

How to Protect Yourself Against a Ruthless, Greedy Landlord

30 Strategies for Guarding Your Tenant Rights

An Emergency Special Report

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McAdams Law

Since rent regulation laws were passed during the Second World War, there's never been a time when your tenancy rights have been more dangerously threatened with extinction.

Housing Court's enforcement of tenants' rights is at a low ebb, whereas there are increasing instances of landlords manipulating their way around rent regulation laws, and further eroding tenant protections. McAdams Law has noticed a disturbing recent trend: tenants are victimized by landlords at an alarmingly accelerated rate. Powerful market forces in the form of skyrocketing rents and astounding property prices fuel landlord greed.

The Housing Court system has always been stacked in favor of landlords in many ways. Cases are subject to a much faster resolution process than other courts. This often steamrolls tenants. Landlords have the deepest pockets and the strongest political influence. There are continual lobbying efforts to weaken and eliminate rent regulation laws.

Following is a collection of strategies that reveal what it takes to win in court, what to do if you lose in court, and how to stay out of court.

Please understand that none of what follows is intended to be legal advice for your specific situation or to replace the services of a competent Tenants' attorney. The smartest and safest thing you can do is hire a lawyer who practices Landlord Tenant law. These are a general series of principles to keep in mind so you can have a more productive discussion with your attorney, and understand your case more clearly.

The idea is to build a wall of protection around yourself to the greatest extent possible. This is easiest and most effective with the help of the right lawyer. With that in mind, read on to learn about how to guard yourself against the many traps and pitfalls a tenant can face in dealing with a problem-landlord.

1 – If you live in a rent-regulated apartment, you're at war. You may not realize it, but you are. Your landlord wants you out, and has a major financial incentive to get you out. That's because if you vacate your apartment, the landlord will get a 20% increase on a two-year lease for a new tenant. Increases for a one-year lease are determined by a special formula and can vary, but still give the landlord more profit than renewing your lease.

Additionally, landlords can add another 2.5% per month of the costs of any apartment improvements to the rent. And if the new rent in a vacant unit exceeds \$2000 a month, after adding in rent increases for vacancy and improvements, the landlord can escape the rent regulation for the apartment, and rent it at free market rates. Similarly, if your rent is over \$2000 right now and your household income exceeds \$175,000, you may be at risk of losing your rent-stabilized rights.

If your landlord intends to convert your building to a coop or condo, or if you're living as a rent-stabilized tenant in a condo or coop that could be sold if you weren't there, the profits might be even greater.

This means you need to be vigilant about protecting your rights, because you can be sure your landlord will use any legal means available to get control of your home.

2 – To protect your rights you have to know your rights. It's critical to spend some time learning what rights and remedies the law gives you. You'll find a lot of helpful information in this report, and you can learn a great deal online. In the Resources section below, you'll find a number of informative sites to visit. There are also handouts available from Housing Court and the Division of Housing and Community Renewal (DHCR) that are useful to an extent.

Most tenants don't know their rights. Don't be one of them. However, being an informed tenant is not a substitute for hiring an experienced Tenants' attorney to protect your interests, and negotiate on your behalf.

3 – Hire a Tenants' attorney to represent you. Amazingly, 90% of tenants who appear in Housing Court don't have lawyers. Yet 95% of landlords do. How can you expect to fare well in defending yourself against an adversary who has retained a seasoned, knowledgeable expert to defeat you? The answer is you're very unlikely to win. Landlord Tenant law is very complex. There are hundreds of rules and regulations only an experienced attorney will have sufficient working knowledge of, to help navigate conflicts with your landlord.

As you'll see, it's easy to get pushed around in Housing Court. Even if you know your rights, you may waive certain protections without realizing it, and damage your case.

For example, the law requires court documents to be delivered to you, or "served" in a very specific way. You must receive the papers, and receive them properly. Your landlord's attorney will hire a "process server" to deliver legal papers, alerting you that you're being sued. There must be at least two attempts at personal delivery, before papers can be left at your door and sent by both regular and certified mail. But in some instances the process servers, who are paid according to how many sets of papers they deliver, will cut corners and attempt to serve them only once. This is called "sewer service" and is illegal.

Raising an objection to proper service buys you time, and can be a helpful leverage point

in negotiating with your landlord's lawyer. So don't be surprised when your landlord's attorney asks you to "submit to personal jurisdiction." Expect to hear something like "You agree you got the papers, right?" Sounds easy to agree to, but if you do you'll lose your right to dispute that you were properly served, and miss gaining that advantage.

And that's just one example. There are dozens of other traps that can ensnare you into giving up your valuable rights. You're at real risk when you try to be your own lawyer.

So get an attorney if you can afford one. When your home is at stake, especially if it's rent-regulated, it's money well invested. Consider borrowing if you have to. If you lose your case and your home because you tried to represent yourself, the expense of finding a new apartment may be significantly more than what it would have cost you for a lawyer. There is also the risk of homelessness, and property loss or damage, if you are unable to find a new home before a City Marshal evicts you.

4 – Only hire a Tenants' attorney, for a Landlord Tenant case. A lawyer who doesn't practice Landlord Tenant law ("L&T law") can hurt you more than help you. So don't hire a criminal lawyer, a divorce lawyer, or a corporate lawyer to represent you in Housing Court. Tenants make this error all the time. The problem is these lawyers don't understand the detailed, technical practice of L&T law. They may know how to butt heads and haggle with the landlord's lawyer, but they don't know what your rights are.

