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An insider's guide to evicting rent-stabilized tenants

"Demolition eviction, page 23," RE attorney Michelle Maratto Itkowitz advises landlords

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Attorney Michelle Maratto Itkowitz (left) gave landlords tips on how to best free their properties of rent-stabilized tenants. (Illustration credit: Noah Patrick Pfarr for The Real Deal)

"Careful when you go outside or some tenant group will bust you," a young real estate professional with a Gordon Gekko-esque hairstyle joked inside the men's room.

"They don't have to," a colleague fired back. "They've got de Blasio."

Such was the mood after Michelle Maratto Itkowitz, a well-known landlord attorney, concluded an extraordinary speech titled "Tenant Buyouts — The Next Generation," at TerraCRG's "Only Brooklyn" real estate summit Wednesday.

The lecture centered on strategies for how to "de-tenant" occupied and rent-stabilized buildings, a [high-stakes issue for multifamily investors in Brooklyn](#). Itkowitz began with some corny attempts at hipster jokes about Urban Outfitters and Williamsburg, including this gem: "Why do hipsters like ice in their drinks so much? Because ice was water before it was cool."

But she quickly got down to the business of eviction, telling landlords the best way to get tenants out of their buildings is to show the state they plan to knock 'em down in the first place.

"Things have changed in three years," Itkowitz said. "Tenants understand implicitly, even if they live under a rock, that there is value for owners, developers and managers in recovering rent-stabilized apartments. It's not a secret anymore."

Shooing out existing tenants from stabilized and market-rate properties alike has become more difficult with a more organized tenant movement, increased media attention — think the [Stuyvesant Town debacle](#) — and stricter regulation on both the city and state levels. Tenants are now too savvy to succumb to the old tricks of the trade and housing codes have been revised, Itkowitz said. As such, she had three main points for landlords who have still not figured out how to go about "de-tenanting" in the "next generation."

"No harassment. No frivolous litigation. No supers," she said, giving examples of how not to operate in a market with heightened tenant protections.

"Obviously, you know, don't take people's front doors off, you don't take people's things from their apartment," she said, before detailing some recent amendments to the New York City Housing Maintenance Code that prohibit over-zealous and over-frequent buyout soliciting as well as the use of physical force — those things in addition to allowing residents to have doors.

"Anything not nice can be harassment," Itkowitz said, "and a landlord was just arrested for that."

It was [no doubt a reference](#) to [Steve Croman](#), whose "not nice" activities included hiring an ex-cop to intimidate renters and exposing tenants to lead-tainted dust 65 times above the legal limit, according to the civil suit brought by New York Attorney General Eric Schneiderman.

Beyond direct harassment, Itkowitz said that too many landlords come to her wanting to engage in frivolous litigation, which is also considered harassment in the housing code.

"[A young landlord client] wanted to know what I would do to get rid of these tenants, what action would I take" Itkowitz recalled. "When you guys come to me and say 'what can I sue the tenants for?' —if you have to ask me that, the answer is probably nothing," she said.

Thirdly, she warned against using a superintendent as a henchman to engage tenants on buyouts, as supers may not be trustworthy and can commit blunders that arouse suspicion among tenants.

So in the post-Croman, post-amended housing code era, what's a tenant-tossing landlord to do?

Demolish, baby, demolish.

“Now let’s talk about something that actually moves tenants out of the way if you have to get to that point,” said Itkowitz, transitioning from don’ts to dos. “Demolition eviction, page 23,” she prompted, referencing a pamphlet that accompanied her speech.

A line in the rent-stabilization law allows landlords to deny tenants’ renewals on leases at stabilized apartments if the landlord can show the state they have approved new building plans, the money to complete them, and agree to pay tenants relocation expenses and a stipend.

Currently, many landlords try to evict tenants and clear a building before proceeding with demolition and development plans, she said. But if landlords would just bite the bullet and get all of that filed up-front, they’d have an easier time getting tenants out.

That got the audience talking.

“So can you do demolition eviction and then evict the tenants and then not demolish the building?” asked one man in attendance.

“There’s nothing in there I can see that penalizes you for not demolishing the building,” Itkowitz replied. This bait-and-switch technique is probably fair game, excepting that a “nasty person with a grudge” tried to take you to court over it after the fact, she said.

More questions followed: Does the demolition technique — phantom or real — work for gut renovation? (No.) Does it work for rent-controlled buildings? (Sometimes, but it’s hard to do.) Does the unit count have to be the same in the new project after demolition? (Only if rent control is involved.) Does it work with SROs? (You bet.) Can you start the demolition eviction while you’re not legally allowed to be contacting tenants about buyouts? (Yeah, I don’t see why not.) Does starting this process preclude you from also suing your tenants or buying them out? (No, that’s fine.)

“I like demolition eviction and I’d just like to see people do more of it,” instead of frivolous and sneaky tactics that lead nowhere, Itkowitz said.

“I don’t understand why more landlords aren’t doing it,” she added.

Other bits of advice for owners looking to part with tenants included coming up with a de-tenanting strategy before closing on a building, and ensuring new buyers have all the outstanding lease contracts in hand ahead of time. “Someone needs to be looking at them and methodically planning,” she said.

Itkowitz noted that many landlords get themselves into trouble by trying to be sneaky. “Own your agenda, people,” she told the audience — “none of this hidden stuff.” Owners should also try in advance to identify the likely holdovers looking to lawyer-up and deal with them directly and honestly.

“I can’t help you with lies,” she said. “But there’s enough tools in the truth.”

Clarification: The follow-up questions posed to Itkowitz referred to the “demolition eviction” technique — not necessarily strictly to phantom demolitions.

Tags: [eviction](#), [rent stabilization](#)