

Landlords & Loft Space



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New York City has many landlord-tenant disputes. There are laws unique to New York State that protect landlords' and tenants' rights.

Case Studies

In *Chazon, LLC v. Maugenest*, the New York Court of Appeals reversed the summary judgment for the plaintiff-landlord allowing the eviction of the defendant-tenant from the loft unit for non-payment of rent. See *Chazon, LLC v. Maugenest*, 948 N.Y.S.2d 571, 574 (N.Y. 2012). The court reasoned that the plaintiff-landlord failed to meet the Loft Law deadlines and did not request an ex-

tension of time from the Loft Board. *Chazon, LLC*, 948 N.Y.S.2d at 573. The court relied on a strict, accurate interpretation of the statute and case law pertaining to the Loft Law. *Id.* at 574. Ultimately, the non-paying defendant-tenant was protected under the Loft Law from eviction because the plaintiff-landlord failed to legalize the property as a residential building. *Id.*

Recently, in alignment with New York City's landlord-tenant rights, 513 West 26th Realty LLC ("Landlord") filed a claim against Zachery Bennett and Karen Nourse ("Tenants") for non-payment of rent and electric charges for the last eighty months. See Katherine Boniello, *Couple Renting Chelsea Pas Hasn't Paid Rent Since 2010*, New York Post (last visited on Feb. 11, 2017 at 3:37 p.m.), <http://nypost.com/2017/01/08/couple-renting-chelsea-pad-hasnt-paid-rent-since-2010/>. The tenants, independent film makers, have lived in the loft space since 1998. See Nathan Tempey, *Manhattan Couple Living In A Loft by The High Line Hasn't Paid Rent In Years*, Gothamist, http://gothamist.com/2017/01/09/rent_strike_chelsea_loft.php (last visited on Feb.11, 2017). The loft space is located in a nine-story commercial building with other units used as art galleries and other business purposes.

See Boniello, *supra*. The Tenant's filed for loft status, along with two other tenants, with the Loft Board in 2010. See Tempey, *supra*. Consequently, the Landlord registered the building with the Loft Board after multiple debates with the Tenants. *Id.* By 2014, the Tenants were protected under the loft status by the Loft Board. *Id.* The Tenant's defense for non-payment of rent: (1) the building does not comply with the New York Loft Law ("Loft Law"); and (2) the Landlord has failed to retain a residential certificate of occupancy ("CO")[1]. See Boniello, *supra*. This class of landlord-tenant dispute requires an understanding of the Loft Law. A complete understanding of the Loft Law will help landlords avoid similar disputes with tenants.

Loft Law Background

To understand the Loft Law, requires a general overview of the art culture of New York City in the 1970s. Lofts are residential dwellings housed in nonresidential buildings that are open, unpartitioned spaces with high ceilings in buildings formerly used as commercial, manufacturing, or warehouse space. See Gerald Lebovits & Linda Rzesiowiecki, *The New York Loft Law*, 38 N.Y. Real Prop. L. J., 21 (2010). During this time, Andy Warhol rented a loft space in The Factory on East 47th

Street—paying \$100 a year—to create work, and more notably, host bohemian artists within his industry circle. See Nathan Brooker, *New York's Long Love Affair With Loft Living* (Feb. 11, 2016, 4:12PM), <https://www.ft.com/content/03c469e6-dfad-11e0-8e15-00144feabdc0>. This started a trend for many struggling artists in the 1970s to seek loft spaces to create new works due to cheap rent offered by landlords with vacant commercial units. See Cait Etherington, *NYC Artists' Lofts Before and After the Loft Law*, <https://www.cityrealty.com/nyc/market-insight/features/trending-in-ny/nyc-artists-lofts-before-after-loft-law/4621> (last visited on Feb. 11, 2017). South of Houston (“Soho”) was one New York City neighborhood labeled as an artistic haven that provided the cheapest loft spaces at the time. See Etherington, *supra*. In the 1940s and 1950s no one wanted to live in Soho’s industrial and commercial spaces because it was considered dirty, dangerous, and an overall undesirable place to live. See Brooker, *supra*. Most of these spaces did not provide tenants residential necessities such as hot water. *Id.* Regardless, renting the empty spaces proved to be beneficial to landlords: the occupancy of empty commercial spaces. Honorable Mark C. Dillon, *The Extent To Which “Yellowstone Injunctions” Apply in Favor of Residential Tenants: Who Will See Red, Who Can Earn Green,*

