



21 July 2006

Linda Camoin
 Legislative Associate
 Assembly Committee on Housing
 Room 513 - Capitol
 Albany, New York 12248

RE: Harassment and Eviction of Rent Regulated Tenants

Honorable Assembly Members:

The Shalom Tenants Alliance offers the following written comments as testimony for the Assembly Committee on Housing's hearing concerning **Harassment and Eviction of Rent Regulated Tenants**. We are hoping some of our members will also be able to testify in person at the hearing, work schedules permitting.

The Shalom Tenants Alliance is a coalition of residents of more than 100 New York City apartment buildings owned and/or managed by the Shalom (*a/k/a* Ohebshalom) family: Fred Shalom (Empire Management), Jon and Ben Shalom (Sky Management), Nader Ohebshalom (Gatsby Enterprises), David Ohebshalom (Big Apple Management, Perceptive Management), and Daniel Shalom (Keystone Properties, based in California). Operating under various corporate names, the Shaloms buy rent-stabilized buildings and then systematically dismantle required building services, forcing out legal residents through harassment, intimidation, negligence and deception.

Over the past five years, we have compiled extensive documentation based on tenant reports, photographs, and public records, including records of official complaints and violations, court records, and more that establishes a clear pattern of harassment by these landlords. The Shaloms are actively trying to force us to give up our rent-regulated apartments and/or our rights as rent-regulated tenants. The methods range from the standard "service reductions" and "repair" issues to surprise "inspections," construction "accidents" and frivolous litigation, real or threatened. In March 2006, a group of tenants from several Shalom buildings filed harassment complaints collectively, asking the NYS Division of Housing and Community Renewal (DHCR) to evaluate the complaints as a group and recognize the patterns across multiple buildings. Conferences are still in progress and we are hopeful of a positive result. Meanwhile, the Manhattan District Attorney's office has been investigating the Shaloms' criminal activities – raiding their Sky Management office in October 2005 -- and we expect a grand jury indictment soon.

We are eager to respond to the Assembly Committee on Housing's questions regarding Harassment and Eviction of Rent Regulated Tenants.

- 1. What penalties may be imposed on an owner for harassment of tenants to achieve vacancy? Should the amount of such penalties be increased? Does the existing judicial system successfully identify and penalize owners who violate the law?**

Unless the owner's harassment involves physical or sexual assault, burglary, or extortion; use of force (or threat of force) to evict a tenant; or racial or sexual discrimination/harassment, DHCR is the only venue that can hear tenants' complaints of harassment. We have yet to hear of a landlord being found guilty of harassment for less than the above crimes. Should a landlord be found guilty of harassment, the penalties may include monetary fines, reverting rent-stabilized apartments to rent controlled status, placing a lien against the building, and revoking eligibility for certain tax abatements. Suitable rent abatements should also be granted to harassed tenants.

Whether current penalties for tenant harassment are adequate is almost beside the point. DHCR's definition of "harassment" is far too vague to be useful, and DHCR has a tendency to err in favor of landlords. A clearer definition of harassment is crucial.

Other jurisdictions, including Santa Monica, CA; West Hollywood, CA; Seattle, WA; Ontario, Canada; Northern Ireland; and Brent, UK, have created clearer definitions of tenant harassment. The legal definitions provided in these jurisdictions' regulations, combined with DHCR's definition, might look like this:

A landlord is guilty of harassment when he or she does any of the following with malice (intent to vex, annoy, harass or injure another person) with the effect of forcing a tenant out of his/her apartment or preventing a tenant from living peacefully in his/her home:

- Interfering with the tenant's free exercise of rights granted the tenant by the Rent Stabilization Law or Rent Control Law, or retaliating against a tenant who exercises his/her rights.
- Reducing, interrupting, interfering with, terminating, or failing to provide housing services required by contract or by State, county or local housing, health or safety laws.
- Reducing maintenance or failing to perform repairs and maintenance required by contract or by State, county or local housing, health or safety laws.
- Failing to exercise due diligence in completing repairs and maintenance once undertaken.
- Abusing the landlord's right of access into a rental housing unit.
- Altering the locking system of a door giving entry to the unit or the building without giving the tenant replacement keys.
- Abusing the tenant with words that are offensive and inherently likely to provoke an immediate violent reaction.
- Threatening the tenant, by word or gesture, with physical harm.
- Acting in a discriminatory manner prohibited by federal law.
- Engaging in an act that interferes with the tenant's right to use and enjoy the rental unit; intentionally disturbing a tenant's peace and quiet or privacy
- Engaging in conduct intended primarily to vex, annoy, injure or intimidate a tenant.
- Engaging in conduct intended to create grounds for eviction.
- Influencing or attempt to influence a tenant to vacate a rental housing unit through intentional misrepresentation, deceit, concealment of a material fact, intimidation, or coercion.
- Taking action to terminate any tenancy including service of any notice to quit or other eviction notice or bring any action to recover possession of a rental housing unit based upon facts which the landlord has no reasonable cause to believe to be true or upon a legal theory which is untenable under the facts known to the landlord (this does not apply to legal proceedings initiated against a tenant in good faith).

