



NEWS & POLITICS

'Preferential Rent': How Landlords Kill NYC's Affordable Apartments and Get Away With It

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1420 Grand Concourse in the Bronx, where tenants who pay preferential rents have seen their rents unexpectedly skyrocket KHOLOOD EID

Ruth Hippolyte thought she'd gotten a good deal when she found a rent-stabilized one-bedroom apartment near Brooklyn College for \$1,395 a month in late 2013. It was low enough that her teacher's salary could cover both her rent and her son's college education.

There was a catch, however. Her lease said that the rent was a "preferential rent," and that the legal rent was \$2,204. When it came up for renewal in 2015, a year when the maximum increase allowed on rent-stabilized apartments was 2 percent, her rent jumped almost 30 percent, to \$1,800. This year, facing another increase that could be more than \$400, Hippolyte's looking to move.



“I was never expecting this,” she told the *Voice*. “I know you should review what you’re signing, but I’m not a lawyer.”

Hippolyte is one of more than 250,000 rent-stabilized tenants in the city who pay a preferential rent, a rent that is less than the legal maximum for an apartment — but that comes with potential increases that could be \$300, \$500, or \$800 lurking when the tenants renew their leases.

Preferential rents make the Rent Guidelines Board’s annual limits on rent increases “completely irrelevant” to those tenants, says Sheila Garcia, one of the board’s two tenant representatives. Tenant lawyer David Hershey-Webb calls the practice “bait and switch,” because people often don’t realize that their rent can be raised by much



The number of units with preferential rents represents about 31 percent of the 806,000 rent-stabilized apartments registered with the New York State Division of Housing and Community Renewal, according to a report released by the RGB in June.

“The biggest problem is that when people sign on to a preferential rent, they are not sure what the rules are,” says Wasim Lone, director of housing services at Good Old Lower East Side. “Very often, they’re blindsided.”

“Everybody who comes in here has the same heart attack when they get the next lease,” says Hippolyte, who adds that at least three other tenants in her building have moved out because of preferential-rent increases.

Preferential rents were virtually nonexistent before 2001, according to state housing-agency data analyzed by ProPublica in April.

Before June 2003, landlords who gave tenants preferential rents had to continue them as long as the current tenant stayed in the apartment, with any increases based on the discounted rent rather than the legal maximum. But on the last night of that year’s legislative session, the Republican-dominated state senate amended the state’s about-to-expire rent-stabilization law to let owners raise preferential rents when the tenant renewed his lease, unless the lease explicitly forbade it. The senate then adjourned, leaving the Democratic-controlled assembly with the choice of accepting its changes or letting rent stabilization itself die.



By the end of 2003, there were more than 100,000 apartments with preferential rents statewide. The number surpassed 200,000 in 2010.

The largest numbers of apartments with preferential rents are in neighborhoods where landlords can't yet raise rents to market rate, such as Flatbush and Midwood, the belt of northern Queens from Sunnyside to Flushing, and Washington Heights and Inwood. The biggest single concentration, however, is in the west and northwest Bronx. There are about 35,000 apartments with preferential rents in the neighborhoods from Yankee Stadium to Kingsbridge, roughly between the 2 train line and the Harlem River.

Most of the thirty buildings in the southwest Bronx where Community Action for Safe Apartments is organizing tenants have at least some apartments with preferential rents, says a CASA organizer. A June report by the University Neighborhood Housing Project found that more than 45 percent of the apartments in eighteen northwest Bronx buildings up for sale had preferential rents, with the average discount over \$500.

UNHP executive director Jim Buckley says that when preferential rents first appeared in the Bronx about fifteen years ago, tenants thought they were "beneficial." Tenants got cheaper apartments, and landlords were able to maintain their cash flow. But now, he believes that owners having large rent increases in reserve is fueling speculation. Prices for apartment buildings in the Bronx more than doubled from 2012 to 2016, from about \$79,000 per unit to \$163,000, and some sales this year have



How are list-price rents increasing so fast that they exceed the market rate? Tenant advocates and lawyers say it's a combination of the legal increases allowed under rent stabilization, particularly the 20 percent surcharge on vacant apartments enacted in 1997, and sheer fraud.

Many are illegal, says Sally Dunford, executive director of the West Bronx Housing and Neighborhood Resource Center in Norwood. "When we look at these rent histories, we're finding very big discrepancies," she says. In a three-room apartment in Bedford Park, she says, the ostensibly legal rent the landlord registered with the state jumped from \$827 in 2011 to \$1,444 in 2012. That would have required more than \$20,000 worth of renovations, but the tenant she worked with, who took the apartment in 2013, told her it hadn't even been painted. The "legal" rent rose by another \$69 in 2015 and \$18 in 2016, years when the RGB had frozen rents for one-year leases.

