By February, paid or borrowed staff were at work in several targeted Republican Senate districts. Other staff ran phone banks and supervised lobbying activities involving hundreds of volunteers. At its height, the campaign had 12 paid staff and two borrowed

staff members, plus several volunteers who worked virtually full-time to advance the cause. Tenant organizations do not often have these kinds of resources.

Thousands of letters were written to state legislators, demanding renewal of the rent laws without weakening amendments. Dozens of community meetings were held in neighborhoods throughout the city and suburban counties, at which tenants were recruited into the campaign. A majority of these meetings were in Republican Senate districts; tenants were asked to write letters on the spot to their representatives.

With thousands of tenants involved, the campaign was the New York City and New York State tenant movement's proudest moment. A huge burst of energy and enthusiasm was released – all thanks to Joe Bruno.

Indeed, over the next several months, whenever things looked as if they might quiet down, Bruno would throw more gasoline on the fire, repeating his threat to allow the laws to expire if he did not get his way.

Much more could be written about the campaign, its high points and low, interesting events, and so on. But the purpose of this history is not to describe the campaign, but its outcome: how and why the rent laws were weakened so severely.

An excellent narrative and analysis of the 1997 rent law fight and its outcome can be found in *Let Them Rent Cake: George Pataki, Market Ideology, and the Attempt to Dismantle Rent Regulation in New York*, by Craig Gurian, published in the *Fordham Urban Law Journal*, Vol. 31, 2004, and available on line at:

<http://www.antibiaslaw.com/cake.pdf>.

Tenants should have done much better than the final legislative outcome. We had mounted a huge, vigorous, successful organizing campaign. In the words of *The New York Times*, "... the Republicans misjudged the sophistication of tenant advocates, who waged a surprisingly effective guerilla campaign on a modest budget ..." ("Rent War Redux: As Dust Settles, A Torturous Inside Story Emerges," by James Dao and Richard Perez-Pena, *The New York Times*, June 29, 1997).

Tenants had made several tactical mistakes during the campaign – the worst being inviting, then dis-inviting Mayor Rudy Giuliani to be the keynote speaker at the May 20 Tenant Lobby Day, thus effectively letting Giuliani off the hook politically for the outcome. But the real estate lobby made many more mistakes, colossal ones in fact.

As the legislative session lurched forward toward the June 15 sunset, tenants had a clear advantage. By May, the landlords had lost the battle for public opinion – despite repeated editorials in all the major newspapers calling for an end to rent regulation. Opinion polls showed that an overwhelming majority of the public thought rent regulation an essential municipal service.

In the first two weeks of June, the dynamic in Albany was clearly shifting in favor of tenants. Al D'Amato, frightened that he would be blamed if the rent laws were not

renewed (indeed, he was defeated in his re-election bid the following year), persuaded his ally Pataki to back off. Pataki and D'Amato together pressured Bruno to back off.

But at the end, tenants were betrayed by our strong ally, Speaker Sheldon Silver.

At the May 20 rally, Silver had made a passionate speech attacking Pataki for proposing to phase out rent protections. "No compromise at all!" he thundered, to roars of approval from the thousands assembled on the east side of the State Capitol.

Sunday, June 15 was Father's Day. The rent laws were due to expire at midnight. By midday several hundred tenants had assembled outside the State Capitol, prepared to stick it out into the night. The Capitol was surrounded by dozens of TV satellite trucks, never before seen in such density. Several hundred more tenants gathered that evening outside the Governor's New York City office, candles in hand, prepared for a vigil.

Tenant organizations had for some weeks been preparing for the eventuality that the rent laws would actually expire – described as "going over the cliff." It was clear that steps had to be taken to make sure that renters did not panic if that happened. Confident that if the laws were allowed to expire, they would ultimately be renewed, tenants had set up a hot line and prepared fact sheets explaining that no one could be evicted overnight and giving instructions on what steps tenants should take to protect themselves. The City of New York also set up a hot line for this purpose.

At 11:30 pm Sunday night, Silver's press officer told tenant leaders assembled in the hallways behind the Assembly chamber to be ready for a midnight news conference with the Speaker to reassure tenants that they had nothing to fear despite the fact that the rent laws had expired.

Fifteen minutes later, some tenant advocates were called into Silver's office and told by the Speaker that he was negotiating a compromise bill with the Governor, but that he was not sure that he was going to agree to it. As Silver began to describe the compromise, however, it sounded as if he had in fact agreed to the package – and, of course, he had.

While tenant advocates had been aware that the parties were talking, reports from the Speaker's staff during the day made it sound as if the negotiations were not going anywhere. We fully expected to go over the cliff.

Over the next couple of hours, details came out about the package. At 2:00 am, a two-page outline of the deal was released.

