



Dear Chairman LiMandri and NYC Loft Board -

Thank you for the opportunity to comment on the proposed Loft Board rules. We understand that it is very difficult to craft rules which accurately reflect the law, while finding fair solutions to the myriad problems which beset tenants in illegal buildings.

Moreover we also realize that the Loft Board is under considerable time pressure to complete the rule making process, and that the process for completing these rules is complex and involves many city agencies. That said, we hope that the Board will be guided by the merits of questions and not short term expediency. There is little long-term gain in accepting a rule that is sure to be challenged later.

Collectively and individually, tenants have expressed concerns about how the rules are currently drafted. Below is a summary of NYCLT's requested changes to the rules.

### **2-09 Coverage**

If a tenant moved in to an eligible or covered unit after 6/21/10 it is unclear if that tenant is eligible for loft law protection under 2-09(b)(3). It currently requires some work to prove that the landlord "consented" to them being there. We request a definition of consent that acknowledges that the landlord directly taking a tenant's rent implies consent.

Unlike other rules, the restrictions on subletting in 2-09(c)(4)(ii)(H) apply to subleases that started after the date the building was registered, rather than after the rule is finalized. So a tenant may be evicted for violating a rule that wasn't published. We request that the rule be updated to enable the restrictions only after its enactment.

### **2-11.1 Fines**

The fine for filing a harassment claim in bad faith should be much lower (say \$200), because the tenant stands nothing to gain and has to pay massive legal fees. It is acceptable to keep the aggravated penalty high in case a tenant is really misusing the system.

We request that the fines for harassment be doubled. The Loft Board should be able to fine the maximum \$17,500 for aggravated harassment.

Please institute a harassment fine for serving the Narrative Statement Process waiver under false pretenses. This is conduct intended to cause a tenant to surrender rights pursuant to Article 7-C.

If you agree to a notification requirement in Rule 2-12, please include a fine for not filing on time.

Please keep this rule open for comment as there are multiple references to Rule 2-01 in it.

### **2-02 Harassment**

Rule 2-11.1 contains helpful lists of examples of harassment that impacts on the tenant's "safety" and "quality of life" – please bring this language into Rule 2-02.

Quality of life issues should also include false collections claims, frivolous lawsuits, and getting tenants to sign a Narrative Statement Process waiver under false pretenses.

It is presently unclear what constitutes severe harassment. Some guidance should be provided in the rule regarding severity. For example, if a lock is repeatedly busted or a utility is out for a period of months, does that constitute aggravated harassment?

### **2-10 Sale of Rights**

We request that the Loft Board raise the fine for not filing a Sale of Rights disclosure document in a timely fashion. This can be used to drive out unwanted tenants in much the same way as preferential rent, without even a warning in the lease.

Please make it easier for new tenants to find out what their legal rent is & whether the rights have been sold on their unit. This can be accomplished through the notification and informative process we're asking for in 2-12.

### **2-07 Sales of Improvements**

No suggestions/comment.

### **2-06.2 Interim Rent Guidelines & Total Rent**

Please add a clause making it clear that tenants are not liable for collections claims or holdovers for refusing to pay illegal increases.

If a landlord has charged illegal increases after June 2010, the full amount of the overcharge should be returned as lump sum or according to a schedule. Otherwise it becomes an unenforceable bookkeeping nightmare.

If possible, more guidance should be provided in what escalators and fees are fair. In particular, exorbitant fees on usage and dividing by square footage shouldn't be allowed, and if submeters are necessary then there should be some guidelines.

### **2-12 Rent Adjustments**

Ideally landlords should have to request a rent adjustment before receiving it. However we recognize that the Law may not allow this.

At a minimum, in order to increase transparency and accountability, please institute a notification process where the landlord has to formally notify tenants about each milestone increase, with a copy going to the LB. Please explore whether it is possible to mandate that an increase be allowed only after filing.

There should also be an easy way for tenants to inquire the LB for their legal rent.

Please institute a penalty for landlords not filing the notification in a timely manner, because asking for retroactive increases will surely be used to drive out tenants selectively.

Please keep this rule open; see General below.

### **General**

Please keep Rules 2-11.1 Fines and 2-12 Rent Adjustments open for written comment until 2-01 has been published, because we don't know how these will be affected: as noted above and also because we don't know how no-work interacts with 2-12.

Thank you for your consideration.

NYCLT

TESTIMONY on Rule 2-09 7/12/2017

I, Benjamin Kabin Weitzenkorn, moved into 260 Moore Street #209<sup>1206</sup> on July 1 of this year. It is an LMD building and I pay \$2,700 each month. I recently spoke with a previous tenant who lived in and worked out of the space on June 21, 2010. He told me that on that date, rent for my unit was \$2,300. Clearly, my landlord does not believe, or does not care that I or my unit are covered by this provision of the Loft Law as he is collecting an additional \$400 on top of what the rent was on that window day (June 21, 2010).

I strongly believe that I, and others in my situation, need to be covered and protected from rent increases that occur after the window day. If those of us who moved into LMDs after June 21, 2010 are not covered or protected from rent increases, it allows the landlord to operate as he pleases with little or no incentive to bring the building up to code and make the necessary safety and habitability improvements.

Furthermore, it's unclear whether or not my landlord intends to furnish me with a copy of the lease. I asked for a copy upon signing and he said he would provide one at a later date. Now he's telling me that I need to call him ten minutes prior to meeting him on a street corner to obtain a copy of the lease in south Brooklyn, near Redhook. I live on the Border of Bushwick and Bed-Stuy in East Williamsburg. It's not an easy place to get to for me.

The only receipt I have for my security deposit and first month of rent are the photocopies of checks provided by my bank. The landlord has deposited them, and it is my understanding that indicates that the landlord has consented to my tenancy and occupation of the space.

My name is Hannah Kinlaw and I am a post-2010 tenant living at 467 Troutman St., Brooklyn.

