

Saving The World One Home At A Time

Timothy Collins*

April 24, 2024

Pete Seeger once said, “The world will be saved by people fighting for their homes.” If taming the harsh edges of deeply concentrated economic power is part of saving the world, this has already happened – more than once in the New York experience. The relative decline in violence and social disruptions in recent decades can easily be traced to legal reforms – sometimes radical reforms.

Once again, however, the rising cost of housing has emerged as a major national problem and tensions between landlords and tenants are on the rise. In New York, a legislative fight over a statewide “good cause” eviction law delayed settlement of the state budget and resulted in a watered-down law that left no one happy. A newly formed coalition of “ground lease cooperatives” is seeking relief from the monopolistic power of generations of wealthy families who threaten to exact ruinous increases on renewal of co-op ground leases. Following the pandemic, rents rose sharply among both regulated and unregulated tenants – increasing on average 7.4% between 2021-22 in buildings with rent stabilized units. Housing availability as measured through vacancy rates in NYC have fallen to lows not seen in at least a half century. At the same time emergency “ERAP” grants to cover rent arrears have dried up – and the \$2.8 billion that was distributed is now safely parked in the pockets of landlords. Evictions spiked as soon as the courts resumed normal operations (up 195% over last year) and homelessness has hit record highs with some 80,000 individuals in City shelters each night compared to just over 50,000 last year. In the midst of all this, the City’s real estate industry actively sought to dismantle all rent protections through the courts, claiming throughout that rent and eviction protections unconstitutionally interfere with their right to charge rents higher than current laws permit. Asserting that rents are already way too high, last year several tenant leaders including five members of the New York City Council stormed the stage at a public meeting of the City’s Rent Guidelines Board to demand rent rollbacks.

It may be worthwhile to look back and consider what happens when public officials turn a deaf ear on tenant distress. It may also be worthwhile for tenants to ask “What strategies will best protect our homes?”

There can be little doubt that a vigorous but peaceful public discourse on housing stability and affordability is the optimal way to achieve progress – when such discourse is permitted and respected. New York’s long experience with landlord tenant strife repeatedly demonstrates this. Ignoring tenant hardships has almost always triggered instability and multifaceted forms of protest and rebellion. The question for tenant activists today is whether logic, data, organizing and peaceful appeals to lawmakers and administrators are sufficient to move policy in a positive direction. Despite some painful setbacks, the answer is that this has already happened.

Rebellion and Reform: A Look Back -

Beginning in the 1750's a series of riots rippled through the Hudson Valley where tenant farmers had been harnessed to feudal leaseholds which offered little hope for free and economically secure futures. They were largely powerless against the holders of vast estates – or “Patroons” as some were called. Neighboring New Englanders, long accustomed to freehold ownership and the democratic traditions that came with it, took note of their plight.

In the early 1770's, the threat of perpetual landlordism loomed over a large district of northeastern New York, an area once claimed by New Hampshire and largely settled by Connecticut families. When New York landlords sought to enforce their ownership rights militant resistance erupted. Governor William Tryon responded by issuing a reward for the arrest and capture of six leaders of rebellious settlers. The rebels responded by offering a reward of their own for the arrest and capture of John Kempe, then attorney general of New York, and James Duane, both large landlords in the area. (Duane would go on to become the first mayor of New York City after the British evacuation. Duane street in lower Manhattan and upstate Duanesburg are his legacies.)

The rebels, known locally as Green Mountain Boys, found a fearless spokesperson in Ethan Allen, a man viewed by New York landlords as a foul mouthed, hard drinking, heathen and cheat. (Allen would have disavowed being a cheat.) The same rebels, after becoming widely known as “a scourge and terror to arbitrary power” (at least according to Allen) spearheaded the first offensive military campaign of the American Revolution - the bloodless capture of Fort Ticonderoga in 1775. As for their dispute with New York landlords, in 1777 they simply declared themselves an independent republic – the republic of Vermont. All was finally settled when Vermont gained statehood in 1791 after paying New York and its mega landlords the modest sum of thirty thousand dollars for their claims.

The struggles of the Hudson Valley farmers would continue long after the Revolution and came to a head in the Anti-rent war of 1839 to 1845. In mid-1839 a series of ejection attempts was initiated by the powerful Van Renssalaer estate. To intimidate the angry tenant farmers and avoid resistance while they seized the homesteads of debtors, the estate enlisted a posse of some five hundred men personally led by the local sheriff. According to one historian, the posse “ran into a wall of nearly twenty-four hundred tenants armed with pitchforks and clubs” which forced their retreat. Ultimately, Governor William Seward was compelled to dispatch the state militia against the farmers. In the six years that followed, demonstrations, violent stand offs, and shootings ensued. The corresponding rise of New York's Anti-rent movement eventually led to reforms abolishing feudal land tenures in 1846.

