Rule 2-06.2 Interim Rent Guidelines & Total Rent

Eliza Proctor
475 Kent Avenue
Brooklyn NY 11249

Thank you Loft Board members for hearing our facts and setting the Interim Rent Guidelines at **0%** for tenants who haven't had an increase in years.

I am very concerned however, that the Rule does not give protection to tenants that are receiving requests for a rent increase after June 21, 2010.

I am a tenant that will not be protected.

I have been receiving a request for 4% increase for two years. Initially I was getting calls, stopped in the main entry, and multiple requests by email for meetings to 'discuss' why I wasn't paying my rent regardless of my explanation. Over time they stopped asking, but it is on my bill every month.

It's clearly a glitch in the system, but the way this Rule is currently written I fear that I could be venerable to collections and is it fair that my landlord could potentially evict me for nonpayment even though I'm within my rights?

Please correct this unjust glitch in Rule 2-06.2.

Also of great concern is the discrepancy of use-based and non-use-based escalators.

I live in a building that has unit-by-unit agreements with the landlord. My gas bill is based upon square-footage (heat and hot water). Though I have no equipment or laundry machines I still pay an amount based upon my loft size… but I never see the actual bill the landlord receives. Furthermore, my neighbors who are on the south side of the building are also paying according to loft size regardless of the fact that they don't use the heat.. their heat is turned off all winter. There is no transparency.

My electric bill used to be per occupant regardless of whether any electricity was being used. If I was away for a month, I still paid my bill (divided by total tenants). In 2009 we got locally-installed submeters – my electric bill plummeted to a more logical amount – but still no regulation! Who's paying for the common hallways? What are the meter readings? It's just a dollar amount dropped onto my rent bill. There is no secure sense that I am paying what I am using. There is no transparency.

Respectfully submitted –

Eliza Proctor
NYCLT member

Loft Board Hearing
280 Broadway, 3rd Floor
New York, NY 10007

Elizabeth Long
70 Commercial Street, Apt 403
Brooklyn, NY 11222

July 27th 2pm

Testimony on **2-06.02 Interim Rent Guidelines and Rent Adjustments Pursuant to MDL**, specifically 'Use-Base Escalators'.

The 4th floor of our building is comprised of 7 live/work lofts, none of which are properly electrified, metered.

As of 5/00, the 4th floor tenants have been required to pay various arbitrary sums to the landlord, in addition to rent. If and when our building is brought up to code, we request that the surcharge no longer apply.

Thank you for your consideration.

Steve Dumain, apt 401

Hasan Schahbaz, apt 402

Elizabeth Long, apt 403

Peter Spagnuoulo, apt 404

Raphael Shirley, apt 405 — NOT AVAILABLE

Al Lupiani, apt 406 — NOT AVAILABLE

Thank you for the opportunity to testify to today.
My name is Eve Sussman. I'm a loft tenant at 475 Kent Ave in Brooklyn and I'm a member of the steering committee of NYCLT.

I want to commend the Board on their hard work so far, especially as it relates to **Interim Rent Guidelines within rule 2-06.2** and the decision to implement no Interim Rent Increases, helping to protect the creative community in NYC. As pointed out by Ms. Pagoda at the time the language was voted on, "We heard you, we read your letters we got your emails and we responded. The system worked."

I am however, extremely concerned about how "the system will work" going forward, specifically in response to the testimony we've heard over the past 3 weeks.

On that note I have a question: Who on the board has the authority to decide if a change to a rule is "substantive" or "non-substantive"? I think it's important for the public to know who is responsible for making those critical decisions. Could you please tell us today who that person is?

I ask this question because over the past few months as tenants, advocates and lawyers have spent time volunteering many hours working to improve the Loft Board rules with suggestions of constructive changes, we have heard disturbing rumors that "no substantive changes will be made" and no changes would happen that required language being sent back to the Mayors Office of Operations for a second rules review process.

As far as I understand there is nothing in the rule making process of the City of New York that states a proposed rule may only be reviewed by MOO once, indeed proposed language can be sent back for review as many times as is deemed necessary.

I sincerely hope that this process that we've all sweated through over this long hot summer is not a sham. We have not been coming to these hearings religiously for the past 3 weeks to take part in empty political theatre in which the public plays the role of concerned citizens and Board members nod their heads at our performances, and then next to nothing changes. That, obviously, would not be the democracy that we picture ourselves living in. That is not how the process is supposed to work. Cursory treatment of the public's requests will not be acceptable.

The Loft Board and the Loft Board staff must do everything in their power to make sure all the important changes that the testimony has addressed get made, regardless of how much work is involved or whether or not language is "substantive" and must be sent back to "legal" for review. NYCLT will be submitting a summary reiterating the requested changes on all the rules that have been discussed in these hearings.