Even attorneys who practice real estate law are often unfamiliar with the intricacies of Landlord Tenant law. Real estate attorneys generally handle the purchase and sale of residential and commercial property, which is completely different from what goes on in Housing Court. L&T law really is a distinct practice area.

Hiring the wrong lawyer can be the costliest decision of all. If your lawyer doesn't understand the complexities of Landlord Tenant law, you're at greater risk of losing your case. And you might end up paying legal fees for both your lawyer and your landlord's lawyer.

5 – Don't depend on Court personnel to protect your rights. If you represent yourself in Housing Court, you are supposed to receive assistance from the Judges' Law Assistants. Keep in mind that sometimes these people are impatient, overworked, and rushed. You have not hired them as you would an attorney, and depending on them can injure your rights.

For example, most Judges require their Law Assistants to ask tenants if there are conditions in their apartments needing repair. However, it's quicker for Law Assistants if they don't ask about or document all complaints. So they don't always inquire about the full spectrum of issues, or record them completely on Court forms.

Similarly, in dealing with the Court Clerk, if you do explain what the problems are or how you were served papers, he or she may not include everything when filling out documents.

Frustrated tenants have retained McAdams Law after the Court Clerk failed to write down complaints about their apartments or buildings on pre-printed Court forms. The firm was able to amend their papers, but it cost them unnecessary attorneys fees. Tenants should not have to hire a lawyer to insure court acceptance of documents that correctly and completely describe complaints. Yet it happened. So be aware that even in a court of law, things may not always proceed as they're supposed to.

Pre-printed Court forms leave out many details that are vital to preserving your rights. In the first place, if the form doesn't ask you a question related to a certain right, you might easily overlook it. Here's an example. A question asks if you were served papers correctly, but it doesn't tell you what correct service would be. It's easy to be trapped by the form's lack of explicit information.

The sad fact of life in Housing Court is that improper things can happen, and when you represent yourself, you can be a victim.

6 – You can't be evicted without Court process. If your landlord evicts you without any court process, it's illegal. The legal name for these actions is "self help." Using self help to evict a tenant is a crime. A self-help eviction without going to Court can make your landlord liable to reimburse you for triple the amount of any costs you sustain.

For example, let's say the landlord changes your locks, and you can't get into your apartment. If over the next few days you stay in a hotel, keep track of all your expenses. Save receipts for your room, meals, travel, phone, and whatever else you pay for as a result of being locked out. At Housing Court, you or your attorney can assert that your landlord used self-help to evict you, and show proof of expenses you incurred as a result. While it's never a certainty, the Court has the power to award you triple the amount of your total costs.

So don't panic if your landlord tells you that you have to move out. Reply that only the Court can order you to leave. Only the City Marshal or Sheriff has the legal right to take possession of your apartment without your permission, and can only do so by court order. And they're required to give you written notice, so that if you have grounds you can go to Court and get an "order to show cause" to stop it. Usually you'll get at least six business days advance notice.

7 – If you've been illegally evicted, call the police. Examples of illegal eviction include locking you out of your apartment, using or threatening to use violence to get you to leave, cutting off essential services such as electricity, water or heat, or removing your property. If you've been illegally evicted, the first thing to do is call the police.

The police sometimes don't like to get involved, and if there's a way they can avoid doing so, they won't intervene. They may say, "It's a civil matter." However, trespass to illegally evict you, and illegal eviction itself are crimes. So it's not just a civil matter.

Here's what to say if they refuse to help you: "Officer, the law says that illegal eviction is a crime. In the Police Department Patrol Guide, under procedure 117-11, police are required to assist tenants in circumstances of illegal eviction, which is why I'm calling. I would like a police officer to come to my apartment, and write up a police report."

If you do not get cooperation, ask for the name of the sergeant or supervisor in charge at the 911 call center, and speak with that person. If you still have difficulty, call your local precinct and repeat these steps. Write down the names and badge numbers of all police personnel you have contact with.

At other times, the police do exactly what they're supposed to. McAdams Law has had both very good and very bad experience with police helping tenants who've been illegally locked out.

Whether the police come to your apartment, or if you have to go directly to the precinct, it's important to get a police report substantiating the incident. Police procedures can also direct an officer to issue a summons to your landlord, requiring a court appearance. You should get a copy of that also. You want a written record of your illegal eviction, and any other relevant documents, which your attorney can then show in court. Your landlord may even be arrested.

If neighbors can back up your story, and the police can take statements from them, that can also help. If you have to call the utilities to get services restored, explain the circumstances of illegal eviction, and find out what options are available.

Keep a log of everything that happens, along with a list names, addresses and phone numbers of everyone you talk to, and the date and time of each conversation. Winning against your landlord requires evidence to support your position.

In Housing Court, you'll have to prove you actually live in your apartment to get back in. So make sure you keep your New York State Driver's License or Identification Card up-to-date, in terms of reflecting your current address accurately. Mail sent to you at that address is also evidence of residence, especially utility bills and rent receipts.

It's best if you have a copy of your lease, and written documentation of any difficulties with your landlord to show the police. As discussed elsewhere in this Report, it's a good idea to keep copies of these documents in a safe place outside of your apartment, such as with a relative, friend or your attorney. Also, make sure you give the name, address and phone number of your landlord, building superintendent or managing agent to the officers.

