

An Escape Clause on Preferential Rents

By DENNIS HEVESI

STURGIS WARNER'S rent is tripling. Not that Mr. Warner hasn't had, in his own estimation, "a sweetheart deal" for years — \$530 a month for a one-bedroom apartment in a Greek-columned building on Lafayette Street in NoHo.

"But still, it's tripling!" Mr. Warner, 54, said of the jump to \$1,549 called for in the new lease for his rent-stabilized apartment. And, based on the on-off income of an Off Broadway theater director, Mr. Warner doesn't know whether he will have to move. "Frankly, it's not easy being a theater artist with the real estate situation in Manhattan," he said.

Mr. Warner and thousands of other tenants are being jolted by a change in the rent-stabilization law regarding what are called preferential rents — rents lower than what the landlord could have legally charged.

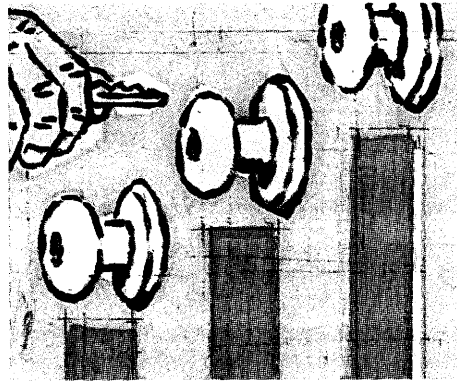
Before June 15, 2003, if a landlord signed a lease granting a preferential rent, all subsequent increases were based on that preferential rent, not on the higher legal rent the owner could have originally charged. Upon vacancy, a new tenant could be charged the legal rent, including any increases based on the legal rent that could have been added during the preferred tenant's occupancy.

Last year, however, the Legislature amended Section 26-511 of the New York City Rent Stabilization Law, providing that when the lease for an apartment with a preferential rent is renewed, the owner can jump to the legal rent even if the preferred tenant is staying in place.

Precisely how many people are facing such big jumps could not be determined. Owners of regulated apartments must annually record their rents with the New York State Division of Housing and Community

Renewal. According to housing division statistics, 11 percent of the approximately 860,000 apartments registered last year had preferential rents. But because of the nature of many preferential rents — often the landlord wants to keep a friend, a relative or simply an obliging tenant in place — not all preferred tenants face increases.

Market conditions, of course, are the primary impetus for increases. "With the reduction in crime, city investments in housing rehabilitation and the population in-



Stephen Schildbach

crease, there's now rent pressure in virtually every neighborhood," said Michael H. Schill, director of the Furman Center for Real Estate and Urban Policy at the New York University School of Law. "Many neighborhoods now attract renters who 5, 10 years ago wouldn't have considered them, places like East New York, Red Hook."

Frank Ricci, a spokesman for the Rent Stabilization Association, a major landlord group, thinks the new law "is good for owners and tenants."

"Under the old rules," Mr. Ricci said, "many owners didn't grant preferential

rents because they would be locked in. Now, if they know they can do a preferential rent and adjust at the end of the lease, they're going to be more flexible."

But Andrew Scherer, author of "Residential Landlord-Tenant Law in New York" (West Group, 2001), said: "The difference between legal and preferential rent can be hundreds of dollars. The jump can be too high and the tenant could be displaced."

Mr. Ricci countered: "Look, they got a benefit for however long. I don't think there's anything wrong with going to the legal rent."

The new law has become "fodder for litigation," Mr. Scherer said.

Geoffrey Doig-Marx has lived in a Hell's Kitchen walk-up for 12 years. He received a preferential rent of \$635 "because it was so bad around here back then."

"Now it's Upper Chelsea; that's my definition," he said.

By last October, Mr. Doig-Marx's preferred rent had climbed to \$946. Then he received a notice, from a new landlord, that his rent would rise to \$1,385, because of the new law. When he refused to pay, pointing to a specific clause in his original lease granting him a preferential rent for the duration of his tenancy, Mr. Doig-Marx received an eviction notice.

His lawyer, Lynn Armentrout, argued, "The state doesn't have the power to undo or substantially impair a private contract." Two months ago, the Housing Court judge, Anthony J. Fiorella Jr., ruled in Mr. Doig-Marx's favor.

By far, however, most preferred tenants don't have such specific stipulations in their leases. And in Mr. Scherer's opinion, the new law needs clarification. "It clearly applies to preferential rent in leases signed since its passage," he said, "but it is not clear about its application to preferential rents agreed to prior to its enactment."