I am testifying that I should be covered under the loft law because I paid rent directly to the landlord for a little over 1 year from June 2011 - now July 2012. After our lease was up on July 1st 2012, I headed over to my landlord's office to resign it to my name, where they caught me off guard and said that the rent was \$500 dollars more per month if I wanted to continue to live in my home.

I left being unaware and obviously very very upset that I was going to end up being homeless with the responsibility of two other roommates on my shoulders because \$500 dollars sounded impossible. They told me property tax went up, so therefore my rent was \$500 dollars higher. Not only were my roommates from 2010-2012 covered under the NYC loft law, I lived and shared the space with them for a little over a year.

I feel as if being covered under the NYC loft law is necessary because my landlord was obviously taking my checks from 2011-2012 and will still continue to take my checks and cash them.

*Hannah Kinlaw*

July 12, 2012

Testimony to Loft Board regarding Section 2-09

Thank you for this opportunity to speak about the proposed rule. My name is Ryan Kuonen and I am a residential occupant of a loft building—140 Metropolitan Ave—in the Williamsburg neighborhood of Brooklyn. By your definition, I am also considered a sub-tenant who has with privity with a prime lessee.

I believe that Rule 2-09 cannot be passed as written because it is clearly unfair to certain residential occupants, rewarding overcharges and profiteering, giving someone like my building owner an economic windfall of a 130% rent increase without performing any work to my unit.

Let me explain— I live on the first floor in a small, 6 story brick building a few blocks from the Northside waterfront. The apartment has 1 semi-legal bedroom, and 3 rooms that are by definition beyond illegal in their structure. We have a shared kitchen, bathroom, and common room.

According to neighborhood lore, the building was a horse shoe factory built somewhere around the turn of the century. The first records available are in regards to the sale of the building in 1968 for four thousand dollars. At that time, the owner used the first two floors as a lamp factory with the other floors being rented out and used to produce garments and sweaters. By 1975, half of the building was empty and the lamp factory was closing up shop. By the mid-eighties, the building was residentially occupied by the building owner himself and several live-work artists. By 2000, all but one the original occupants had moved out with each floor being rented residentially—a majority of them being rented out as “guest rooms” by a single prime lessee.

In January of 2003, I answered a Craigslist ad in regards to a room for rent. I signed a month-to-month lease and paid a 2 month cash deposit. My landlord, an occupant on another floor who had the lease on 4 of the 6 floors and was renting out 15 individual rooms, creating a supposedly legal hotel for artists. After about 6 months in the building, I was informed by other residents that despite what I had been told by the prime lessee, the building was not a legal residence.

To say that my prime tenant was unscrupulous in her overcharges is an understatement. 2 of the rooms in my unit were so crazy they were rarely occupied for longer than 9 months at a time and most often were rented to foreign interns who were in the City for 4-6 months, desperate to live in Williamsburg and willing to live in kooky creative cubbies without any real privacy for a short period of time. Often these rooms were empty for weeks at a time, having been vacated by unhappy tenants due to issues of habitability or they sat empty because no new tenant could be found to occupy them.

In 2010, the rent paid to the building owner for my floor was \$1,500; the total paid to the building owner for all 4 floors leased by my prime lessee was \$8,700. The income collected by the prime lessee from my floor was \$3,525, resulting in \$2,025 in profit from just my floor. The other 3 floors had more rooms and even greater profit margins.

Since we have filed for Loft Law coverage last July, our building has entered into a phase of chaos— mostly resulting from the effect that this rule could have on our situation. The prime lessee harassed, threatened, and evicted tenants, emptying half the building last Fall. Eventually, she decided to move

on, selling our leases and deposits to a third party. This third party bought our leases specifically because of this rule, which legalizes the overcharge into a base rent that is equal to rent received in a lot of new and luxurious buildings. In the past there may have been situations that warranted the affirmation of the rent at the rate paid to the prime lessee. However, I believe that cases like mine show that that would be completely unfair and not in the spirit that the law intended.

Also, I believe that the Loft Board should only allow prime lessee's to recoup the cost of ~~the~~<sup>code</sup> code compliant construction. Because the tenants will have to pay for demolition and reconstruction of non-compliant work in their units, it does not seem fair that they are charged for this work, especially since the sub-tenants are not given any credit in the calculation for rent paid.

In our case, nothing in our unit is even close to code compliant. In fact, my entire unit was constructed out of found materials from the street and it is pretty safe to say that the entire thing — every single inch — will have to be demolished and reconstructed.

I really believe that this rule is arbitrary and capricious in that it rewards profiteering. In essence it is legalizing economic windfalls for those who exploited their sublessors the harshest. I ask that the Loft Board not pass this rule, but instead rewrite these sections of the rule, realizing that there are extreme differences in sub-tenant situations and that this law was not written with the purpose of legalizing profiteering but to protect the residential occupants of these spaces.

COMMENTS TO PROPOSED RULE §2-09

While these comments are directed at issues raised by proposed regulation §2-09, it is important to understand that the issues exist, for the most part, because of the overall regulatory approach that the Loft Board has taken in amending its regulations to implement the 2010 Amendments. For obvious reasons, the Board has, wherever possible, hewed as closely as possible to the existing regulations. While there is a clear logic to this path of expediency, taking the shortest route has the unfortunate disadvantage of glossing over problems that arose under the original regulatory scheme and ignoring the vast sea changes that have occurred since the Loft Law was first enacted.

Section 2-09 was never easy to understand, and the Loft Board seems to be ignoring a clear opportunity to shed light on what was intended when the regulation was originally drafted. Subsection (b)(1) establishes that the “occupant qualified for possession” of an IMD space under the default formula is the “residential occupant in possession.” This has always been understood to mean that the “occupant qualified for possession” is the “occupant in possession” on the date of coverage (the “Base Date”) for the particular unit. What has never been clear, however, is who qualifies as an “occupant in possession.”