If you are already engaged in a legal action against your landlord and are illegally evicted, speak with your attorney about filing a claim for contempt of court.

In circumstances where you can't gain re-entry to your apartment and have no place to stay, call the Emergency Assistance Unit at 1-800-994-6494 for temporary shelter, or

look online for help. Please see the Resources section below for a link to the NYC Department of Homeless Services.

Be very clear that if you've been evicted with legal court process and you attempt to break into your apartment, then you become the criminal: you can be arrested and convicted of a crime. If you've been suddenly evicted for any reason, you are safest staying temporarily with a relative, friend or at a hotel, and hiring a Tenants' lawyer to represent you. Maximum certainty as to your rights is only available through the courts, and with a court order you have a legally guaranteed right to re-enter your home.

Especially if relations with your landlord are hostile, you need to consider in advance what can happen, and have a plan for dealing with any contingency. In sudden emergency circumstances when you've been evicted, there's no guarantee you'll be able to get back into your apartment right away, or possibly at all. Whatever you decide to do, just remember that in any allegedly illegal eviction situation, your first call is to the police.

8 – If you're locked out or find an eviction notice on your door, go to Housing Court immediately to assert your rights. If you are properly prepared, going to court is always the safest approach to preserving your rights. It's important to act quickly, as soon as you know there's a problem. If possible, the first thing to do is call your attorney, but don't delay going to Court if you can't reach one. However, be clear that if you aren't knowledgeable about your rights and court procedures, whatever you say or do may later be used against you. Your mistakes can work to your detriment.

You or your attorney can apply to the Court for an "order to show cause," based on an affidavit claiming you've either been, or are in the process of being wrongly evicted. An affidavit is a written statement sworn or affirmed to be true. If you don't have an attorney, ask the Court Clerk how to proceed. With your affidavit and evidence that you live at the premises, the Court will issue the order to show cause. In most cases, an order to show cause is an emergency Court Order. After an eviction, it can require your landlord to appear and "show cause" why you should not be granted access to your home immediately, and then be restored to possession.

Even if you've received a Marshal's notice of eviction, further action can be put on hold until the order to show cause is decided.

The order to show cause will specify what actions and proceedings are stopped until a Court hearing, how it must be delivered to your landlord, and give a quick return date to Court. Sometimes it's as soon as the following day if you're there in the morning. For example, if the Court signs your order to show cause by 12:00 noon, it can require service on your landlord that afternoon, and require the landlord to come to court the very next day. If the landlord doesn't show up in Court that day, and was given proper notice, then by default the Court can award you the right to re-enter your apartment. If you make a strong enough case, the Court's order to show cause may also give you the right to re-enter, before the hearing.

There are times when the City Marshal may be at fault, and several factors can combine to make a situation quite dangerous. In one case McAdams Law handled, a tenant was evicted without receiving a Marshal's notice. A Court Order had required the landlord to make repairs and gave a judgment against the tenant, requiring payment. The landlord did not complete the work, but orally gave the tenant an extension of time to pay. Then without notifying the tenant, the landlord used the judgment and evicted him. Although he was not a McAdams Law client before he was evicted, the firm got him back into the apartment by showing the Court that he had been duped, and had all the money the landlord was entitled to.

The Clerk's office is open late on Thursday night.

9 – Keep a copy of your lease and related documents off premises, in a safe place you have access to any time. If you're illegally evicted, or lose access to your home for any reason, certain critical documents will help to secure your rights in court. You never want to be in a position where important papers are in your home, and you can't get them because you're locked out.

Make a point of keeping a copy of your lease, last tax return with your current address, and the last few phone and utility bills in a safe deposit box, with a relative or friend, or with your attorney. This is a good idea even if you don't have problems with your landlord. What if there's a flood or fire, and all your records are destroyed? If you keep these documents in a secure location, in any emergency you'll still be able to prove your identity and that you are the legal occupant at that address.

10 – Describe conditions that need repair or correction in written detail. It's best to prepare a written list of complaints, with a specific description of each problem or condition for the Court and your attorney. That way nothing important will be missing from your court papers. Also, take color pictures or video of any defective conditions, to provide further proof of your claims. Take several photos, from various angles. Include the cover of that day's newspaper in the photo or video to establish the date.

Always notify your landlord when there's a defective condition to correct. It's best to do it in writing, but at least keep a written record of any verbal requests you make. Include the date and time, and the person you spoke to. If the repair or correction isn't made, you may be entitled to an "abatement," which is a reduction in rent.

The three elements that make an abatement possible are: a) there's a problem with conditions in your apartment or the building; b) your landlord has notice of it; c) your landlord then fails to correct it in a reasonable amount of time. The law states that you should not have to pay the full rent if you don't receive full use of the premises in good condition.

In one particularly outrageous abatement case, a landlord removed the joists under the floors in the client's apartment, and replaced them with defective brackets. The floors began to sag, and cracks developed that were literally large enough for the client to see

through to the apartment below, creating a very unsafe condition. McAdams Law sued and forced the landlord to give a substantial abatement, to pay the attorney's fees, and to move the tenants to a safe building while they repaired the floors. Carefully documenting the worsening conditions and resulting dangers was essential to the successful outcome achieved.

