

Manhattan resident wins 'counter' argument



By BARBARA ROSS and HELEN KENNEDY

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John Burke in his studio apartment on E. 84th St. (Andrew Savulich/New York Daily News)

In Manhattan real estate, 36 inches of kitchen counter space trumps an elevator, a panel of judges decided.

The ruling means a disabled bartender who has lived in a dark, groundfloor Yorkville studio for 35 years — paying \$288 a month — gets to keep his kitchen, while the rest of the tenants, including those in the \$5,900 fifth-floor penthouse, have to keep climbing stairs.

"We won? I can't believe it," said John Burke, 67, the Irish immigrant who has occupied the rent-stabilized studio at 318 East 84th St. since 1977.

For three years, Burke has been fighting his landlord's plan to put an elevator in the five-story walkup.

Last week, the Appellate Division in Manhattan upheld a decision by a deputy commissioner in the state Division of Housing and Community Renewal nixing the proposed elevator because it would shave three feet of counter space from Burke's kitchen and eliminate a closet.

"The existing kitchen appears much more spacious, consisting of about 9½ feet of counter space and appliances against one wall," the judges said.

"Proposed is 6 ½ feet. The effect would reduce the actual physical space available for food preparation to a significantly smaller area."

In all, Burke's humble abode would have become 18% smaller.

Robert Berman, an attorney for Lite View LLC, which bought the building in 2009, declined to say if his clients would appeal.

Mitchell Posilkin, general counsel to the Rent Stabilization Association, denounced the decision.

"Once again, rights of rent-regulated tenants trumps over the rights of property owners and even other tenants who would benefit from . . . improvements," he said.

According to Streeteasy.com, the building's airy renovated 4-bedroom duplex penthouse, which boasts two huge terraces, rented in 2010 for \$5,900 a month — even with the fivefloor climb.

Burke, who worked as a hotel bartender and concierge until he became disabled in a 1995 accident, credited his lawyers and the staff of State Senator Liz Krueger (D-Manhattan) for his legal victory.

Burke said that he was willing to accommodate his landlords, Ben and John Obe Shalomo, in 2009, when they offered to put him in another apartment for two months during construction and then reduce his rent

by 10% to compensate him for losing a portion of his backyard, which is shaded by trees and covered with a carpet of wild strawberries.

Burke packed his belongings into two tall rows of boxes lined up through the middle of his room. They have been there 31/2 years.

"They showed me apartments that were little more than broom closets," he said.

"The tenants' alliance told me, 'Don't do it.

He'll never let you back into your apartment and you'll lose rent stabilization.' "

So he fought.

In the interim, he said, the landlord extended the rear of the building into his yard and filled the apartments above him. The new outside wall blocks light and air, he said.

"I have a heart condition and I have no ventilation," he said.

Burke said it's especially hard in the summer because he can't install an air conditioner in the unfinished space.

"These landlords are the Devils born in hell," he said with a brogue from his native Galway.

bross@nydailynews.com