The rent and coop laws were to be renewed not for the expected four years, but for six. In return, Silver agreed to a staggering array of weakening amendments.

Over the next few days, tenant advocates learned that Silver had essentially negotiated these changes to the rent laws single-handedly with the Governor and his staff. The Governor had the top landlord lawyers from New York City in the next room, consulting them repeatedly. Silver went into these negotiating sessions alone.

Silver, far from an expert on rent regulation, did not consult with any tenant lawyers or advocates before cutting the deal. He agreed to dozens of pro-landlord amendments – in some cases, it later became clear, without realizing what he was giving up.

A reconstruction of Sunday: that morning, the “three men in a room” met. The Speaker presented a plan for more liberal rent increases on vacancy to Pataki and Bruno. Pataki stepped into the hall outside his office to tell the waiting reporters that Silver’s proposal was laughable.

But as soon as Bruno left the Capitol for a Father’s Day lunch with his family across the Hudson River, Pataki called Silver back for a meeting to flesh out the details of Silver’s plan. When Bruno returned to the Capitol later in the afternoon, the Governor told him that the deal he had negotiated with Silver was the best the Republicans could do. Bruno reportedly exploded, kicking furniture and screaming. But he eventually agreed.

If the vacancy rent increases were all that Silver had agreed to, it would have been bad enough. But the final deal, negotiated over late afternoon and through the evening, was disastrous. Silver made many additional concessions in return for the extra two years.

An amendment tightening the four-year rule on challenging rent overcharges had the effect of gutting the rent registration system. Tenants had feared concessions in the area of vacancy increases, and had feared changes that would make it easier for landlords to evict in Housing Court – changes that were, in fact, in the final bill. But tenants had not anticipated the destruction of an effective rent registration system, which had been fought for so long and hard and had only been implemented in 1984, after enactment of the Omnibus Housing Act of 1983.

It seems clear that – on this point at least – Silver had no idea of the significance of this amendment, or the damage it would accomplish. The gutting of the rent registration system has spawned a new era of unbridled rent overcharging, and facilitated fraudulent decontrol of vacant apartments: many landlords simply treat units that turn over as deregulated, without spending the necessary funds refurbishing the apartment to get it up to a \$2,000 monthly rent. They get away with it because of lack of enforcement by DHCR, and a weakened registration system.

The 2:00 am agreement was a handshake deal. It then had to be put into bill form, a process that was completed only on Friday, June 20. So we actually went over the cliff: the state rent laws actually ceased to exist for five days, until they were renewed Friday night, their effective date made retroactive to Sunday.

The five days between agreement and enactment were extremely unpleasant. A dozen or so tenant advocates remained in Albany throughout the week, reduced to sitting around outside Silver’s office, waiting to see bill language. Every day Silver’s staff promised to let us see parts of the bill draft, and every day they put us off. It was tedious and stressful at the same time. In fact, bill drafting of this nature involves constant negotiation.

By the time the actual bill – the Rent Regulation “Reform” Act of 1997 – was printed late Friday afternoon, tenants discovered that even more pro-landlord amendments had found

their way into the bill, changes that had not been included on the checklist released at 2:00 am on Monday.

Chief among these was a provision restricting the powers of Housing Court judges to issue Orders to Show Cause to stop evictions. Throughout the day on Friday, while the bill was being finalized, tenants observed a prominent Albany lobbyist (who happens to be a frequent golf partner of the Speaker) go from Silver's office behind the Assembly chamber to the lobby outside the Senate Chamber, where the landlord lobbyists were assembled, and back to Silver's office – 17 times back and forth.

A day or two later tenants learned that the landlord organizations had hired this lobbyist to negotiate the Housing Court changes the landlords wanted inserted in the final bill.

On Tuesday, former Democratic State Senator and former DHCR Commissioner Donald Halperin had appeared in Albany, obviously lobbying for something or someone. When tenants asked him why he was in Albany, he dissembled.

Only many days later did tenants learn of Halperin's real purpose: Halperin had been hired by a consortium of developers to negotiate changes to make it easier to evict rent-controlled tenants where the landlord wants to demolish the building. Halperin's amendment was included in the final print of the bill that came out Friday, another provision that was not included in the 2:00 am summary.

Politically, Silver had to make some concessions to Bruno, who had to have a face-saving way to back down. Some kind of concession on vacancy rent increases could have been fashioned that would have given Bruno political cover. (In the aftermath, Bruno claimed that his goal all along had been vacancy decontrol, that his threat to allow the laws to expire had been a negotiating ploy.)

But Silver gave away the store. He agreed to a "statutory vacancy bonus" that allows all landlords to raise rents on vacant apartments by a minimum of 20 percent for a two-year lease, and in many cases much more than 20 percent – and the landlord can get the 20 percent every time the apartment turns over, even if the apartment turns over several times a year. This was far greater than any vacancy allowance that had ever been granted by the NYC Rent Guidelines Board.