Of particular concern – because it apparently has never been previously resolved – is whether a roommate qualifies as an “occupant in possession.” On the face of the regulation, a roommate is certainly qualified for protection, so long as he/she was in

possession on the Base Date. There is nothing on the face of the regulation to suggest otherwise, and, if a roommate was paying rent and had the legal right to be in possession on the Base Date, it would be difficult to see how a court of law could rule other than in the roommate's favor. While I have no particularly strong opinion as to whether this is a good or a bad result, it is essential that the Loft Board clarify this issue, and, if necessary, amend its proposed regulations.

The first issue that arises if roommates are qualified for possession has to do with rents. Under proposed §2-09(c)(6)(ii)(A), once the lease for a covered unit is no longer in effect, and the occupant(s)/roommate(s) are in privity with the landlord (together with the prime lessee), the rent for the space becomes the total of what the prime lessee was paying to the landlord, plus the rent(s) the occupant(s)/roommate(s) were paying to the prime lessee. This multiple of what is already in most cases market rent would constitute an enormous, unwarranted – and, I would have to assume, unintended – windfall to the landlord. Accordingly, the proposed regulations should be further amended by making the rent to be paid to the landlord at the expiration of the prime lease the amount the prime lessee had been paying at the time the prime lease expired, and then devising a fair formula for the amount(s) the roommate(s) should be paying to the prime lessee.

A second issue that would arise if roommates are occupants entitled to possession is that the prime lessee, the person who presumably developed the space, would, in most instances, be unable to sell his/her fixtures or rights. At the very least, he or she would

have to wait until the very last roommate left the space before even having the opportunity to sell. If roommates are to be given protected status, changes need to be made to the regulations to allow the prime lessee to recoup his/her investment — a result clearly intended under the Loft Law.

I would suggest changes to the proposed regulations ~~regarding~~ with respect to instances where a prime lessee leased a space that he/she never occupied and subleased it out to an individual or to a group of individuals for profit. I have seen this situation personally and have heard anecdotally that it is very common. Under proposed §2-09(c)(6)(ii)(A), once the prime lease expires, the landlord is entitled to the benefit of the rents paid by the sublessees to the prime tenant. This is how the situation has been resolved under the original Loft Law, but, I would submit that it is no longer a fair solution to the problem.

Times have changed, and the economic conditions that prevailed when the original Loft Law was enacted in 1982 are very different from those that exist today. In 1982, the assumption was reasonably made that owners had been forced to rent out space at below market rents. Accordingly, it made sense that, in instances where a subtenant had been willing to pay a rent higher than what the prime tenant was paying to the landlord, the landlord should get the benefit of the additional rent. Today, however, such an assumption no longer makes sense. Under the 2010 amendment, prime tenants who leased out space for profit are, in most instances, already paying market rents to their landlords.

These prime tenants have been able to make a profit because they subleased a single unit to multiple subtenants, who are "doubling up." In this very common situation, there is a single unit which contains one kitchen, but numerous bedrooms. After the prime lease expires, authorizing the landlord to collect the rent that had been paid to the prime, instead of the rent the prime had been paying to the landlord, would constitute an unreasonable windfall for the landlord. Landlords are already getting huge benefits under the 2010 amendments. They now have a law that supercedes the Zoning Resolution and provides them with development opportunities that they could only have dreamed of. In addition, by starting at market rents, with the promise of substantial increases (unrelated to expenses) as they proceed through the legalization process, most landlords will end up collecting rents substantially *above* fair market. Landlords do not need any further windfalls under §2-09.

In light of the forgoing issues, I hope that the Loft Board will take the time to consider the differences between the 1982 Law and the 2010 amendments and enact a regulation that fairly reflects the circumstances that tenants and landlords now find themselves in.

Dated: July 11, 2012

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July 12, 2012



Members of the New York City Loft Board:

Thank you for the opportunity to speak on these important proposed amendments to §2-09 of Title 29 of the Rules of the City of New York. My name is Lincoln Restler, I am here today to speak to you in two roles. I am the State Committeeman and District Leader from the 50<sup>th</sup> Assembly District in Brooklyn, New York, representing the neighborhoods of Williamsburg, Greenpoint, Fort Greene and Clinton Hill. Secondly, I lead the NYC Employment and Training Coalition, a coalition of 200 New York City workforce development organizations, where I advocate to ensure that New Yorkers have access to skills, education, and training to secure quality employment. I would like to take this opportunity to recognize Neighbors Allied for Good Growth and NYCLT for their extensive outreach and educational efforts to inform and organize loft tenants in North Brooklyn and to actively ensure that tenants' rights are being protected.

One key objective of mine is the retention and creation of manufacturing jobs throughout Brooklyn. As we all know too well, shifts in the market and opportunistic landlords have converted hundreds – if not thousands – of manufacturing facilities into residential spaces. While I am staunchly committed to initiatives that preserve and revitalize Brooklyn's manufacturing and industrial sectors, the reality is that these units will not revert back to manufacturing. These converted residential units have provided much needed housing to an emerging market of artists and young professionals. The flexibility of the spaces has facilitated live/work environments that have stimulated our local economies in new and positive ways. Indeed, these tenants have been at the forefront of building a new creative economy in Brooklyn. Their tenancies have also provided building owners with much needed revenue to maintain properties and to avoid them from falling into abandonment, disrepair, blight etc. A regrettable side effect of this broader process has been the all too common exploitation of subtenants perpetrated by profiteering "overtenants".

Article 7-C, the Interim Multiple Dwelling Law, was written as a response to the current housing crisis in New York City. The law also seeks to provide safe dwellings for primary residents, so they can safely remain in their homes. In my role as State Committeeman and District Leader, I have had the opportunity to speak with many of my constituents who will be forced to relocate because of the financial burden these amendments to §2-09 place on themselves and their families.

