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The Knottiest Cases Of Landlord v. Tenant

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PINK boxes on enlarged monthly calendars perched on easels beside the witness box in housing court in downtown Manhattan indicated days when the tenant facing eviction, Carole Langer, a documentary filmmaker, was in New York City.

Blue boxes meant she was at her other home in New Hampshire. Fuchsia, on the road.

For 26 years, Ms. Langer has rented a 2,800-square-foot loft in a six-story 1873 cast-iron building at 28 Greene Street in SoHo. In 1994 she bought a house in Fitzwilliam, N.H. Two years ago, Morgane-Greene -- a subsidiary of a Swiss company that now sells high-end modular office furniture from the Corinthian-columned showroom on the ground floor -- bought the building on Greene Street. A few months later, claiming that the loft was no longer Ms. Langer's primary residence, the new owner commenced eviction proceedings.

"Those fuchsia-colored boxes indicate those days when she would spend 3 hours and 45 minutes traveling," testified the creator of those 3-by-5-foot calendars, Ms. Langer's 43-year-old son, Luke Sacher.

"Was there a pattern to your mother's travel back and forth between New York and New Hampshire?" asked William McCartin, the lawyer for the landlord.

"I can only go by how many times she put her head down on a pillow," Mr. Sacher said.

Based, in part, on such minutia -- receipts for U-Haul truck rentals, cross-state plotting of credit-card slips, electricity-use patterns and attestations of who slept where and when -- life-altering decisions are made in the landlord-tenant parts of Civil Court throughout the city. Most often, those decisions involve the potential eviction of a rent-regulated tenant. More substantial evidence like tax filings, telephone records and voter registration comes into play in what the courts categorize as "nonprimary residence" cases. And in a somewhat similar category called "owner occupancy" cases -- where building owners seek to evict tenants to exercise their "good faith" right to live in their own building -- the evidence might include a landlord's history of renovating apartments in other buildings and then, perhaps, renting at market rates rather than personally moving in.

Although nonprimary-residence and owner-occupancy cases constitute a fraction of the total housing court caseload, they resonate through the landlord-tenant legal community and grab a disproportionate piece of the court calendar.

Judge Ernest Cavallo, the supervising judge of the Landlord-Tenant Part of Civil Court in Manhattan, assesses the impact through a multiborough lens. "These are hotly contested cases," Judge Cavallo said. "They tend to be complicated, lots of documents, lots of motions. They stick with you because they take up lots of time."

And they are most prevalent in Manhattan. Between 1997 and 2000, before supervising Manhattan housing court, Judge Cavallo sat in Queens. There, he said, "Many rent-stabilized rents were equivalent to market rents, so there was no real incentive for landlords to take the apartment back."

"But in Manhattan," he continued, "rent-stabilized rents are most frequently not at market rates, so there is an incentive to take these apartments by this method."

There are two umbrella-type categories for housing court cases: those involving nonpayment of rent (by far the most common) and so-called holdovers. Nonprimary and owner-occupancy cases fall into the holdover category.

In holdover cases, Judge Cavallo explained: "You can lose your right to be there. So in Manhattan particularly, the loss of an apartment can be devastating to a tenant and beneficial to the landlord."

Last year, 78,509 nonpayment cases were filed in Manhattan, compared with 6,600 holdovers. "If holdovers are 8 percent of our caseload," the judge said, "at least a third of the cases that go to trial are holdovers."

"And the general consensus is that we're seeing more of them," he added.

Including a particularly notable one in which the landlord of a building on East 72nd Street near Fifth Avenue is seeking to vacate all 23 apartments, with a total of 65 rooms, to create a quadruplex for himself, his wife and two children, as well as a duplex for his sister-in-law's family of four.

Similarly reality-testing, one landlord said he once talked with a man who has lived in Chicago since 1956, but retains his rent-controlled apartment in Manhattan for those times when he visits New York. "He tells me how he loves New York, still has family there and goes back to visit three or four times a year," said Vincent Castellano, a former member of the city's Rent Guidelines Board. "And he keeps his rent-controlled apartment in Little Italy because it's cheaper to pay rent all year long than to get a hotel."

Nonprimary and owner-occupancy cases can involve difficult-to-fathom claims: that a soldier on active duty should be evicted; that an entire apartment was used for storage. Or eye-squinching tactics: a motion-activated videocamera employed by a tenant to record her comings and goings; a timer turning on lights and air-conditioning when a tenant is out of town; the hiring of life-penetrating private detectives.