Militant and disruptive actions by New York tenants hardly ended with these reforms. At the lower end of the Hudson, tenants were being packed into cramped, poorly maintained and often disease-ridden tenements beginning in the 1830's. According to one historian, New York City's “riots in 1849 and 1857 pointed toward the increasing pathological state of the tenement population” and the participation of the “wretched and diseased population of the tenements” in

the infamous “draft riots” of 1863 “demonstrated beyond question the connection between the housing problem and the threat of civil disturbance.”

By the 1880's Jacob Riis would famously chronicle the disturbing state of the tenement house population. In 1884, Felix Adler, leader of the New York Society for Ethical Culture, observed, “[t]he evils of the tenement house section of this city are due to the estates which neglect the comfort of their tenants, and to the landlords who demand exorbitant rents.”

In 1904 women of the Lower East Side initiated the first rent strikes of the 20th century. This was followed by rent strikes in Brooklyn and Manhattan by thousands of tenants in 1907-8. By the end of World War I a highly organized and politicized tenant movement launched a series of protests and rent strikes, demanding relief from spiraling rents resulting from a war related shortage of new housing. This effort was followed by New York City's first experience with rent regulation in the 1920's.

During the Great Depression (following the lapse of the rent regulations of the 1920's) New York witnessed another series of militant disruptions. The “Great Rent Strike War of 1932” began at 2302 Olinville Avenue in the Bronx when city marshals and police attempted to evict seventeen tenants. They were met by a crowd of some four thousand, some of whom “charged the police and began pummeling them with fists, stones, and sticks”. Eventually a compromise was worked out, but by the winter of 1933 some two hundred buildings in the Bronx would be on rent strike. In 1934 widespread rent strikes erupted in Harlem and at Knickerbocker Village in lower Manhattan. These would be followed by various strikes and other disruptions throughout the Great Depression.

On August 1, 1943, following an altercation with police which resulted in the shooting and wounding of an off duty black soldier, Harlem erupted into a riot which left six dead and nearly five hundred injured. That riot has long been connected with simmering anger over social and economic disparities, fueled by war related rationing, extreme rent burdens and entrenched racism. In the wake of the riot and amidst threats of widespread rent strikes, a concerted effort by unions, tenant advocates and Mayor La Guardia, led the federal Office of Price Control to freeze residential rents. That was over eighty years ago. New York City has had some form of rent regulation since that time.

The establishment of rent controls in 1943 had the effect of derailing the worst of such disturbances, though resistance would still erupt when landlords dodged their legal obligations. According to the Metropolitan Council on Housing, some 25% of Harlem landlords charged rents in excess of legal limits in the 1950's and early 60's. Widespread building neglect, rat infestation and other dangerous conditions in Harlem led to a series of rent strikes by neighborhood tenants, led by local activist Jesse Gray, together with the Congress of Racial Equality and other groups. In later years what angst and fury remained would be directed at legislative bodies and government agencies.

A general characteristic of these rebellions and disruptions is housing insecurity, a sense of

exploitation and a lack of trust in the political process. When homes are threatened people fight back. Democratic mechanisms for reform, when transparent and responsive, will gradually cure the body politic – or at least treat its most painful symptoms. This explains the relative peace over the last half century in housing activism – but cracks in the system have again reappeared.

A conservative push to dismantle the City's rent protections during the 1990's, greased by millions of dollars in campaign donations from the City's real estate industry, resulted in the deregulation of some 300,000 apartments and sharp limits on rent overcharge claims (making way for widespread fraud by landlords seeking to evade rent limits). Tenants fought back with increasingly sophisticated efforts to gain both a voice and accountable representation in Albany. The result was the Housing Stability and Tenant Protection Act of 2019 – the most significant legislative reform for tenants since 1974. A critical part of the new law (dealing with overcharge penalties) was undermined by a deeply split decision from the New York Court of Appeals in 2020. Continuing the legal tango, that decision was recently mitigated by new legislation in 2024.

Aside from Albany, since 1969 the main actor controlling tenants' fate in the City has been the Rent Guidelines Board – a nine member body appointed by the Mayor. The Board operated with very limited information with which to gauge owner income and expenses until 1990 (and routinely overstated operating costs) when it first gained access to data from property tax filings with the City.