I recognize that the loft board has been charged with the complicated task of creating rules surrounding the often vague loft law and attempting to unite the many diverging stakeholders. While I respect the Board's aspiration to protect the investments made by prime tenants, rule §2-09 expands beyond the mere recoupment of those investments and, instead, actively encourages and shields the disproportionately lucrative profiteering of "overtenants" and owners. As I see it, there are three main problems:

- 1) The continuation of privity between prime lessee and sublessor allowing subtenants to be continually overcharged;
- 2) Building owners are allowed to collect windfall profits upon entering privity with sublessors;
- 3) The cost of improvements paid to the prime lessee by the sublessor do not take into consideration standard market guidelines.

*1) Problems in continuing privity between prime lessee and sublessor*

The allowance of a continuation of privity between the prime lessee and sublessor in §2-09 (c)(6)(i) creates various problems. First, it will immediately conflict with the Rent Stabilization Code (RSC), because this new category of "overtenant" does not exist anywhere in the Rent Stabilization Code, once these rules regulate housing, some of these "overtenants" will immediately lead to illegal sublet/non-primary residence holdovers. This threat of eviction of apartments runs directly counter

to the spirit of this law, which is to deal with the housing crisis currently existing in New York City. § 2-09 in its current state will create unnecessary litigation in the court system. Secondly, it allows rents to be set arbitrarily by interested parties and rewards previous overcharges by stating that the "maximum permissible rent" should be whatever the overtenant charged the sublessor pursuant a rent agreement. Finally, while a § 2-09 (c)(3)(ii) prime lessee must maintain services and minimum housing maintenance standards, there exists realistically little recourse against the prime lessee, especially when compared with the existing mechanisms the city may impose against owners. Even though a sublessor could take a prime lessee to court, if a prime lessee fails to provide services they will generally not have the funds with which to abate the violations, thus leading to conditions that threaten the life, safety and health of the sublessors.

*2) Landlords should not be allowed to collect windfall profits*

The insistence in §2-09 (c)(6)(ii) that sublessors continue to pay the landlord the amount paid to the prime lessee is inconsistent with § 286 (2)(i) of Article 7-C of the Interim Multiple Dwelling Law and should be reconciled. Where §286 (2)(i) states that the residential occupant qualified for protection are the primary occupants, not prime lessees, and should pay their current rental agreement to the extent it remains in effect, or in the absence of a lease or rental agreement, the same rent "most recently paid and accepted by the owner." However, the rule sets out a standard that states the amount paid should be the last amount paid to the prime lessee. These two amounts may, and regularly do, differ greatly. This divergence rewards overcharges. Owners, in this situation, would receive an economic windfall from allowing unscrupulous prime tenants to overcharge the subtenants. No one should be rewarded as the result of these exploitative relationships by requiring subtenants to continue to pay excess rent upon entering privily for renovations that they did not perform.

*3) Improving cost calculations*

While prime lessees' should be compensated for their investments, that compensation should be limited to the investment. The spirit of the law is to allow those to who live in the space to continue to occupy their homes, not to protect profits by quasi-landlords. After years of charging subtenants for the costs of improvements, it seems markedly unfair to allow prime tenants to again recoup these costs, since the market would dictate that they have, through fixing the rent, already reaped the benefits of these improvements. As such, those profits should be taken into consideration when calculating the costs of improvements. The Loft Board's proposed rule §2-09 (7) (iv) (B) however, does the opposite. It arbitrarily and capriciously rewards profiteering, because it explicitly sets aside common sense excess charges in rent from being used in the compensation scheme for prime lessees' improvements. In essence, the Loft Board would be legalizing economic windfalls for those who exploited their sublessors the harshest. Prime lessees, under this scheme, would not only be allowed to keep this "overcharge" but also would then recoup the actual cost of the improvements. This is inappropriate, because, prior to the implementation of this law, the market would have dictated that the cost of this work would have been factored into the rental agreement, without necessity of a double windfall.

These are but a few of the troubling issues within the framework of these proposed rules. I respectfully urge the Board to keep in mind the Legislative Findings of the Loft Law itself that focus the law on the legalization and preservation of safe and affordable housing units. Rather than protecting profit margins, this should be our core objective. As you reconsider these proposed rules, I would ask that you remember the vital importance of generating a more equitable system for rent calculations and improvements that protects the rights of tenants and the preserves the affordability of our housing stock.

Thank you for your consideration.

Lincoln Restler  
District Leader and State Committeeman  
50<sup>th</sup> Assembly District

Dear Loft Board,

My name is Sebastian Gladstone, my address is 236 Moore st (apt 409), Brooklyn, NY. I have been living in my loft since February of 2012, thus I moved in after the June 2010 window period. Rights to my loft were passed on to me from the primary tenant, who lived in the loft since May of 2010, when their lease ended in May of 2012. I am a roommate who has always paid checks directly to the landlord for my portion of the shared loft space. I currently do not have a lease, although I have been pressured to sign one by the landlord. My current legal status and coverage as a loft tenant is very muddly to say the least with the current loft rules, however with rule 2-09, my privity with my landlord is clearly outlined, and would lessen landlord-tenant conflicts, not just for me, but for other people in my building as well.

Sincerely,

Sebastian Gladstone

Written Testimony Concerning Rule 2.09  
By Guy Lesser  
12 July 2012

Dear Commissioner LiMandri and Members of the Loft Board

I am writing in very much in an individual capacity and "with no dog in the fight" (as Secretary of State James Baker was fond of saying) concerning the base rent "adjustments" sometimes called "windfalls" contemplated by the proposed rule 2.09 in buildings with prime tenants.

This because I believe (1) it evidently represented a bitter compromise to a extremely contentious fight twenty odd years ago which imperatively needs to be reexamined; (2) that it survives only because it is far too opaquely drafted to be understood; (3) fairness and the efficient administration of the loft law would be greatly advanced by altering its terms so that (a) owners get a 0% increase from what they received pursuant to the prime lease, and (b) this amount be divided on equal terms pro rata with no distinction made between former prime tenants and their former subtenants, and no special favor granted former prime tenants.