Silver also agreed to enshrine permanent high rent vacancy decontrol and high income rent decontrol into the state rent laws, thus taking the issue completely out of the New York City Council's control, and extending these two permanent decontrol mechanisms to the suburbs.

The 1997 renewal enactment included several other pro-landlord changes, every single one of them favorable to landlords. Not one single amendment in the bill benefited tenants. All we got was the six-year extender. (The regulations granting succession rights to family members of tenants were put into statute, which protected them from being weakened by administrative action; but aunts, uncles, nephews and nieces were made ineligible to succeed to tenancies.)

While it is true that tenants dodged the bullet of full vacancy decontrol (which real estate representatives acknowledged had been their goal), high rent vacancy decontrol became almost as lucrative to landlords. In the ever-tightening real estate market in the downstate region, it is easy for landlords to charge \$2,000 per month rent for vacant apartments.

Tenants were now faced with the unhappy prospect of either criticizing our chief Albany ally, or keeping silent in the hopes that he would set things right in six years.

But in the end, none of this mattered in terms of the relationship between Shelly Silver and tenant advocates. An election campaign permanently poisoned any possibility of reconciliation.

Coming up in November 1997 was a citywide election for Mayor and other offices including all 51 seats in the New York City Council. Lower East Side community activist Margarita López had announced a challenge to Antonio Pagán for his Council seat. But Pagán decided not to run for re-election, instead taking a job in the Giuliani administration. In the spring of 1997 a new candidate had emerged: Shelly Silver's chief of staff Judy Rapfogel.

The buzz among politicians predicted a sure victory for Silver's candidate. But Rapfogel ran a lackluster campaign, resulting in a narrow loss to López. Silver pulled in every chit he could for this race, from labor unions and his fellow Assembly members and Assembly staff, but this huge advantage of resources was not enough. Silver and Rapfogel were both bitter.

Many tenant advocates had endorsed their sister advocate López. Silver did not care about this until after Rapfogel's unexpected loss. Afterwards, however, he was furious with everyone who had failed to support his candidate.

The 2003 Campaign

The six-year extender of the state rent and coop laws enacted in 1997 expired on June 15, 2003. Tenants began a campaign to renew the laws, and repeal vacancy decontrol, in early 2002.

The abortive palace coup in 2000, when Majority Leader Michael Bragman attempted to topple Silver as Speaker, had seemingly resulted in an improvement in relations. Tenant advocates helped Silver keep his job, and he had expressed gratitude. (In 1997 Bragman had publicly criticized Silver for holding the state budget hostage to rent control.)

Going into the 2003 sunset year, there was new hope that Silver would use his considerable political leverage to repeal vacancy decontrol and win other improvements. In the fall of 2002 tenant advocates presented a campaign plan to the Speaker and his staff, which called for the Speaker to marshal resources for campaign staff and television ads, as he had in 1997. We were promised an answer in a week or two. But for the next several months, Silver's staff stalled, repeatedly promising an answer that never came.

By April it became apparent that Silver never intended to do more than give lip service to tenants. Not only did he not hold the budget up, he did not bring a single resource to the campaign. A former member of the Speaker's staff told tenant advocates in April, "You guys think you have been forgiven for not supporting Judy, but you are wrong."

As they had in 1997, tenants targeted downstate Republican Senators whose districts had significant numbers of tenants, but this time with many fewer resources. By May it was clear that this was a losing strategy: tenants were without the resources necessary to make the Senators worry, and there was no pressure being applied to them by the Assembly. It became clear that tenants should have targeted Assembly Democrats, pressuring them to pressure their leader. But it was too late.

At the beginning of the session, there had been rumors that Silver and Bruno had a handshake deal to renew the rent and coop laws as is, without any strengthening or weakening amendments. Bruno and Pataki both made public statements that they were happy with the rent laws in their current form and would not seek any additional weakening amendments. This had the intended effect of lulling tenants into inaction. Bruno had learned his lesson.

As the Sunday, June 15 sunset approached, four Republican State Senators from New York City – Frank Padavan, Guy Velella, Marty Golden and Olga Mendez (she had switched from Democrat to Republican the year before) – went to Bruno with a proposal to raise the threshold for decontrol from \$2,000 to \$2,500 per month rent. Bruno was not interested.

Instead, the Senate began passing a series of short extender bills, renewing the rent and coop laws for a day at a time. The Assembly followed suit each time.

Then the shoe dropped. Late at night on what Bruno declared would be the last day of the legislative session – Thursday, June 20 – a Governor's program bill appeared on a supplemental Senate calendar. This bill, which appeared after midnight, renewed the rent and coop laws for an unprecedented eight years, to June 2011, and made two pro-landlord changes.