While we recognize the danger of creating a definition that is too specific, the above points could be phrased so as to cover a broad range of situations.

All of the actions described above are illegal already, according to the Rent Laws, Housing Codes, and/or other regulations. However, because they are distributed amongst multiple NYC, State, and even Federal regulatory codes, when these tactics are addressed at all, they tend to be viewed singly, with the overall pattern never coming to light. Any definition of harassment should include (but not be limited to) patterns of behavior/action.

The Shalom landlords subject their tenants to these tactics on a continuous basis – although they are usually careful to avoid the more obviously criminal actions involving physical abuse/threats or barefaced discrimination. They also cleverly make use of loopholes in the law. For example, they change the building entrance lock doors and, rather than blatantly denying keys to tenants, they require tenants to travel 40 blocks (on short deadline) to pick up the key and charge \$25 - \$50 for spares only the landlord can duplicate, then “accidentally” have the locksmith show up a day or two early.

2. Are tenants adequately represented at eviction proceedings in housing court? What more could be done to assist tenants who are faced with possible eviction?

Tenants in Housing Court are not guaranteed legal representation. Low-income tenants at least have the opportunity to obtain representation at no cost, but moderate-income and rent-poor tenants are out of luck. At the very least, tenants who are taken to court by their landlords should be guaranteed legal representation.

Please be aware that the Shaloms (and other landlords) use Housing Court to harass tenants. *Almost every day* there is at least one (usually more) Shalom tenant in Housing Court. When tenants go on rent strike for service reductions and harassment, the landlord hauls them to court for nonpayment; the settlement stipulation requires the tenants to withdraw their DHCR harassment complaint. A long-term tenant has a dog, it dies, and the tenant gets a new one; the Shaloms take them to court for violating the no-pet policy, even though new tenants regularly move into the buildings with pets, having paid “pet deposits.” Other tenants are taken to court for “illusory tenancy” or “illegal sublet” or “clutter” on false grounds. To answer these lawsuits, tenants must take time off from work, prepare their cases, potentially hire lawyers. . . . Who wouldn’t want to just give up and resume a normal life? Paying double or triple the rent and giving up the rights of a rent-regulated tenant are small prices to pay to get one’s life back, some tenants feel. We do not think anyone should be backed into this corner.

Please note: at least one Shalom tenant who has direct experience with Housing Court intends to testify at the hearing and may be able to address this question in more detail.

3. What checks and balances exist for granting rent increases when an owner applies for Major Capital Improvements (MCI)? What is the process for an owner to apply for an MCI rent increase? Should owners have to show more proof of work done and the cost of such work?

Major Capital Improvements (MCIs) are not an issue for Shalom tenants. Our landlords don’t apply for MCI rent increases, so far as we know – most likely because so much proof is required. We will defer to other tenants and tenant groups to address the question of MCIs.

The problem in Shalom buildings is Individual Apartment Improvements in vacancy leases. Gut renovations of apartments begin immediately when the Shaloms purchase a rent regulated building, and apartment renovations continue non-stop until all of the original regulated tenants have been removed. The Shaloms rarely obtain required permits for this work, and they use their own laborers and construction companies they own to do the construction. In many cases, the apartment being renovated had already been renovated by the previous owner recently, with Individual Apartment Improvement costs added to the rent. (In this case, MCIs are relevant because the Useful Lifecycle for MCIs applies to Individual Apartment Improvements.) It is also quite evident that, when the landlord registers rents with DHCR, the costs of renovating apartments are directly tied to the “target” near-market rent. Apartment A is vacated with a rent of \$600. It costs \$28,000 to renovate. Apartment B is identical to Apartment A. It is vacated with a rent of \$1,100. It costs \$8,000 to renovate Apartment B. The two apartments, before and after renovations, are identical. The same construction crews are used. The apartments are renovated simultaneously. Both apartments are registered with DHCR with a “legal” rent of \$1300/mo, just below “market” for the area. Clearly the renovation costs are “fudged.”