I suggest this because it would wholly eliminate the awkward windfall dilemma altogether, avoid any challenge to the rule as an unfair (or even arbitrary and capricious) and one-sided extension of obligations of expired contracts (unduly and disproportionately favoring some tenants and not others), and because it would put all tenants on a equitable footing most likely to promote what might be called the long term community of the buildings concerned.<sup>1</sup>

To be sure, the issues present a classic minus sum problem-- which is to say, one in which you have only bad choices. However, I believe if you take the time to consider my lengthy argument below (consisting of my own ten year history as a subtenant and a detailed hypothetical based on somewhat analogous facts), you will conclude that what I suggest is by far the least bad among your choices. As with other testimony I've made during the rule making process, I believe my own first hand experience at 475 Kent Avenue is both relevant and fairly typical of the phenomenon in many Brooklyn buildings brought within the authority of the loft board in 2010.

**475 KENT 1998-2008 ANECDOTAL BACKGROUND** (this section may be skipped if you wish to consider the policy argument pure and simple):

As I have recounted before, I moved to 475 Kent in the autumn of 1998, taking possession of a "raw" loft space of almost 900 square feet on the building's ninth floor where I have lived and worked continuously since.

The building had been, as DOB records reflect, purchased by its present owner in 1982, and during the period of his ownership prior to my arrival, almost the entire building had been rented out as warehouse space for bulk cold storage, and insofar as I know had no tenants operating active businesses of any kind.

This was hardly surprising given the extraordinarily dilapidated state of the building (not to mention its immediate neighborhood). Its elevators, plumbing, electricity and heating dated from various periods ranging from 1910 to the 1950s, and it had evidently been several decades since even minor routine maintenance of any kind had been performed-- let alone

1. As to the value of physical improvements made to a building by a prime tenant, this, to my mind, could be more than adequately dealt with as a practical matter as part of the sale of rights and fixtures provisions of the loft board rules. As a conceptual issue, I think it is extremely useful to think of the windfall problem as one arising purely out of the lease contracts in force or expired between the primes and their subtenants.

capital improvement made. Accordingly, the building was in a woeful state, entirely unfit for any actual occupation for any purpose be it commercial or otherwise.

Windows including mine had long ago been bricked up with cinder block. And certainly up until the time I moved in— only a few months after my prime tenant, known as Seelevel Inc., had signed a ten year lease for two floors in the building— no functional heat, gas, water or phone lines existed on the floor, and what rudimentary electrical lines there were, were in a dangerous state, and long overdue for replacement. This was typical of other once glorious private buildings in the immediate neighborhood (including, for instance, the abandoned Shaeffer beer brewery just north of us on Kent Avenue and the BMT power plant located on the corner of Kent and Division, which have both since been razed).

As for Seelevel, this was a partnership of three successful mid-career artists who had been involuntarily displaced from other loft buildings in the past. And their principle motive for becoming entrepreneurial prime tenants and developing two floors of 475 Kent was to secure adequate longterm live/work space for themselves.

Their plan was relatively straightforward and fairly typical of what turned out to be in aggregate the remarkable grass roots entrepreneurial redevelopment of the Williamsburg waterfront neighborhood. Each of the three partners would get a large live/work space— representing in total perhaps 7500 square feet of the 20,000+ sq ft area of the two floors, and the remainder would be divided into units of between 500 and 2500 square feet, and then rented initially at approximately \$1.25 a foot a month. Well worth noting is that spaces were rented on a first come first served basis, and priced solely as a function of their size. Which is to say, unlike luxury housing on the Upper East Side, such issues as an apartment's particular view (or lack of one) and premiums paid for higher floors did not factor into the pricing equation at all. An architect was hired, and plans duly filed with DOB, but most of the initial work was done either by themselves or small work crews they hired.

A large new gas boiler was installed for heat and hot water for the two floors, units were divided with sheetrock walls and steel doors installed along a corridor, and each unit received new windows and window frames, baseboard heating fixtures, and new wiring. Gas and water lines were routed along the corridor, and the rental spaces were offered as "raw" units without any internal water lines, drains, gas or phone lines-- these being up to the individual tenant to deal with himself.

In keeping with the idea of the units being primarily for creative work—with a blind eye turned to the issue of whether tenants were also going to live in them— two public wash rooms with showers were also installed on each floor, presumably with the idea that even if a tenancy (or a particular tenant's use of his space) might not be technically legal, the conversion itself might nonetheless pass muster.

At a very rough guess, Seelevel probably made an initial investment of between \$100,000 and \$200,000 in their conversion venture, along with many hours of their own labor. And I would guess they were probably paying approximately \$0.75 a foot a month for the two floors, suggesting their net annual revenue was likely in the general range of \$75,000 (with full occupancy of units). Accordingly, they could therefore expect, roughly speaking, to "break even" and begin to turn a profit on the funds invested within about 3 years, in addition to enjoying the use of their own spaces for the period.<sup>2</sup>

2. Utility bills for the floor were passed along to tenants and divided pro rata according to the size of their individual lofts. Any and all further improvements to units were strictly up to the individual subtenant to undertake himself (which in my own case meant entirely at my own expense, "cutting" drains, installing pipes on the floor below mine, adding gas and water lines, as well as phone lines, and building a kitchen and bathroom with appliances and fixtures that I purchased myself— and which I gradually added over a course of years).

Seelevel, turned out to be good neighbors, wonderfully fair to deal with as landlords, scrupulous in dealing with problems in the building, and I have never begrudged them making what seems to me a reasonable return for having the vision, initiative, skill and capital to offer what became my home, and at what in 1998 seemed a perfectly fair price for raw space in what I hoped would become a better neighborhood, compared to what else was available.