Thank you for your time.
Eve Sussman

NYC Loft Board Public Testimony
Re: Rule 2-06.2 "non-use" based escalators
Friday, July 27th 2012

226 Franklin Tenants Association
Heather Troy hktroy@gmail.com
917 981-4333

Ladies and Gentlemen of the Loft Board, Members of the Tenant Community: Good Afternoon and Thank You for listening to my testimony today.

My name is Heather Troy. I am a loft tenant at 100 Freeman Street in Greenpoint Brooklyn. I have been the prime tenant of my loft since 2004. Today, I am speaking on behalf of the 226 Franklin Tenants Association regarding rule 2-06.2 and the inclusion of "non-use" based escalators in the Interim Rent Guidelines as well as providing some other "use based" escalator information. First, I would like to recognize the great work the Loft Board has already accomplished, especially by setting a 0% increase within the Interim Rent Guidelines for those tenants who have not had a rent increase in recent years. The Loft Board was right to acknowledge that contemporary loft tenants are already paying market rate or higher rents for their units.

My building has over forty residential units with several mailing addresses on three streets. Until recently I only spoke to the greater number of my neighbors when my cats would go missing. Now I know my neighbors by name; the Loft Board application process brought us together and we're grateful for this sense of community.

In January one of my neighbors called me about applying for the Loft Law. Our landlord, American Package Company Inc, wanted to double her rent. I had only barely heard about the law and had reservations about getting involved with a lawyer but agreed to a meeting. We spoke to our neighbors, as well as Rachel Fuentes and Gordon Woodhull, and by April myself and twelve other units filed for residential coverage. We incorporated and formed the tenants association. Since then our membership has doubled and the landlord's response to our application (so far) has been to be voluntarily register all the residential units.

In a building of our size you'll find a lot of diversity. We are in our mid-twenties to early sixties. We are African-Americans, Asian Americans, White Hispanics and Non-Hispanics as well as Immigrants. We are artists, teachers, designers, Pilates and yoga instructors, wood workers, film makers, musicians, dancers, writers and a church... maybe two churches depending on how you look at it. We have GEDs and PhDs. Most of us use our space for live/work and/or work within walking distance. We are invested in our community; some of us own storefronts or studios in the neighborhood.

One thing we all have in common is that we all work very hard. We are self-employed juggling multiple clients or working long hours at the office. My fiancé works two part time jobs while maintaining a 4.0 as a full time adult undergraduate—every dollar counts for us.

The reason I'm giving all this background is to paint a picture of our economic demographic. We are none of us "trust fund babies". Despite the recent New York Times article[1] which described the newer residents of Greenpoint as a "rapid-growth

[1] Finn, Robin. "Who You Calling Gritty?" The New York Times [New York City] 22 July 2012, Real Estate: RE1

226 Franklin Tenants Association
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community with a certain amount of wealth" –within the members of the 226 Franklin Tenants Association you would likely find the average American story of trying to make it day by day.

On top of the rising rents, rising cost of living and slowing economy, residents of American Package Company pay an annual Real Estate Tax. A few more recent leaseholders have a fixed value rolled into their monthly rent but the majority of us are billed whatever percentage our lease claims the square footage of our unit occupies. I say "claims" because although my 1,100 square foot loft is valued at 1.1%, my neighbor's identical 1,100sq ft loft is valued at 1.25%. Another comparison is a 1,400sq ft loft valued at 1.4% while his neighbor's identical 1,400sq ft loft is valued at 1.7%.[2] So the percentage each unit is billed seems an arbitrary decision or based on other factors not yet known.

The clause in my lease says that I owe 1.1% of the annual real estate tax bill –which doesn't look bad on paper. In 2004, my first annual real estate tax bill was $30 (some tenants have told me they were also billed $30 their first year), by 2006 my bill was $317.[36]... After the Williamsburg/Greenpoint Waterfront Rezoning our building value was reassessed so by 2008 my annual bill had jumped to $1,307.[56] and on July 1st, 2010 I received a bill for $1,992.[44].

$1,992.[44] + $2400 in rent + utilities is a devastating bill to say the least.

After speaking with my neighbors I was shocked to learn that I'm on the low end of the spectrum; some of my neighbors pay double in rent and real estate tax. We put up with the annual blood letting because we're invested in our units and value the space for our careers but the real estate tax is the number one reason most tenants end up moving out.

The Loft Board application seemed a saving grace for us. In June our lawyer advised us not to pay the annual real estate bill because the Loft Board had not yet ruled on its inclusion in the Interim Rent Guideline. We were told there was a chance "some percentage" of the annual bill could be rolled in and that seemed worth waiting to find out about. If rule 2-06.2 is adopted we would like clarification on whether we could be at risk for "non-pay" for having skipped payment on a fee that was not considered legal at the time it was due.