One change was to tighten the Urstadt Law. Enacted in 1971 and named for Governor Nelson Rockefeller's housing commissioner, Charles Urstadt, the law prohibits the New York City Council and Mayor from enacting stronger tenant protections. Despite this restriction, the Council had succeeded in enacting some improvements in the rent laws. A 1996 amendment to the Maximum Base Rent formula had averted huge rent hikes for rent-controlled tenants, and had been upheld by the Court of Appeals (highest court in the state) as not violating Urstadt.

In response, the Pataki bill amended Urstadt to prohibit the Council from making any law affecting rents or evictions, except for the periodic renewal of city rent control and the RSL, and to decontrol classes of housing accommodations.

The second amendment was in the area of preferential rents, any rent the landlord agrees to accept below the legal rent, for any reason, whether to do a favor for a relative or

friend, or because local market conditions do not allow the landlord to collect the legal rent.

Prior to this 2003 amendment, landlords charging preferential rents to rent-stabilized tenants were required in most cases to offer renewal leases based on the lower preferential rent, and could only jump back up to the legal rent when the apartment became vacant. The Pataki bill changed the law to allow the landlord to increase the rent to the legal rent upon renewal or upon vacancy, at the landlord's option. This change has subjected thousands of tenants to huge rent increases, sometimes several hundred dollars. For example, if the legal rent is \$1,600 and the tenant's lease provides for a payment of \$1,100 per month, the landlord can collect \$1,600 plus the guidelines upon renewal: \$1,648 for a one-year lease under the current NYC guidelines.

Members of the State Senate began a post-midnight debate on the bill before copies were available at the Senate document room outside the Senate chambers. The Senators who spoke clearly had not had time to read it. The bill passed with virtually all Democrats and a couple of Republicans voting no. An hour or so later the Senate adjourned for the year. The extender bill was sent to the Assembly.

Embarrassed Assembly Democrats passed the bill Friday night. It was appropriate that they felt embarrassed, as it was clear that Silver had painted himself into this corner, where the choice was to pass yet another bill weakening the laws (which had not even been negotiated) or allow them to expire.

The long period of the extender – an unprecedented eight years – was chosen by Pataki and Bruno in the obvious hope that by 2011 the size of the rent-regulated universe would be significantly reduced by vacancy decontrol, with a consequent reduction of tenant political power.

And now what?

The time is ripe for tenants to take back what we have lost, and to strengthen the rent and coop laws. The probability that the State Senate will change hands this year, after the November 4 election, means that we can anticipate, at long last, getting bills through the Senate. But tenants must help: the chance for improvement in tenant laws is real, but this opportunity will be lost unless the organized tenant movement responds.

To achieve this, tenants must help the Democrats take control of the State Senate by contributing money and effort to elect Democratic candidates. And tenants must engage in serious lobbying of Assembly Democrats and Senate Democrats, to make sure they do the right thing once both houses are controlled by Democrats.

Once the Democrats take control of the Senate, we will hopefully be able to pass two-house bills and get them signed into law by Governor David Paterson. The top goal must be to repeal vacancy decontrol and re-regulate decontrolled apartments. We also need to pass legislation to protect Mitchell-Lama and Section 8 tenants, close eviction loopholes, end high income decontrol, reform the Rent Guidelines Board system, and more – not the

least of the demands is to restore home rule to New York City and extend it to other jurisdictions that might want it (particularly Westchester County).

This will not simply happen. Tenants must make it happen. This will require sacrifice of time, energy, and money. No legislative goals can be achieved unless the Democrats take control of the State Senate in the November 4 statewide election.

Other than the prospect of Democratic control of both houses of the Legislature, we have another advantage: the New York City tenant movement has never been as united as at present. The past sectarian struggles over program and turf have essentially dissolved.

The Real Rent Reform Campaign represents a tremendous step forward. After a decade or more of steady defeat, many tenants feel beaten down, defeated, demoralized. The R³ Campaign has injected a new sense of energy, strength and determination into the tenant movement. More groups and individuals must be recruited, including market rate tenants who have moved into decontrolled apartments; they must be mobilized to help us demand rent and eviction protections for them. Labor unions must be meaningfully involved in the struggle. Outreach to religious and civic organizations is needed.

The housing struggle has become a unifying force in our communities because as it grows harder and harder to eke out a living, the fight for decent, affordable, permanent housing is a fundamental element in democratizing our society.

There is one lesson that we must never forget: As long as we have sunsets, when tenant protection laws expire and must be renewed, tenants must remain vigilant and organized. The moment we slack off, the real estate lobby and its legislative allies will move in for the kill.

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