My understanding with Seelevel was that I could remain in my space for the full term of their 10 year lease (on the basis of annual leases with a small additional percentage rent rises), and then we'd see what happened and what might be worked out with the building owner if any of us were still there.

In any event, what happened was in the fall of 2008, after several months of negotiation, I and the owner of 475 Kent reached a deal for my continuing in occupancy. Ironically, this was just as the global economic crisis (following the collapse of Lehman Brothers) began to unfold, so while uncertainty was very much in the air, I failed to benefit from the depressed housing market that began to affect the New York rental market in the months to come.

So much for my own real world experience.

As may be inferred from the above, Seelevel, I, and 475 Kent's owner all did reasonably well, all things considered, during the course of our ten year arrangement. I will leave to another occasion discussion of and speculation about how the longterm investment of prime tenants and subtenants in 475 Kent improved and saved the building from demolition, or positively affected the neighborhood, or served to significantly increase the value of the property. And say simply that, whatever else, as a prime tenant, Seelevel, as far as I can infer, received a handsome return on monies invested, and reaped rewards they very much deserved. I would even be prepared to argue that, leaving issues of strict legality aside (and omitting a few dark incidents from the picture, such as our 3 month long "evacuation" of January 2008), 475 Kent's history provides a case study of capitalism at its most productive and benign, achieving what economists term Pareto optimality.

**THE HYPOTHETICAL** (teasing out the radically different outcomes between two identical buildings-- one "developed" by "prime tenants" and the other in which all tenants are in privity with a building owner from the start):

#### Building A

Imagine it is 21 Jun 2001. A derelict building "A" has 10 floors and a landlord who has no interest in doing anything to improve the building. The owner's only interest is revenue. Each floor is 10,000sq feet, ideal for creating ten identical spaces of 1000sq feet. Ten prime tenants each take a lease for ten years investing \$100,000 to develop a single floor. The monthly rent for Prime Tenants is \$1 a sq foot or \$10,000 a month per floor (hereinafter "wholesale"). These leases run out on 20 June 2010. Each prime tenant continuously occupies one space for the lease period. All subs moved in on day one and remain for the full term, and then every occupant files an application for Loft Law coverage. The subtenants each pay their Prime Tenant \$2 a square foot or \$2000 per month (hereinafter "retail").

Accordingly, over the ten year period, each prime tenant receives \$8,000 a month in net revenue (over and above the \$10,000 per month paid to the landlord; or \$96,000 a year, AND a free 1000sq foot space (with as we are terming it, a "retail value" of \$2000 per month). Thus, at the end of the ten year lease, each prime tenant will have received \$960,000 in revenue and a "free" space (with a "retail" value of \$240,000; which is what each of his 9 subtenants has paid).

Under 2.09 as currently written, when the ten year leases of the prime tenants expire (Jun 2010), the following is what happens:

The landlord's rent roll will be increased from \$10,000 per floor per month to \$14,100 (\$18,000 - .5x\$8000+\$100). And more than an additional \$400,000 a year will be added to the rent roll of the building. Each original subtenant will go into the Loft Law at a monthly rent of \$2000 per month. While each of the original ten prime tenants will pay \$100 a month for their 1000sq foot spaces.<sup>3</sup>

#### Building B

Let us now imagine an identical second derelict building "B" with much the same facts, but here there is no single "Prime Tenant," and each floor's ten tenants invests his own \$10,000 in improvement work, and pays his landlord the "wholesale" rate of \$1000 a month for his space directly; the ONLY difference between Buildings A and B is that B has no prime tenants in the picture. Here each and every tenant goes into the loft law with a monthly rent of \$1000 a month.<sup>4</sup>

#### A FEW POLICY QUESTIONS:

I believe the hypothetical above provides considerable food for thought. As a start, perhaps, I think four questions are worth pondering:

- Why should 90 tenants of building A pay twice as much as those in building B?
- Why should building owner A have a 40% higher rent roll going into the loft law process solely because he made a 2001 contract with a group of ten so-called prime tenants (who've made almost \$1 million profit on an investment of \$100,000)?
- Why do prime tenants, AFTER the expiration of all their per se unlawful rental contracts, deserve to be granted in perpetuity, a kind of permanent quasi-property interest in the building (disguised, to be sure, in the form of paying only \$100 a month, and presumably later getting whatever the far higher value that would be given to any transfer of their unit's rights by a buildings owner (in contrast to their neighbors) solely on the basis of the greater disparity between their \$100 a month rent and the market rate)?
- How does it look in terms of the general appearance of fairness for ten prime tenants to have their rental deal (and building A's owner extra \$400,000) funded by 90 tenant neighbors who pay 2000% more a month than the ten former primes?<sup>5</sup>

3. Outside my hypothetical, strictly speaking- But any prime tenant who occupied more than one unit for a year before subdividing his floor into spaces, and who made a written agreement with one of his subtenants for him to "recover" the subtenant's unit (presumably during the ten period the lease was still running), can- with a claim of "compelling need" (whatever this means)- get a second space for free if he acts before 13 December 2012. Is this a null set? Or does this actually affect anyone? This weird benefit to an unknown subgroup of former Primes disappears if the Rule is changed to a net increase of Zero for the landlord, and everyone pays their pro rata share of \$1 a square foot.

4. The 3rd relevant hypothetical, let's call it "Building C," would be where the owner funded the initial \$1 million conversion costs. And presumably set rents for his 100 tenants at the same higher "retail" rate of the prime building. Assuming all the same simplified facts of full continuous occupancy, etc., going forward from Jun 2010 he'd receive \$2000x10 or \$20,000 a month per floor. This presents what might be called the toughest questions about the "fairness" of rent disparities between buildings offering similar (or identical) space at wildly different prices. But in this case no loft board rule would be implicated, no "adjustment" of any kind would be necessary to whatever rents were in effect on 21 June 2010, and the loft board would not be required to create and then enforce a murky and perpetual quasi-property interest in the building for the benefit of 10 of its original 100 tenants.