Since the publication of Rule 2.06-2 we have been told to interpret the inclusion of "non-use" based escalators in the base rent to mean that the July 2009 real estate tax bill (the only "non-use" based escalator paid by June, 21 2010) would be divided by twelve (months) and that would be the figure added to the new base rent. For my unit that would add $136.[93] to the base rent. For another neighbor that could mean adding $280 to her base rent.

[2] I am enclosing a spreadsheet showing what information I could gather. A second spreadsheet is also provided with the results of a conversation I had with a securities and market data analyst to confirm the math behind these annual bills.

Testimony of Katherine L. Hill
Live/Work Resident of 72 Warren Street, New York, NY
Regarding Rule 2-06.2 Interim Rent Guidelines & Total Rent

My name is Katherine Hill, I live at 72 Warren St. My partner and I have been Live/Work residents of Lower Manhattan for the past 18 years. We are raising a 12 yr old son who is being reared by the public school system here in District 2.

I don't need to go into detail of how Tribeca, and so many other neighborhoods in New York and Brooklyn where loft dwellers established roots in areas that were void of urban life, void of catchy real estate names, and moved into abandoned, derelict buildings. This city has certainly witnessed significant changes over the past three decades since the original Loft Law was passed. And with those changes, have come many Landlord's dream of cashing in on the *loft* cache, and in turn, able to charge exorbitant rents for what you now see advertised all over NYC as *Luxury Lofts*.

With the passing of the Loft Law Expansion in 2010, thousands of new tenants will be covered under the law and be protected from arbitrary rent increases that for decades were used to harass and force thousands of loft tenants from their live/work spaces and from the very neighborhoods in which they contributed to the thriving communities where we live, work, and raise families today.

I want to thank the Loft Board for recognizing in 2011, that lofts tenants all over New York City are already paying significant rents, comparable to market rates, and to whom ANY *adjustments* to the *Total Rent* they were paying as of June 21, 2010, would price-out whole communities of creative

entrepreneurs. **Moreover, I thank you for recognizing that the already built-in 6/8/6 legalization milestone increases, which compounded, equal to approximately a 21% increase,** could be imposed in full, in less than two years. Upon compliance, these built-in increases, provide landlords with thousands and thousands of dollars in additional rents. And let's not forget, in addition to this 21% increase, there will be pass along costs for the work to achieve compliance which could add thousands more dollars the landlord can recoup over the coarse of 10-15 years. These combined increases, are significant for Landlords and a tremendous financial adjustment for Loft Tenants.

(text- my increases...)

It is only fair to also factor in that a majority of loft spaces were originally rented "as is" whereby tenants moved into RAW spaces that required major financial investment to make their Live/Work rental spaces habitable, and adaptable to their work environment needs. These investments notoriously included *(but not limited to)* major cleaning, building bathrooms, kitchens, installing plumbing, electricity, flooring, windows, heating, walls etc.

All that said, I want to extend much appreciation to the Loft Board for listening to us tenants, for reading our letters and for making the right choice in setting the Interim Rent Guidelines at 0%.

This establishes tenant's permissible Total Rent, (including escalators that are not use-based escalators), as what they were paying on or before June 21, 2010.

Where this rule is ambiguous and FAILS to fully protect the tenant, is when there are illegal rent increases charged AFTER June 21, 2010.

And according to section *(e) Overcharges and Penalties,* makes the tenant liable for the extra rent until they win an overcharge claim... This totally contradicts section (c) which states *there will be no increase permitted above the total rent...*

And considering how backed up the Loft Board is with cases, a tenant could be paying these overcharges for an undetermined amount of time. This could be detrimental to the very coverage they seek for protection. We ask that before you make this rule effective Oct 14, 2012, you consider correcting this liability imposed on the tenant.

Addressing this now, will avoid confusion, potential landlord harassment and added financial and emotional stress on tenants. The Loft Board needs to correct this erroneous contradiction. Otherwise, it enforces an undo burden on the tenant to pay such rent increase or be vulnerable to penalties, harassment, and possible legal eviction for non payment of an illegal rent increase! That is NOT what the loft law was created to do...

(Is this an oxymoron or just a moronic oversight?)

Under this City Rule, tenants should be able to file an Overcharge Claim, and refuse payment without penalty nor possible harassment or eviction for non payment.

In addition, **in order to protect tenants from frivolous escalators that are not relative to their tenancy, and/or deemed a legal charge,** I ask that the Board **further specify in this rule, what is considered legal use-base and non use-base escalators and to clarify what is the formula for determining "fair calculations."**

I thank the Loft Board for recognizing the need for protecting tenants from illegal rent increases and unfair escalators not relative to their tenancy.
I ask that the Loft Board correct section (e) to eliminate the consequences of the contradiction imposed in this rule.