And Who May Feel Blue?, 9 *Cardozo Pub. L. Pol’y & Ethics J.* 287, 348 (2011). Eventually, issues aroused between landlords and tenants regarding the loft space living conditions. See Dillon, *supra* at 348. Landlords had no legal relief when tenants did not pay rent. *Id.* Similarly, tenants could not enforce standard residential covenants with fear of eviction from either the city or the landlord. *Id.*

New York State soon realized the public policy risks of illegal conversion of loft spaces into residential spaces. *Id.* This led to a redirected interest towards loft spaces to ensure minimum state health and safety requirements for met. *Id.* Prior to the Loft Law provision, the New York State Legislature had in affect the Multiple Dwelling Law (“MDL”), which protects the general welfare of tenants and living conditions in buildings with residential units of three or more families. See N.Y. Multiple Dwelling Law § 2 (Consol. 2016). In 1982, the MDL was amended to address the concerns of the loft spaces, mainly in Manhattan, Brooklyn, and Queens; which became known as the Loft Law. See Lebovits & Rzesiowiecki, *supra* at 21. The amendment added the term Interim Multiple Dwelling (“IMD”), which was directed towards rented or leased building spaces in the process of becoming multiple dwellings once the land-

lord retained a CO. *Id.* The amendment also created the Loft Board to regulate the legal conversion of loft spaces from commercial and/or manufacturing use to residential use. See Welcome to the Loft Board, <http://www.nyc.gov/html/loft/html/home/home.shtml>. (last visited on Feb. 11, 2017). A building is considered an IMD if it: (1) at any time was used for commercial and/or manufacturing; (2) lacked a CO; (3) there was residential occupancy in the building from April 1, 1980, to December 1, 1981, by three or more tenants; and (4) the building is in a residential zone. See Lebovits & Rzesiowiecki, *supra* at 21. In 1987, the Loft Law was amended again eliminating the residential zone requirement if the IMD had residential occupancy from May 1, 1987, in addition to the required occupancy dates in the 1982 amendment. *Id.*

The goal of the Loft Law is to encourage landlords to legalize loft spaces into residential use. See Dillion, *supra* at 351. Ultimately, landlords could (1) evict tenants out of the loft spaces—if the tenant had not filed for protection under the loft law—or; (2) allow tenants to stay and have the cost burden of upgrading the loft space; or (3) make the required building improvements. See Etherington, *supra*. Defensively, tenants have the right, under the MDL § 286 (6), to sell any improvements to a

unit in a loft space to the landlord or the incoming tenant under the Loft Law. See *Matter of Bikman v. New York City Loft Bd.*, N.E.3d 377, 380 (N.Y. 2010).

The Loft Law was amended in June 2010 and January of 2013 by the New York State Legislature. See Welcome to the Loft Board, *supra*. The amendment still includes commercial and/or manufacturing buildings where three or more families have lived independently from one another for twelve consecutive months from January 1, 2008, to December 21, 2009, in a building that does not have a CO. *Id.* In contrast to the 1982 amendment, the loft space must have (1) at least one window that faces the street; (2) a legal yard or courtyard; (3) must be at least 400 square feet and not located in a basement or cellar; (4) located in an industrial business zone and; (5) the building can not have been used for commercial and/or manufacturing purpose as of June 21, 2010. *Id.* Recently, the Legislature extended the application for the Loft Law landlord registration and tenant protection to June 26, 2017. See The Lost Law Application Has Been Reopened, <http://nyclofttenants.org> (last visited Feb, 11, 2017). It's common practice for tenants to apply for protection without negotiating with the landlord. See *How to Organize, Save Money, Deal with Landlords and Skepticism*,

<http://nyclofttenants.org/how-to-organize/> (last visited Feb. 11, 2017). Usually, tenants take all or some of the following tactics: (1) initial conversation with neighbors about applying for loft status; (2) organize a tenant meeting for in-depth steps; (3) seek an attorney; (4) form a tenant's association to save money; or (5) create by-laws if there are a lot of units in the building. *Id.*