Dunford also says that rent histories provided by the state's Division of Housing and Community Renewal, which oversees rent regulations, include the disclaimers that the document "merely reflects statements made by the owner" and that the DHCR "does not attest to the truthfulness of the owner's statements or the legality of the rents reported."



At 1675 Grand Concourse, tenants paying preferential rents who were seeking repairs tried to be less confrontational by protesting instead of filing a lawsuit; the landlord refused to meet with them.

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Others say there are plenty of legal ways to raise rents. The increases allowed by the Rent Guidelines Board, though less than 5 percent a year, are cumulative. Increases for major capital improvements can be several hundred dollars a month, and those are also permanent and cumulative.



Tenant lawyer John Gorman cites a hypothetical example: If a tenant who was paying \$1,300 moves out after twenty years in an apartment, the landlord can raise the rent by the 20 percent vacancy surcharge, plus an extra 0.6 percent a year if the previous tenant had lived there for more than eight years. That means they can raise the rent to more than \$1,700 “without even having to paint.” Ruth Hippolyte says that when she went to the DHCR office in Brooklyn, she was told her rent was legitimate.

Lorena Lopez, an organizer at Catholic Migration Services in Sunnyside, says people come in and ask, “Is that legal? Can the landlord do this?” — and the answer is that unfortunately, “rent stabilization applies to the legal rent, not the preferential rent.”

Some landlords, says David Hershey-Webb, will give tenants a lease that only mentions one rent, and then tell them it’s actually a preferential rent. “It’s not legal,



That's what happened to a Bronx hospital technician, an African immigrant who doesn't want to give his name because he's looking for a new apartment. He'd been living with his daughter in Kingsbridge for ten years, but when their lease expired last December, a few months after a new owner acquired the building, they told him he had a preferential rent and raised it from \$900 to \$1,350. He says he didn't see anything about a preferential rent in his first lease, and his landlord didn't give him a copy of the new one.

"It was just a surprise," he says.

A spokesperson for the state housing agency says for such increases to be legal, the landlord has to put the "legal rent" in the lease in which the preferential rent was first charged, include it in all subsequent renewal leases, and register it with DHCR.

If "the landlord has covered their bases" like that, those increases are very hard to fight, says Wasim Lone.

Cases of obvious fraud are easier to rectify. Good Old Lower East Side is currently helping tenants in four East Harlem buildings sue owner Steven Croman because he raised their preferential rent despite clear language in the lease that he couldn't, says Lone. On May 31, a State Supreme Court judge in Brooklyn ruled that despite the four-year statute of limitations on rent fraud enacted in 1997, preferential-rent tenants can go back more than four years to determine if their "legal rent" is actually legitimate.

In the Bedford Park building Sally Dunford cites, the tenant she worked with was never actually overcharged; he was paying a preferential rent of \$1,150. Because the "legal rent" was so obviously excessive — by 2016, it was more than \$1,800 — Dunford was able to negotiate it down to \$1,180.





Preferential rents also make it harder to organize tenants. They are “much less likely to complain about bad conditions if they think the landlord is doing them a favor,” says Dunford. The owner can also retaliate when their lease runs out. At 1420 Grand Concourse, says the CASA organizer, the landlord monitored tenant-association meetings and raised the rents of three tenants who participated. Two moved out, and the third was able to negotiate the increase down from \$700 to \$350 — but dropped out of the association. At 1675 Grand Concourse, tenants seeking repairs tried to be less confrontational by protesting instead of filing a lawsuit; the landlord refused to meet with them.

Activists say tenants in buildings with preferential rents often also face problems like harassment and the lack of basic services like heat and cooking gas. “We see a lot of no-gas cases,” says Pilar DeJesus, a tenants’-rights paralegal with the Urban Justice



when people move out.

The assembly has passed bills to repeal the preferential-rent loophole six times since 2009, most recently on June 14. They would have prohibited owners from raising preferential rents by more than the annual RGB increases as long as the current tenant lives there, or if the previous tenant moved out because the apartment wasn't maintained "in a habitable condition." However, all were "one-house bills" that failed to make it out of committee in the senate. The only change that has passed the legislature was a 2015 amendment to the rent-stabilization law that prevented landlords from charging the full 20 percent vacancy increase if the previous tenant had had a preferential rent and lived in the apartment for less than four years.

"We pass all these bills, but the senate does nothing," says Assembly Member Linda Rosenthal (D-Manhattan), who has cosponsored several. "Their mouths are shut because they're stuffed full of cash from landlords."

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