5. Again, NB this particular provision of 2-09 is ENTIRELY separate from any consideration of the fair market value of any investment in "improvements" made to the building or the individual spaces within it by any of the parties- which is governed by other subsections.

### **A FEW PRELIMINARY SUGGESTIONS:**

As I stated in the beginning of this letter, I think the 2.09 rule poses some very tough questions for the loft board to consider thoughtfully. And from past experience, I have full confidence that alerted to the problems presented, you will do exactly this, whether or not you agree with my own suggested solutions.

This said, I do think that by eliminating the "windfall" percentage added to the rent roll AND the subsidy/discount enjoyed by the ex-prime tenant group, a whole area of potentially acrimonious disputes can be avoided (that may be expected to potentially lead to long term litigation both within the loft law system and before the courts) if a rule were adopted that put my two hypothetical buildings and all their tenants on an equal footing— with the landlord getting the same rent going forward as of 22 June 2010 he received on 21 June, and each and every tenant paying an equal share, with the same price paid for the same space. (I also think that, as was the case at 475 Kent when I rented my space, the common practice of the loft world community to exclude as irrelevant to price such soft factors as views or premiums for better floors, would be a policy the loft board would be wise to adopt).

Finally, I think, is that one thing for private parties to make what might seem insanely bad or one sided deals (or even for them later to ask a court or other government entity to step in, undo it, and make it fairer). But on the present occasion you have something of a blank slate in which you are obligated to IMPOSE terms, ideally using criteria of basic fairness, good policy, and clear sighted appraisal of what likely will or what can't possibly work. Clearly, one reason this particular aspect of 2-09 has survived for twenty years is that it is so cryptically worded no one can understand what it actually effects, least of all those it impacts the most. And since it is so completely buried within a complex body of rules devoted to various arcane aspects of purely abstract questions like the effect of privity of contract, I suspect that few loft tenants of the past or present have actually ever really pondered the implications of the rule's reach.

I could say much more, but will close here with a single thought, implicit in both what I've said about 475 Kent and in my hypothetical. To mind, all longterm stakeholders in buildings that have been reclaimed from total dereliction and been part of creating thriving new neighborhoods at no public cost (and in marked contrast to public top down urban renewal policies) arguably deserve some recognition and reward for their investment and proactive efforts. My own feeling is the mechanism for doing so would be best fashioned within the rules and future administrative decision and caselaw governing the sale of rights and improvements— where an individual's own efforts can be explored on a case by case basis in terms of value added. Here, all things being equal, a prime tenant who has made a substantial investment of money and man hours in the physical integrity of a building can make his case for a just recompense. And just as I hope you will take this opportunity to reevaluate the current version of 2.09 with respect to fairness, efficiency and other factors, when the time comes, I hope you will also act to improve the rules governing the sale of rights.

Very Truly Yours,

Guy Lesser  
475 Kent Ave #908  
Brooklyn, NY 11211

Testimony on Proposed Amendment to Rule 2-09 of the Title 29 of the RCNY

Public Hearing Held July 12, 2012

Rachel Fuentes

Thank you Chairman LiMandri, members of the Board for giving me the opportunity to speak at this Public Hearing. My name is Rachel Fuentes and I live at 62a Sullivan Street in Brooklyn, New York, which is not a loft. I have been involved in the loft law since June 21, 2010 as an educator, organizer and advocate for loft tenants.

Throughout the past two years I have met with hundreds of tenants and have tried to provide them with what guidance I could about their rights and responsibilities under the loft law. However, whenever this rule would come up, I would always say, I don't know, it's too complicated, and we still don't know how it will apply to 281(5) tenants. Now the rule will finally be passed and, despite how profoundly confusing it is, tenants have a responsibility to comply with it. However, I am deeply concerned that tenants may actually face eviction for having not been in compliance with the rule before its passage.

Section 2-09(c)(4)(ii) sets out the restrictions on subletting of a <sup>residential leasehold</sup> ~~premises~~, which include provisions for length of time, legal rent, and the liability for treble damages in the case of an overcharge. Violation of these restrictions is, in many cases, possible grounds for eviction under the loft law. In the current formulation, 2-09(c)(4)(ii)(H) specifies that, for 281(5) buildings, new subleases entered into after the date of coverage (by order or by registration) are subject to these restrictions. This means, for example, that a ~~prime~~ tenant in a building that registered in 2010 who issued a new sublease in 2011, may now face eviction if they violated any of these restrictions. In my experience, many covered <sup>TENANTS</sup> ~~parties~~ very much want to be fair and in compliance with the loft law, but just are not sure what compliance would mean for them since the rule is not yet established.

For 281(1) buildings and 281(4) buildings, the restrictions were made effective only for subleases entered into after the effective date of the regulation. Also, throughout the body of these proposed amendments to 2-09, the Loft Board has conscientiously made deadlines prospective from the expected effective date of this regulation. I support the Loft Board's decision to make restrictions enforceable only for subleases entered into after the date of coverage. However, I would ask that, given the confusion surrounding this rule and the potential legal ramifications for violating this rule, the Board consider also exempting from the subletting restrictions all subleases entered into before the effective date of this regulation.

Thank you for consideration of this request. I am happy to answer any questions or provide specific examples and stories if requested.

East Williamsburg/Bushwick Loft Tenants Association  
Testimony on § 2-09 of Title 29 of the RCNY  
Public Hearing held July 12, 2012  
Delivered by Shantou Basu

Thank you Chairman LiMandri and Members of the Board for giving me the opportunity to speak before you today. My name is Shantou Basu and I am the Organizer of the East Williamsburg/Bushwick Loft Tenants Association ("EWBLTA"). For the reasons stated below, the EWBLTA urges the Loft Board to adopt a clear rule that recognizes implied consent to tenancy in determining coverage when a landlord accepts rent directly from a tenant.