Compliance

A willing, abiding landlord can legalize a building into residential loft spaces by taking the steps to receive a proper CO. See Legalization Process, <http://www.nyc.gov/html/loft/html/legalization/legalization.shtml> (last on visited Feb. 11, 2017). The landlord must file an alteration application with the Department of Buildings ("DOB"), obtain an approved alteration permit from the DOB, and then perform the described work in the permit as approved by DOB inspectors. *Id.* Prior to the building improvements, landlords must go through a Narrative Statement Process ("NSP"). *Id.* NSP is a planning process that involves the landlord, tenant, and Loft board so that any objections to the landlord's legalization process can be heard. *Id.* Tenants' objections usually relate to unreasonably interference of the tenant's enjoyment of the loft space

during the landlord's improvements. *Id.* Alternately, Landlords can file an alternate plan during an NSP. *Id.* Once the NPS is approved, the landlord can proceed with the improvement process. *Id.* The loft board regulates the landlord's deadlines as required by the alteration permit. *Id.* Landlords can apply for deadline extensions if good faith efforts are proven and they reasonably could not comply with the law for reasons beyond its control. *Id.* Failure to meet deadlines and apply for an extension will result in high fines against the landlord from the Loft Board. *Id.*

The Loft Law is to the benefit or detriment of landlords. If a landlord has had a vacancy for a short or long period in commercial or manufacturing building, then it reasonably expected that a landlord will seek to avoid a loss of money by allowing a non-commercial tenant such as a residential tenant. Relying on the legalization process under the Loft Law will benefit landlords because it protects the landlord from the DOB. Once the DOB discovers that a landlord is illegally renting loft space for residential purposes in a former commercial and/or manufacturing building, then fines will ensue. Additionally, the tenants will be evicted from the building. Legalization under the Loft Law also ensures that landlords are protected from bad tenants. A landlord

renting an illegal loft space will not have any legal remedies if a tenant decides not to pay rent. This scenario will leave the landlord in the same position prior to the illegal practice: no incoming rent due to unit vacancies. Ideally, a landlord under the Loft Law will enjoy the legal right to file a complaint against a non-paying tenant.

If a landlord decides that the process of legalizing a former commercial and/or manufacturing building to residential use is too taxing, then the best course of action: do not allow any person(s) or entity to occupy the building with the purpose of residential use. Putting this into action will help prevent possible damages to both landlord and potential tenant. Landlords will not have to worry about repercussions from the DOB or the Loft Board. Similarly, Landlords will not have to worry about a tenant—knowingly occupying a unit for residential purposes—quietly applying for loft status with the Loft Board. Landlords must explicitly state in agreements with commercial tenants that the unit is solely for commercial use and under no circumstances can the unit be used and/or modified for residential purposes. Establishing this expectation early will best protect the rights and interests of a landlord.

NYC Landlord-Tenant Current Events

Recently, there has been significant legal activity affecting landlord-tenant rights. In February 2017, The New York City Council passed a bill aimed to protect tenants living in regulated halfway houses for substance abuse issues. See N.Y.C. City Council, Int. 1168-2016, Comm. on Hous. and Bldg., *Improperly Conditioning Residential Occupancy on Medical Treatment*, (2017) (enacted) (last visited on Mar. 1, 2017), <http://legistar.council.nyc.gov/LegislationDetail.aspx?ID=2694005&GUID=8565678A-F9CA-4AC2-871A-59C6C60EB09A&Options=ID|Text|&Search=tenants> . Also, New York City Mayor Bill de Blasio seeks to provide New York City residents with incomes under \$50,000 free legal representation in the housing court. See Denis Slattery, *Low-income Tenants to Get Lawyer Provided by NYC in Housing Court Disputes*, New York Daily News (last visited on Feb. 21, 2017), <http://www.nydailynews.com/new-york/poor-tenants-lawyer-nyc-housing-disputes-article-1.2970264>.

Conclusion

Globally-speaking, New York City is one of the hottest real estate markets, and what appears certain is the judi-

ciary, legislative, and executive branches will continue to strive to strike balance and find the harmonious fulcrum between landlord and tenant.

Endnotes:

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