Needless to say, when the Shaloms rent a newly-renovated apartment, the “legal” rent increases dramatically. For example, on the Upper East Side, a studio apartment will jump from \$600/mo to \$1600/mo, discounted to \$1300 or so via a preferential rent agreement. In the East Village, a similar \$600/mo studio’s rent may increase to \$2800. The Shaloms register at least some of these whopping vacancy rents with DHCR. DHCR apparently never flags anything as “suspicious.”

The Rent Laws allow landlords vacancy increases of 18% (regardless of how many times an apartment turns over in one year). This is an incentive to force tenants to move out.

The Rent Laws allow landlords an Individual Apartment Improvements increase of 1/40 the cost of improvements. This is an incentive to renovate and improve apartments, but especially upon vacancy, when there is no requirement for the tenant to review and approve the increase. There is far too much incentive to inflate improvement costs and pass them on to tenants. Unlike an MCI, Individual Apartment Improvements do not require landlords to file paperwork or provide any proof of expenses to DHCR.

Most importantly, the current Rent Laws provide a goal: LUXURY DEREGULATION. If the landlord can get the rent above \$2,000, by any means, s/he wins the prize of deregulation. It’s easy to do with unlimited vacancy increases and no oversight of Individual Apartment Increases.

DHCR does not monitor individual apartment rent increases. The only reason DHCR will review an apartment’s rent history is if a tenant files a Rent Overcharge complaint for his/her apartment. In order to find out if the landlord is charging too much rent, a tenant must request his/her rent history. Easy enough, but the vacancy rent charged by the Shaloms is generally right at or just below market rate – why would anyone question that? Aside from the fact that this defeats the whole purpose of rent regulation, it plays upon the naivety of tenants. (We should note that the Shaloms rent vacated apartments almost exclusively to students and young people not native to NYC – populations who are almost universally ignorant of New York’s Rent Laws.) When the landlord revokes the tenant’s preferential rent at the end of lease term (see DHCR’s new Fact Sheet #40), the rent suddenly increases by \$400 and the tenant is forced to move out. The landlord gets another 18% increase, gives the next new tenant a preferential rent, and the \$600 apartment rapidly reaches “luxury” deregulation, regardless of whether any tenant has ever paid \$2,000 in rent.

It would be very simple to monitor rent increases and flag discrepancies. Rent histories are kept in a database. Annual rent increases are specified by the Rent Guidelines Board (RGB). All it would take would be to implement a computer application to flag any variation from the RGB increase amounts, and then establish an orderly (and diligent) system for review.

4. How are tenants notified of their right to protest such rent increase? What more could be done to make tenants aware of an owner's application for an MCI rent increase?

For MCIs, landlords are required to file extensive documentation and paperwork with DHCR, some of which is shared with tenants, who are given the opportunity to file objections. In the past, before Shalom takeover, many tenants successfully challenged MCIs filed by previous landlords. Again, for Shalom tenants (and many others in NYC), MCI's are not the problem. If ALL rent increases beyond the annual Rent Guidelines increases were subject to the same rigorous requirements as MCIs, there might be less of a problem with harassment of rent-regulated tenants.

Harassment of rent-regulated tenants will continue so long as there are so many incentives for landlords to remove rent-regulated tenants from their buildings. We call upon the Committee on Housing to initiate legislation to reform DHCR, reinforce tenant protections, and eliminate the loopholes and incentives in the Rent Laws that encourage landlords to harass tenants.

Specifically, we ask you to:

- Eliminate "luxury deregulation"
- Legislate a clearer definition of tenant harassment
- Require DHCR to actively oversee and enforce Rent Laws relating to rent increases
- Provide alternate legal venues (other than DHCR) to hear harassment cases
- Ensure that rent abatements are given to tenants who have been harassed by landlords
- Require landlords to abide by preferential rents established in initial rental contracts.
- Ensure that tenants in Housing Court have legal representation
- Establish penalties for landlords who bring frivolous litigation and/or present false evidence in Housing Court

Thank you for reading our testimony. We look forward to reviewing the results of this hearing.

Sincerely,

Shalom Tenants Alliance Member

Shalom Tenants Alliance Member