Nonprimary Residences

Absence From Home May Not Prove Case

In April of last year, in a case called 207 Realty Associates v. Greene, the landlord offered evidence that a tenant was not using her West Side apartment as her primary residence. "The tenant then introduced a motion-activated videotape, which recorded the apartment's front door for three months, during which the tenant insisted she was living there," said Sherwin Belkin, a landlord lawyer.

"But the tape demonstrated that the tenant was only seen entering or exiting 17 times over the three months," Mr. Belkin continued. "Needless to say, the court found that the apartment was not her primary residence."

Time spent at home, however, is not necessarily the decisive factor.

Although occupancy for less than 183 days a year is certainly a significant piece of evidence, said Andrew Scherer, the author of "Residential Landlord-Tenant Law in New York" (West Group, 2002), the New York City Rent Stabilization Code states, "No single factor is solely determinative."

Offering a Law Review-like synopsis, Mr. Scherer said that a 1992 case, Sutton Realty v. Vang, found that the fact that a man "spent little time in his Manhattan apartment was not sufficient cause to take the apartment, because he was spending time in Brooklyn taking care of his ailing mother."

"Nor is absence as a result of military service," Mr. Scherer added, citing Chelsmore Apartments v. Garcia, a case decided in 2001; or work-related time out of town (Jocar v. Sigel, 1990).

Other factors come into play, including use of different addresses by the tenant on voting records, tax returns or other public documents. "In Beth Israel Medical v. Matsil, in '91," Mr. Scherer said, "the court ruled for the landlord where the tenant's voter registration was in Florida and mail sent to the tenant's New York address was returned with a post office stamp reading, 'Moved, Left No Address' -- and the tenant did not submit sufficient evidence in opposition."

By law, the burden of proof, based on a combination of factors, rests on the landlord, Mr. Scherer said. But after the landlord's evidence has been presented, it becomes the tenant's task "to prove that he or she is, in fact, using the apartment as a primary residence."

Last year, in a case involving a tenant who held leases for two adjacent apartments (Hudbar Associates v. Charif), the landlord claimed that the second apartment was used only for storage. But after the tenant submitted evidence, "The court found that the landlord knew the

tenant had used both apartments as a single residence for 30 years," Mr. Scherer said.

A Six-Floor Eviction

An Owner's Equation: From 23 Units to 2

In owner-occupancy cases, the most bedeviling questions revolve around the "good faith" intentions of the landlord to move into the apartment -- or, sometimes, apartments.

In March of last year, Steven Croman, president of Croman Real Estate, paid $5.5 million for what, back in the 1890's, had been two baronial, one-family residences at what is now 12 East 72nd Street. After 1966, when they were combined to create 23 apartments on six floors, only one building retained its stately neo-Renaissance style.

Soon after taking over the property, Mr. Croman declared his grand residential intentions, sending a Notice of Nonrenewal of Lease to several residents. The apartments are all rent-stabilized, with monthly rents ranging from $844 to $2,020.

The notices said the landlord "will be serving the tenants of all the apartments on the first, second, third and fourth floors" with similar notifications -- to create a quadruplex for Mr. Croman's family of four -- "and all the apartments on the fifth and sixth floors" -- so his sister-in-law's family can have a duplex.

John D'Orazio, a tenant who got the notice, called the renovation plan a cover to get rid of all the rent-stabilized tenants. "You have to be out to lunch to believe this man wants this for one private home," Mr. D'Orazio said at the time. "How do you do this to people?"

The tenants at 12 East 72nd Street have joined a coalition of tenants in about 20 buildings Mr. Croman owns who contend that he has harrassed them in various ways, including through the courts.

Mr. Croman's lawyer, Todd Rose, said on Thursday that his client "is an excellent landlord. He maintains beautiful buildings and he's never brought a case without a legitimate basis."

Ms. Rose insisted that Mr. Croman intends, "in good faith," to move into the 72nd Street building.

The law is vague on how many apartments a landlord can vacate for personal use. "For owner occupancy, the landlord has to be a natural person, not a corporation," said Mr. Scherer, the author of the landlord-tenant law book. The Rent Stabilization Code does state that the owner can recover apartments for the use of a spouse, a child or a stepchild, a parent or a stepparent, a parent-in-law, a sibling or sibling-in-law, a grandparent or grandchild.

"But only one owner can seek eviction for personal use," not each business partner, Mr. Scherer said. "And that individual owner can recover more than one apartment for a single household as long as there is a good faith intention to use the apartment for that household."

The issue of whether a single owner can recover "multiple apartments for multiple households of immediate family members is unresolved," Mr. Scherer said.

The Croman case might bring some clarity to that issue. Currently, the case is in the pretrial discovery phase, when both sides joust over which key witnesses will give depositions and what information must be included in reams of documents.