11 – Don't expect your landlord to be fair, reasonable or just. Landlords have an interest in blaming tenants, rather than taking responsibility for the cost of repairs. Almost every time McAdams Law represents a tenant with problems in an apartment the landlord says, "The tenant caused it, and I'm not responsible." So you need to be precise about the nature of the difficulty, how long it's existed, the circumstance or conditions that led to it, and your attempts to seek correction from your landlord.

Your landlord may be aware of a dire condition in your apartment that needs to be addressed, yet refuse to treat it effectively as a way to get you to move out. This is more likely to be the scenario if you are a rent-stabilized or rent-controlled tenant. Sometimes landlords allow dangerous conditions to exist so the tenants will move out.

For example, the firm represented several tenants with bedbug infestation in their apartments. Bedbugs are small insects that suck blood and leave red, itchy sores. Incidents of bedbug infestation have now reached epidemic levels in New York City. They infest the bedding and furniture, and attack in the evening while their hosts are asleep. When one apartment is infested, the problem can quickly spread to other units in a building. Consequently, the condition needs treatment in a building-wide manner.

In a recent case, the client's apartment was infested with bedbugs originating from other units. The landlord denied this, but tenants in other apartments complained about the very same problem. McAdams Law was able to obtain a Court Order forcing the landlord to clean the building and eliminate the infestation. The Courts will insist that landlords correct serious problems, and punish them if they don't. So don't hesitate to enforce your rights against a negligent landlord, who puts your family and you in danger.

If you have bad conditions in your apartment, always ask other tenants in your building if they have problems similar to yours. In the case just mentioned, the firm was able to prove the landlord's denial was in fact untrue, because the client made a point of speaking to other tenants and discovered they had the same problem.

12 – Band together with other tenants. If other tenants in your building are also victims of landlord negligence, consider hiring an attorney to represent you as a group, acting in unison. Multiple complaints from several tenants can save on attorney's fees, strengthen your case, and make landlord abuse clear to the Court.

Here's an example of the spectrum of complaints a unified tenant's group can present in Court. In representing a tenant's association against a landlord who neglected the building for some fifteen years, McAdams Law alerted the Court to these horrific conditions which existed at various times: the elevator was shut down more often than it

worked, there was no heat or hot water, the building entrance would not lock, strangers loitered in the halls, bed bugs, roaches and mice infested the building, kitchen ranges leaked gas, refrigerators broke down, a tenant suffered carbon monoxide poisoning, a small child watched an intruder shoot his father dead in the public hallway, and disabled patients had to move into nursing homes because the defective elevator trapped them in the building.

13 – Act quickly. Landlords know many people won't fight hard to hold onto their apartments when conditions are terrible. That's why it's vital to address bad conditions immediately, and take aggressive action to protect your rights. If you allow conditions to deteriorate, you expose yourself to more financial and emotional strain that ultimately wears you down, and makes you a victim. As the situation worsens, the costs of correcting it increases for the landlord. That means he or she's likely to fight you harder, and you may have higher legal costs to get resolution.

14 – You have defenses against a landlord who tries to evict you because you've complained, even if you live in an unregulated apartment. Your landlord doesn't have to renew your lease if you live in an apartment not protected by rent stabilization or rent control laws. However, if your landlord refuses to renew your lease because you complained about conditions in your apartment or the building, that's called "retaliatory eviction." Under New York State law, your landlord cannot evict you in retaliation for enforcing your rights.

Existing statutes presume that if you've complained to a government agency about your landlord within the last six months, and the landlord terminates your tenancy, it's in retaliation. If you or your attorney can prove retaliation, you can beat the eviction. But if your landlord can show there are other reasons why you aren't being renewed, such as a bad payment record or wanting the apartment for a family member or personal use, your claim of retaliatory eviction can be defeated.

If more than six months have passed and your lease isn't renewed in retaliation, there are still "common law" protections available to you. "Common law" refers to actual cases decided at Court that set a precedent for future decisions, as opposed to "statutes" or "legislation." If you've complained to your landlord, or had litigation and think you won't be offered a renewal lease, it's best to speak to an attorney now and develop a plan of action. An L&T practitioner should be able to evaluate your chances of pressuring your landlord to renew your lease.

15 – Buy yourself time if you need to. You can delay eviction, for sometimes as much as a year. Here are a couple of ways to try.

When you are first summoned to court, the law allows you to adjourn or postpone that appearance date to give you time to hire an attorney. Once you have an attorney, you can adjourn the next court date so that your attorney has time to prepare your case. These two adjournments can easily delay your hearing by a month and a half. Next there has to be a trial, and after that the issuance of a judgment, or decision against you. All of this takes

additional time.

If you lose at trial in a holdover proceeding, the Court has authority to postpone your eviction for up to six months. A “holdover proceeding” is a case in which the landlord sues for possession of the apartment, as opposed to “non-payment” of rent. For example, the landlord may petition the Court to evict you so that the apartment can be given to a family member, or be made available for his or her own personal use. In these instances the landlord may have a legal right to the apartment, even if you’ve paid your rent.

As a practical matter, the Court will usually give you at least a month or two to move, but your attorney can sometimes make this plea: “Your honor, my client has been trying to find a new apartment. Here’s a list of all the apartments where applications were made. My client still has nowhere to go, and is paying rent to the landlord. May we have another two months please?” The Court may then give you an extension, but not beyond six months from the time your case was decided.