Thank you.

NYCLT
NYC LOFT TENANTS.ORG

Dear Chairman LiMandri and members of the Loft Board:

There are some very good things in Rule 2-06.2. We applaud the Loft Board for listening to tenants and deciding to set the interim rent adjustment at 0% for tenants who hadn't had an increase in years. This is fair because there was always a reason why landlords weren't able to extract more rent in a lawless market where they held all the leverage. The most common reasons were rent already being high and poor maintenance.

Another point in this rule that is a great relief to tenants is that it spells out so clearly and concisely that any increases they took after June 2010 will be refunded.

However, there are still a couple of glitches in this rule. One is that tenants appear to be still liable for paying those illegal increases until they file an overcharge claim. This makes them vulnerable to collections claims and eviction if they refused to pay extra rent they did not in fact owe. We request that the rule clearly state that it is permissible for tenants to withhold rent they don't actually owe, rather than having to pay until winning an overcharge claim.

Another messy point in this rule is that it gives the landlord the choice of either refunding the overcharge in a lump sum or discounting the rent by 20% until the overcharge is returned. We feel that this will create a bookkeeping nightmare which will be unenforceable and may prompt tenants to withhold rent where they should not. The full amount should be returned as a lump sum or on a payment schedule, not offered as a rent reduction.

Rule 2-06.2 also allows the landlord to continue charging whatever escalators are in the tenant's lease that were being paid in June 2010. A brief survey of our membership revealed that many tenants are paying outrageous garbage charges (whether or not they had curbside pickup), water charges, disproportionate real estate taxes, sub-metered gas and electric with very little accountability, gas or electric charges based on proportionate square footage, service charges on top of utilities, and more. The Loft Board should expect to see some "interesting" overcharge proceedings based on these escalators. Please consider this language carefully.

Thank you,
NYCLT

To:
Lanny R. Alexander
280 Broadway 3rd Fl
New York, NY 10007

Darren Lipman
70 Commercial St. #103
Brooklyn, NY 11222

RE: Text of testimony given on Rule 206.2 of Loft law.

My position on rule 206.2 is there should me be an increase of 0%. Many of us (LOFT) tenants are currently paying a market rent. Any increase in addition to 6-8-6 which is already 20% over market rent would be unfair at best. By raising the rent even more we would be driving tenants out of there units in search of market rents.

If tenants move out, all the work we have done so far has been a complete waste. (Why have a loft law if their a no qualified tenants to fill the units?)

Thank You for all you hard work!

Darren Lipman

Dear Lanny,

Hello, my name is Erin O'Donnell and I live at 268 Metropolitan. Our building has a docket number (TR-0882) and you actually just helped us get our building to be listed as pending--thanks again!

I am writing now because we have a very critical harassment issue developing. We have David Frazer as our lawyer and have contacted him on this issue but the law may be too slow to help us.

Essentially, our building was bought recently by "199 Lee Ave. #693"
from J. Gutman. We found out yesterday that the new owners have not applied for service for the public light and power account on our building.
The letter from Con Ed further states that the electric and/or gas service will be discontinued on 8/15 unless our Landlord or his Agent contact them to apply for service. Con Ed has said we can not pay them directly.

As I said, Frazer is alerted but a letter from the Loft Board would help tremendously.

I am attaching my written testimony for Rule 2-06.2. It details our odd arrangement with the land lord which I will describe quickly- Three of our six units have separate electric meters and three share one meter. That meter is controlled by the landlord. He splits the bill by the square footage of each unit and we pay the bill in addition to our rent. So it is a use-based escalator.

Finally, we believe that the building was not so much sold as shifted around among parties to give more freedom for this kind of harassment. The building was sold for 1.5 million, well under it asking price of 3.5 - 4 million. Our suspicion was further aroused by the lack of a deed available online. Frazer saw that as a red flag and encouraged us to withhold rent; he wrote a letter to the new management saying we would pay when they revealed who the "new"
owners are by producing a deed. So far, nothing from them.

So half of our units stand to loose electricity next week unless the management is made to understand that they can not operate in a veil of secrecy and illegality. It would help so much if you could shine some light in their direction and let them know that they are being watched.

There is always the possibility that they simply forgot to open a new account, but it seems unlikely. When I showed the letter from the new management to Rachel Fuentes she said 199 Lee Ave #693 was well known to her as a conglomerate that specialized in tricky ways of ousting tenants.
A few weeks later here we are.....

Thank you for your time, and any advise you might give would be greatly appreciated.

Sincerely,
Erin O'Donnell