Samuel Himmelstein, the lawyer for eight of the tenants, said Mr. Croman offered his clients $50,000 each to vacate, "but we said we didn't want to respond until we finished discovery."

Sometimes during pretrial discovery, Mr. Himmelstein said: "I uncover documents that the landlord may be a professional building emptier. I can, therefore, show the judge that this is a subterfuge."

"I want to know every building he owns," Mr. Himmelstein continued, "every court proceeding he's brought against tenants. I want to know about renovations he's done; they could indicate that his pattern is to get the tenants out and then renovate the apartments in the hope of getting those units out of rent stabilization."

Mr. Rose, the landlord's lawyer, said that 10 of the building's 23 tenants have already moved out or reached agreements to vacate. Negotiations with some of the remaining 13 are continuing, he said.

"Originally, these were single-family town houses," Mr. Rose pointed out. Mr. Croman, he said, "is doing what other people have done. Other people have brought them back to single-family use."

Renovations will soon begin on the first floor. "Steve has to do the renovations; he really wants to live there," Mr. Rose said. "His good faith, obviously, is that he's moving in."

Owner Occupancy

Seeking Evictions Despite Vacancies

Owner-occupancy cases are by no means exclusive to affluent parts of Manhattan. In a four-story, 20-apartment building in Borough Park, Brooklyn, six tenants have received termination notices from the landlord -- so that his two sons, two daughters, his wife's sister and her brother can each have their own apartment -- even though four apartments in the building are vacant.

The new owner, Harry Stern, bought the building at 973 47th Street last year. One of the tenants facing eviction is Carmen Gonalez, 44, a health aide for an insurance company, who lives in a rent-stabilized three-bedroom apartment with her 17-year-old son, 28-year-old daughter and 6-year-old grandson. She pays $611 a month, and has lived there for 28 years.

The six families that have been served are "all long-term tenants being singled out because their rents are low and, probably, the landlord has a lot to gain by getting them out," said Irene Ginsberg, a staff attorney in the Brooklyn branch of Legal Services, who is representing Ms. Gonzalez. "They are being sued even though there are four vacant apartments. I've never seen a case so blatant as this one." Scott Gross, the lawyer for Mr. Stern, did not respond to several requests for comment, and Mr. Stern could not be reached.

Ms. Gonzalez said she approached Mr. Stern in the hallway soon after she received the notice. "He said, 'I need the apartment for my children,' " Ms. Gonzalez said. "My God, I don't know if I can afford to live in New York. It's scary, nerve-racking; I can hardly sleep."

Until 10 days ago, Carole Langer's tenancy in the SoHo loft she has rented for 26 years was also hanging in the balance.

Her trial -- taking 17 days over a four-week period -- was grinding: Stacks of documents pored over. A litigation representative from Con Edison (who testifies hundreds of times a year in such cases) pointing out that a 100-watt bulb burns 25 kilowatt hours a month. The jury fighting fatigue.

In summing up his case outside of court, Mr. McCartin, the landlord's lawyer, said: "We've established that Ms. Langer bought a house in New Hampshire in 1994; since then she has purchased two other properties in New Hampshire, a house and a commercial property. She's also been licensed to drive in New Hampshire since 1994, which is when she gave up her New York license. And she also has motor vehicles registered in New Hampshire. She registered to vote in New York in April of 2002, after this proceeding started."

Ms. Langer's lawyer, Jeffrey Ween, summed up her case, saying: "She used the loft for living and artistic purposes. She has received several Emmys and a Dupont Award. In 2001, the previous owner and Ms. Langer agreed that to accommodate extensive work needed for the landlord to bring the building up to residential code, Ms. Langer would move out for four months. She moved out all of her personal effects, all of her filmmaking equipment."

"As the work ended, Morgane-Greene bought the building," Mr. Ween continued. "Soon after, they announced that the freight elevator would be taken out of service. That prevented Ms. Langer from moving back in."

In October 2001, Ms. Langer, whose rent is $753, obtained a court order for restoration of the elevator service. "Two weeks later, they commenced this nonprimary residence case," Mr. Ween said. "So the very acts of misconduct -- taking out the elevator, refusing to permit her to come back into the premises -- are the facts they use to claim that it's not her primary residence."

On the stand, Ms. Langer said the SoHo loft "means my life, where I live and where I work." The house in New Hampshire, she said, "is a place to go to get my head cleared, to be able to write."

Returning to the jury box after five hours of deliberation on Oct. 29, the forewoman of the six-woman jury read answers from the verdict sheet:

Was Carole Langer occupying the Greene Street loft as her primary residence on the date of the notice of termination? "No."

Ms. Langer, her lawyer said, has not decided whether to appeal.