An experienced Tenants’ attorney can help with buying time. An example: working with another lawyer, McAdams Law kept a building from evicting a Holocaust survivor suffering from Alzheimer’s disease. The Judge stayed the nonpayment proceeding until a guardian of her property was appointed. The guardian then transferred ownership of a house the client owned to her daughter, so that the daughter could mortgage it and pay the rent arrears.

16 – If you’re a rent-stabilized tenant, get copies of your apartment’s rent history.

Rent-stabilized tenants have a right to a free copy of their apartment’s rent history. Here’s how to get it: call the Division of Housing and Community Renewal (DHCR). There are five offices in the City: two in Manhattan, and one each in Brooklyn, the Bronx, and Queens. Ask specifically for a “certified rent history printout from 1984 to the present.” A certified copy establishes its own evidentiary foundation in a Court proceeding. Rent stabilization records were computerized in 1984, and that’s as far back as you can go for the printout.

The law requires an initial rent registration for every rent-stabilized apartment, and it has to be renewed annually. Carefully examine the sequence of registrations. If there’s a year missing from registration within the last four years, you can challenge the rent increase. The landlord is not supposed to raise the rent above the previous legally registered rent. However, recent changes allow landlords to register retroactively, if the missing registration is exactly the amount provided for in the annual guidelines.

Every year you should receive notification of the annual registration by mail. Keep all of them. Recent changes in the law don’t allow you to make a claim of lack of registration going back more than four years. If you let a defect in the landlord’s registration pass and more than four years go by, it’s can be almost impossible to assert your rights of a rent overcharge.

The Central Office of the DHCR at Gertz Plaza in Queens has other records your case

may require, including rent control records.

17 – If you move into a new apartment that was formerly rent-stabilized, check what the previous rent was. As already mentioned, landlords have the right to raise rents on vacant rent-stabilized apartments, and charge additional increases for making improvements, within certain guidelines.

However, at times they overstate the value of improvements to escape regulation requirements. If the increase is illegal and the apartment should still be subject to rent regulation, you've been overcharged. You can sue to have your rent adjusted to the legal rate, and regain rent-stabilized status. If you lose though, be aware that your landlord is unlikely to give you a renewal lease, and is not obligated to renew leases in unregulated apartments. Of course, if you can prove retaliation as indicated previously, you may have a defense.

Here's an example of how landlords can sometimes manipulate the system to their advantage, to escape rent regulation provisions.

Let's say a landlord has a rent-stabilized apartment that just became vacant, and rented for \$1100 a month. If he or she rents it out on a new two-year lease with a 20% increase, the new rent will be \$1320. If \$30,000.00 worth of improvements are put into the apartment, 2.5% of that amount per month can be added to the rent. That's an additional \$750 per month, bringing the new "legal rent" to \$2070. Because the new legal rent is now over \$2000 a month and it's vacant, the apartment is no longer subject to rent stabilization regulations.

If the apartment is in an area of New York City that cannot command a \$2070 a month rent, the landlord simply tells new tenants that although the legal rent is \$2070, they are getting a "preferential rent" of say \$1500, or whatever the local market will bear.

The problem is some landlords claim to make improvements and don't, or inflate their value. For example, a landlord may list a new bathroom sink as costing \$1000, when in fact it was only \$200.

In this way, landlords end up with a free market apartments and tenants, and are no longer restricted by rent stabilization regulations. And yes, they can get away with it. It can hold up in Court if a tenant doesn't find the improper rent increase within four years and try to correct it. The result is that the number of rent-stabilized apartments in NYC is quickly plummeting, as an ever-increasing number of units become destabilized.

18 – If you have a rent overcharge complaint, don't go to the Division of Housing and Community Renewal. Things may be improving under the current administration, but still if you claim an overcharge at the DHCR, you won't be able to challenge the rent amount in Court if your landlord sues you. For decades, the DHCR has been the target of major lobbying efforts by landlords, and became the worst forum for tenants. If you've already made a complaint to the DHCR, check with a Tenants' attorney about

withdrawing the complaint and bringing your case in Court, where there's a possibility for a much better outcome.

19 – Investigate and challenge the illusory tenant. A landlord will sometimes create an “illusory tenancy,” pretending on paper to have a legitimate tenant-of-record in a rent-stabilized apartment. The false tenant then subleases the apartment to an actual tenant at a rent above the legally permitted rate. If you suspect this has happened with your lease, get a “certified rent history print out” from the Division of Housing and Community Renewal and take it to a Tenants’ attorney. You may be able to sue the illusory tenant and your landlord, and acquire a lease in your name at the legal rent-stabilized rate.

McAdams Law represented a client in these circumstances, and ultimately succeeded in gaining control of the apartment for him. The illusory tenant had to pay over \$15,000 in overcharges. The rent was adjusted to the appropriate rent-stabilized rate, which in this case was less than \$400.

20 – Don’t get blacklisted. While all these strategies are helpful if you end up in a court battle, it’s critical to know that if you are sued by a landlord, you can be blacklisted when you try to rent another apartment. Housing Court sells the names of all tenants who are involved in Landlord Tenant proceedings to background checking agencies.