The EWBLTA is an organization that regularly communicates with over 500 tenants in over 100 buildings throughout North Brooklyn. In addition to outreach and education, we assist loft tenants to achieve coverage for buildings and units.

The East Williamsburg/Bushwick area has a core of very large loft buildings. Due to the size of the buildings, there have been new vacancies on or after June 21, 2010. Our membership is deeply concerned that landlords are overcharging rent in IMD and potentially IMD units.

In preparing for today's hearing, the EWBLTA asked for feedback from our membership. We have found that there is considerable confusion over whether a tenant who moves in after June 21, 2010 is eligible for loft law protection under the following situations:

- A tenant moves into a qualifying loft after June 21, 2010 and receives a one-year lease from the landlord. When the lease expires, the landlord refuses to renew the lease unless the tenant agrees to an unauthorized rent increase.
- A tenant moves into a qualifying loft after June 21, 2010, either as a subtenant or as roommate, but thereafter begins paying rent directly to the landlord who accepts the rental payments.
- A tenant moves into a qualifying loft after June 21, 2010, and the landlord never offers a lease, but the landlord accepts rent from the tenant on an informal basis.

We believe that the tenants should receive Loft Law protection in all three situations. This is because our understanding is that § 2-09(b) requires coverage if the landlord consents to the tenancy, as in the case of the above situations.

However, the rule does not currently include a definition of consent and the concept of implied consent lacks clarity under the current version of § 2-09(b). The

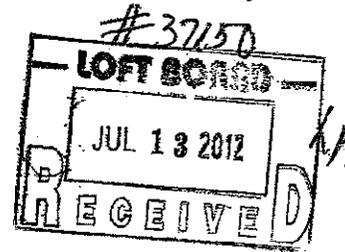
EWBLTA urges the Loft Board to adopt a clear rule which says that *acceptance of rent directly from the occupant shall be deemed prima facie evidence of the landlord's consent.*

Adopting this language will lead clarity to a confusing situation. This language accords well with the purposes of the Loft Law as it will protect tenants who are entitled to coverage from illegal rent increases while preserving safe, stable tenancies.

Sharlot B. Battin  
47 Greene St. 6th Fl.  
New York NY 10013

July 9, 2012

Larry R. Alexander  
Executive Director  
NYC Loft Board  
280 Broadway, 3rd. Floor  
New York NY 10007



Dear Ms. Alexander,

I have resided at the above address since 1978, 34 years. The living conditions have been far less than safe or ideal for a lot of that time. There was talk of building legalization work when I moved in. In 2004 the owners actually started to work in my loft and removed the PVC pipes, repaired old metal ones and brought the old Romex wires up to code. I went through 2 months of filthy hell. I was never properly consulted on any part of the process, but made many concessions in order to expedite their work. As a result I have chronic respiratory problems as well as personal property damage that was never repaired or replaced. I also lost my gas hot water heater and clothes drier which they refused to vent when they moved my appliances to a new location.

I know there are certain things that the present management/owners have to do to obtain their C of O/Legalization papers. My 'concerns' are that they do that work in a professional, timely manner using licensed professional supervisors and workmen and that they use their own tools and clean up after themselves. I would also ask that they repair the holes in the walls and ceiling that the previous crew left un done and restore my gas vents.

As my experience has already been so devastating I am concerned about the owners self certifying their plans and request that the DOB, Loft Board and any other official agencies make the inspections and approvals before during and after any work that takes place.

Thank you for your attention,

Sharlot B. Battin

Mr LaMandri,

Twenty two years ago I signed a lease on an unimproved loft in Williamsburg, agreeing to pay what was then at the high end of current market rates. After significant self financed improvements, the space gave me not only a home, but the ability to store and operate the tools of my trade, albeit in a somewhat forgotten, at times desolate and dangerous part of town. What industry remained was dwindling; pimps, prostitutes and worse owned the streets at night.

At the time, the prime tenant, who leased the 20,000 sq ft floor, operated a successful business, employing a dozen or more craftsmen of varying trades. In addition to his living space and mine, there were three others on the floor.

Over time, the prime tenant's business fared poorly. He responded by downsizing and building additional living spaces. Eventually, the business bankrupted, the entire floor was divided into loft living spaces and he moved out of the building, while continuing to lease the floor. That arrangement prevails to this day.

Upon his leaving, maintenance and security suffered. Things like broken locks and automatic door closing mechanisms resulted in burglaries, robberies and physical threats to tenants. This did not deter him, however, from seeking absurd rent increases; rather, he seemed inspired to do so by the gradually gentrifying neighborhood.

At such times, it was necessary to point out that while the new building across the street charged these rates, it featured a doorman, indoor parking, a health and fitness club and a swimming pool. His tenants, on the other hand, were yet unable to receive the Sunday Times, or modern mail service for that matter, being thus limited by the quaint little old mail slot in the front door.

Despite taking in nearly four times his liability to the owner, he has increasingly employed less respectable traits and techniques. Leases are no longer reissued to long term tenants. Threats of eviction have become commonplace and frivolous lawsuits have transpired. When tenants could be bullied into leaving, he would make cosmetic upgrades and jack the rent. Yet others have endured years of paltry efforts to repair substantial roof leaks. Buckets have become furniture.

Wherein a prime tenant is to be removed from the business arrangement, it is morally appropriate that resulting savings not be awarded solely to the property owner; they have been receiving what is apparently a satisfactory sum all along. While situations like these have been cash cows for prime tenants, the only ones struggling are the tenants, all of whom would appreciate the Loft Board's efforts to rectify this imbalance.

It is also noteworthy to consider that the Loft Law may occupy an unprecedented place in legal history; it may be the first to require an application and a fee in order to provide coverage.

Please forward this to all Loft Board members. Thank you.

Sincerely,

William Lowry

Sent from my iPhone

Ms Alexander,

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