When a prospective tenant submits a rental application for a new apartment, landlords now routinely run a background check. They avoid renting to tenants they think may be a source of legal difficulties. This effectively “blacklists” and disqualifies tenants who’ve been to court with a Landlord Tenant case, even though there may have been an error, or the tenant won, or the suit was dismissed. If you’re on the blacklist, it can be much more difficult for you to rent an apartment in the future.

Although it may be unfair, blacklisting is in fact legal at the present time. There’s been litigation challenging the existence of the list, which has resulted in a requirement that the outcome of every suit be stated. However, as a practical matter once you’re on the blacklist, a landlord is unlikely to care about the reason. Many won’t accept you as a tenant.

Avoiding the blacklist is important for every tenant, but is vital if you’re living in an apartment not protected by rent stabilization or rent control laws, because your lease renewal is not guaranteed. If you get in a fight, you probably won’t be renewed and will ultimately have to find a new home.

There is a strategy that works around the blacklist difficulty. If you know your landlord will sue you on grounds for which you have a legitimate defense, your attorney can initiate an action in New York State’s Supreme Court to block your landlord from starting a case in Housing Court. Tenant background checking agencies currently don’t buy names of litigants from the Supreme Court. Your attorney can ask the Supreme Court to restrict your landlord from Housing Court, and exposing you to blacklisting. Your case can then be handled in Supreme Court. This strategy can work, however it’s more

expensive because legal fees are generally higher for cases outside of Housing Court.

If you're blacklisted, you may have to pay substantial rent in advance, or give your new landlord a much higher security deposit, to get into a new apartment.

Suing a landlord must always be a very carefully considered decision these days. Is the potential gain worth the risk of blacklisting? What are your chances of victory? Only an experienced Tenants' attorney can assist you in making intelligent, strategic decisions.

Blacklisting can be especially treacherous when you're dealing with a difficult landlord, so be wary. McAdams Law litigated for a tenant in a luxury high-rise, who complained about defective elevators and oil spills. In retaliation, the landlord did not renew his lease. The firm raised the defense of retaliatory eviction and bought time for him to move out.

If you are having or even anticipate trouble with your landlord, the quicker you consult a Tenants' attorney, the safer you may be. In the case just mentioned, McAdams Law later discovered that the landlord had previously put the tenant on the blacklist by suing him without notification. In this instance, had the client consulted the firm sooner, it might have been possible to negotiate with the landlord, and to have avoided the subsequent lawsuits and blacklisting.

The lesson: If at all possible, stay out of Housing Court.

21 – Stay calm. While you may be rightly outraged by your landlord's behavior, your best strategy is to stay cool in all your dealings with him or her and the courts. Calmly and carefully explain your circumstances. If you get overly emotional, you may lose credibility and damage your position. People tend to say and do things they later regret under the influence of strong emotion. An unscrupulous landlord wants you to be angry, upset and frightened. You're more likely to move out then. Don't give the landlord that advantage.

22 – Avoid revealing too much to your landlord, building management and neighbors. If your rent-stabilized or rent-controlled apartment is not your primary residence, you can lose your rights to rent-regulated status, and your landlord can evict you. If you intend to be living at any other location for an extended period of time, or if you have other real estate interests such as rental property, a vacation or second home, don't let your landlord know it. You may expose yourself to a lawsuit on the grounds that your rent-regulated apartment is not really your primary residence

Even if the claim against you is baseless, landlords sometimes take the offensive with the hope of gain. From the landlord's perspective, an attack may prevail in court. Even if he or she doesn't win, subjecting you to the financial and emotional turmoil of a lawsuit may just be enough to get you to leave.

The law does not require you to reveal your whereabouts to your landlord, unless demanded by Court Order. So don't let others in your building know your personal

business. Especially not your building manager or superintendent, or even neighbors, who may inadvertently tell a building employee. More likely than not it will get back to your landlord and you could end up with a legal problem.

In one case, a woman lost both parents and inherited the mobile home they owned in another state. She went to see the home, and broke her hip while there. Due to the injury, she was unable to return to her apartment in New York City for eight months. When she finally did, her landlord sued for eviction claiming that her New York City apartment was not her primary residence, even though she had lived here all her life.

The matter is still being litigated, but the moral of the story is this: Don't tell your landlord anything you don't have to. If you are away from your apartment for an extended period for any reason, arrange to have your mail sent to a mail receiving service here, which can then forward it to you privately. If necessary, have a relative or friend look in on anything that needs checking in your apartment.

If you're on good terms with your landlord, bear in mind that even friendly relationships can turn hostile when financial interests are on the line. If your landlord wants or needs the profits that would come from you vacating the apartment, he or she's likely to take a shot at you if an opportunity exists.

23 – Get a second opinion. McAdams Law took over a case in which a woman lived with her elderly, non-English speaking parents and brother. They agreed to move out of their apartment, without any financial incentive. What the previous firm did not realize was that the family had rent stabilized rights. As a general rule, rent stabilization laws govern in buildings with six or more units, built prior to 1974. In this instance, there were multiple single-room occupancy (“SRO”) renters in the building. Each SRO renter's room throughout the various apartments therefore counted as a rental unit, meeting the six-unit criteria.

Even though there was a prior written agreement negotiated by her former attorney, which would otherwise have been exceedingly difficult to break, McAdams Law petitioned the Court to override it, due to the unknown rent-stabilized rights. The result was winning a six-month extension for the woman and her family to find a new home, a waiver of rent, and a significant buyout payment. So although she agreed to move out and find another place with her family, she now had time and money to do it comfortably.

Double-check your attorney's result with a second opinion from another firm, if you have any doubts about getting the best possible outcome.

24 – Make sure any agreement you have with your current landlord is in writing, and complies with current laws. The deal you make with your existing landlord today may be attacked by your new landlord tomorrow. Most leases have a clause that says they can only be modified or amended in writing. If your building is sold to another landlord, he or she may attempt to gain control of your apartment if the agreement you made with the former owner is unenforceable.

In a case currently in litigation that another firm has consulted McAdams Law on, a tenant made a deal with his landlord to pay the past due rent owed by another tenant, in order to get a rent-stabilized apartment. Although under rent stabilization this should be seen as an overcharge, when a second owner purchased the building, he attempted to evict the new tenant because the original tenant's name was still on the lease. The tenant is now in court defending his right to stay.

Before you agree to anything other than what is specified in your lease, check with a Tenants' attorney to see if it's legal, and to prepare an enforceable written agreement that protects your rights.

25 – If you sublease an apartment, get the landlord's approval well in advance. In New York State, tenants have a right to sublease their apartments. Most leases require the landlord's written permission. The landlord is not allowed to refuse permission "unreasonably," but the method of getting permission is tightly regulated. If you do not carefully follow the procedures for obtaining permission to sublet, your landlord may sue you for violating a substantial obligation of your lease. The rent stabilization law also gives landlords the right to collect a vacancy rent increase during the term of the sublet.

For the subtenant, the original leaseholder is called the over-tenant. The safest arrangement is to be sure that you have the landlord's permission to sublet before you move in, and then to pay the rent directly to the landlord. If you pay the over-tenant faithfully every month, don't assume the landlord is receiving the rent in a timely manner. Like several clients McAdams Law represented, you may wake up one day to find an eviction notice taped to your door, and be in a crisis.

To gain maximum protection of your rights it's best to negotiate for your name to be added to the lease. However, this will make you a co-tenant, not a subtenant, and has certain implications. First, the primary tenant may not agree to this arrangement. But if the over-tenant or you are sued in Housing Court, this may be the deciding factor in whether you are able to stay in the apartment. So it can be worth negotiating this point, depending on your needs and the over-tenant's situation.

Secondly, when you leave be sure to get your name off the lease, *before vacating*. Otherwise you may still be sued for nonpayment or eviction if the over-tenant doesn't pay the rent, or violates other lease obligations.

26 – Beware of buyout agreements. There are times when a landlord will agree to pay a rent-regulated tenant to move. It's called a "buyout." These arrangements need careful consideration and handling, as potential dangers can result in you losing your apartment without being compensated.

Recently, tenants have come to Housing Court with written agreements specifying that their landlords would pay them money to move out. The landlords hadn't paid anything, but the tenants were evicted anyway. And there was no legal way for them to get back

their apartments.

If you get into a situation like this, you'll have to start a lawsuit against your landlord in a different court to get your money. That's because Housing Court only handles matters when possession of the apartment is at issue. Unfortunately, you'll have to wait until the matter is resolved and sustain legal fees, which may eat up a significant portion of your buyout proceeds.

The key to protecting your rights in buyout transactions is to make sure that the promises are enforceable. That can only be done with a properly drafted legal agreement.

McAdams Law requires landlords to place buyout money in escrow, to protect tenant interests and insure they are paid. This effectively takes the funds out of landlord hands, and safely delivers them to tenants when they move out. In almost every case, the firm has insisted that some of the money be made available in advance to the tenant, to cover moving expenses and broker's fees in finding a new place live. Often deals are structured so that tenant simply shows a signed lease offer beforehand, to get that part of the proceeds released before they move out.

If your landlord is making it worth your while, and you want to move anyway, it can be a lucrative transaction for you. In one buyout case the firm handled, the tenant wanted to move to Long Island, and used the buyout money as a down payment on a house. A buyout can help you purchase your own home.

27 – Have a renter's insurance policy. Your goal in any conflict about conditions in your apartment is to have them restored to what they should be, and be compensated for the reduced value of your apartment while they exist. Renter's insurance can help alleviate financial burdens associated with substandard conditions.

For example, if there's flood or fire damage to your apartment, a renter's insurance policy can provide you with some immediate cash compensation. Your landlord may delay repairs, and you might have to sue to get them. In the interim, at least you'll have the cash to make some repairs and replacements, so your apartment is livable.

However, you'll need to obtain your landlord's written permission to make the repairs yourself, and deduct their cost from rent charges. In the absence of getting specific permission, if your landlord still fails to make the repairs after repeated written requests, give written notice that you will make them yourself. It's a good idea to have a Tenant's attorney review correspondence before you send it.

Also, if your policy covers part of the cost, and you're asking the landlord for less than the full cost of repairing or replacing damaged property, or correcting bad conditions, you're more likely to get cooperation. That way you'll stay out of court, and avoid the dangers of blacklisting.

If you do ultimately have to sue, with a renter's policy you may have an added advantage

in Court. As a compromise or fall-back position, your attorney can ask for only the difference between the total cost of repairs and what your policy has already paid. Since the landlord is not being asked for the full cost, it makes his or her position in refusing to pay appear even more unreasonable. You improve your chances of winning this way.

28 – Realize your neighbors can become your landlord, and plan accordingly. If you live in a building that converts to a coop or condo, your neighbors gain many of the powers of a landlord. That can change the nature of your relationship with them. For example, if you are a non-purchasing tenant in a non-eviction conversion plan, when the coop needs money your neighbors may attempt to evict you. If they succeed, they can sell your apartment to raise cash.

Formerly friendly neighbors can turn against you when their financial interests are at stake. McAdams Law went to trial for a woman in just these circumstances. She was never given the chance to buy in when the building went coop under an eviction plan. This violated several requirements and laws. Still, the coop claimed she was no longer a rent-stabilized tenant, and they could terminate her tenancy at the end of her lease.

The firm defeated the coop in two eviction attempts. Her neighbors then initiated a third action, which was settled by negotiating for her to buy the apartment at a discounted price. So her neighbors caused her to lose her tenancy, and the only way for her to hold onto the apartment was to buy it, requiring a major financial commitment.

If your building has not yet converted to a coop or condo, it may be wise to assume that someday it will, and to start setting aside money now for a down payment. You may then be able to purchase at a below-market rate, and become a property owner who enjoys appreciation and tax advantages. An experienced attorney can advise you on structuring the deal, which may be possible even if you have only a small down payment saved.

29 – If you're living with a relative whose apartment you hope to inherit, file the DHCR form as evidence of your presence, and send it by certified mail to your landlord. In most cases, to inherit a rent-regulated apartment from a relative who dies or leaves for any other reason, you must be living there with the person as a family for at least two years. And you must be able to prove it. Proof consists of phone, utility, or other bills with your name on them, tax returns, and a valid New York State Driver's License or I.D., all showing that address. Keep a file of all these records.

If your relationship to the named tenant is not a traditional family relationship, you can still prove you had an alternative family-type relationship. If you had close emotional bonds, shared activities and represented yourselves as a family, you may meet the legal definition of a family for the purposes of inheriting the apartment.

If the phone is under your relative's name, have the telephone company put your name on the bill also. This will show that you share the same telephone. Or have your own personal phone line installed, so you get a monthly bill with your name and address on it for evidence, and put the tenant's name on it with yours.

You won't be able to keep your tenancy if you can't substantiate in court that you actually have lived there for at least two years, and it's almost a certainty your landlord will challenge you.

30 – If you're a senior citizen or disabled, look into freezing your rent. Senior citizens and the disabled can freeze their rent if they're below a certain income ceiling. The senior citizen continues to pay the same rent, and the landlord is compensated for the difference by a tax abatement. The rent has to be equivalent to one third or greater of household income.

Another advantage for seniors is they cannot be evicted in personal use holdovers, unless the landlord offers them a similar apartment in the same neighborhood, at the same rent or less.

Be vigilant about your rights...

Take these strategies seriously. When the rent regulation laws come up for review again in 2011, they may be repealed and cause hundreds of thousands of New York renters to lose their homes. As you can see, current legal, market and social trends indicate it's an increasingly likely possibility. Be assertive, be prepared and stay alert. Intelligence and agility can triumph over money and might, when the facts and the law are on your side, and with proper representation.

If you need help, please call McAdams Law at (212) 406-5145. Landlord Tenant law is the firm's main practice area.

Resources

www.dhcr.state.ny.us/ Division of Housing and Community Renewal

www.lawhelp.org/NY/index.cfm/County/%20/City/%20/demoMode/%3D%201/Language/1/State/NY/TextOnly/N/ZipCode/%20/LoggedIn/0 Law Help

www.nyc.gov/html/hpd/html/home/home.shtml Department of Housing Preservation and Development

www.nyc.gov/html/dob/html/home/home.shtml Department of Buildings

www.nyc.gov/html/dof/html/jump/acris.shtml City Register – ACRIS (Property Records)

www.courts.state.ny.us/home.htm New York State Unified Court System

www.nycourts.gov/ecourts/index.shtml Electronic Courts

www.courts.state.ny.us/reporter/ Access to Official Court Reports On-line

www.nyc.gov/portal/site/nycgov/ New York City Government Website

www.nyc.gov/html/dof/html/home/home.shtml New York City Department of Finance

www.nyc.gov/html/nycha/html/home/home.shtml NYC Housing Authority

www.nyc.gov/dhs NYC Department of Homeless Services

www.stopmold.org National Center for Housing and the Environment

www.stopmold.com Lab Results, LLC

Disclaimer

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This Report does not claim that all or most Landlords engage in the practices it describes; those are isolated incidents. Nevertheless such injuries are occurring with increasing frequency to the greater detriment of tenants. The Report attempts to explain this trend by showing the incentives landlords experience. It raises issues and principles as guidance for tenants to avoid such pitfalls. And the Report is not a criticism of Courts or Court Personnel. It merely attempts to advise tenants of problems to watch out for. The lesson is to be vigilant and to fight for your rights!

About Jeffrey C. McAdams, Esq.

Jeffrey C. McAdams, Esq. is a Tenants' attorney practicing in New York City. He has practiced Landlord Tenant law for almost twenty years, focusing on defense and protection of individual rights. He also handles Appellate, Criminal Defense, Domestic Relations, Family Law and Real Estate matters. As a solo practitioner, he is a dedicated and zealous advocate for his clients.

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