From 1990 until 2008, the Board authorized rent increases (inclusive of vacancy allowances) that largely covered operating cost increases and protected landlord net operating income from the effects of inflation. Had the Board authorized increases totaling 12% between 2009 and 2013, the result would have been the same. Instead, the Board authorized a total of 27% in hikes (inclusive of vacancy increases) which effectively bumped rents more than 15% above what was warranted – triggering the highest rent burdens in the modern history of the City.

Though the excess rents were mitigated somewhat by successive Boards appointed during the de Blasio administration and the first year of the Adams administration, they still remain well above what a normal competitive market might produce – something absent from New York City for well over a century. A complex body of laws – particularly zoning, landmarks, building and other quality of life regulations – along with the unique demographics and attractiveness of the City to newcomers, has held housing supply well below levels that would produce reasonable rents. The consequence has been to artificially increase the value of existing structures, giving landlords huge windfalls mitigated only by rent regulations. The immediate effect – driven by excessive rent guidelines and sixteen years of vacancy deregulation – caused owner net operating incomes to increase by 48.4% since 1990, after adjusting for inflation.

On April 30th the New York City's Rent Guidelines Board will meet for the 56th year to consider adjusting rents for the city's one million rent stabilized apartments. We can again expect that passions will be high. At last year's preliminary vote, tenants maintained a raucous demonstration throughout (except when their representatives on the board spoke). Over a dozen

demonstrators, accompanied by five members of the New York City Council, stormed the stage and paraded within inches of board members until the voting process came to a conclusion. This raised concerns for the safety of board members and led to a tightening of security procedures.

This was not the first time the Board has witnessed serious disruptions – though storming the stage is relatively rare. In 2006 the Board’s final vote was actually delayed by nearly three hours of deafening demonstrations. In that year, fear of rising rents was compounded by frustration with a continuing dismemberment of rent protections by a state legislature dominated by upstate legislators who had joined in a feeding frenzy over the millions of dollars in campaign donations being piped north by the City’s real estate industry. Like the farmers and impoverished tenement dwellers of the 18th and 19th century, a sense of hopelessness had overtaken the tenants.

What Next?

Today the tenants’ challenge is more nuanced.

This year the Rent Guidelines Board must weigh the fact of long-term overcompensation of landlords against a continuing growth in operating costs, compounded by divergent economic conditions at the borough and sub-borough level. Based on a limited survey of recent sales, there has also been a decline in the value of rent stabilized properties.

Owners see this decline as the product of excessive government meddling – a loss resulting from the 2019 rent reforms and rent guidelines (which owners have repeatedly and falsely asserted have failed to keep pace with operating cost changes).

Others recognize the decline in property values as a long overdue market correction – the bursting of a speculative bubble brought about by a misguided reliance on the political power of the real estate industry to engineer a continual weakening of rent protections through lobbying and massive campaign donations. In 2019 the power of property was checked by the power of democracy, setting the stage for this correction.

In an act of remarkable audacity the real estate industry claimed in recent court challenges that the combined acts of the Rent Guidelines Board and the state legislature resulted in an unconstitutional taking of their property. No comprehensive data was presented about the growth in their property values over the many decades of regulation – the most neutral measure of the impact of the overall regulatory environment on property values. While the absence of such data is a glaring blind spot (and a persistently negligent omission by the Rent Guidelines Board) what little data is available demonstrates that owners have done spectacularly well over the eight decades of regulation. In any event, the industry lost all of its federal court challenges and multiple efforts to achieve a hearing before the United States Supreme Court were rejected – albeit with an invitation by Justice Thomas to come back with better arguments.

The settlement of these legislative initiatives and judicial challenges moves the drama back to local rent guidelines boards. The 2019 reforms gave upstate towns and cities an opportunity to

“opt-in” to the rent stabilization system and, as a result, a growing number of places which hadn’t seen rent regulations since the 1950’s now have their own annual rent setting dramas. Kingston, which experienced heightened pressures on market rents from an influx of tenants during the Covid pandemic, opted into the system and its newly formed board promptly rolled rents back by 15%. After being enjoined by a local court, the Appellate Division Third Department, covering much of upstate New York, reversed and upheld the rollback.

In New York City, doing the “right thing” in substance means holding rents back. Even a rent freeze would leave owners better off than they were in 1990 – when the Board first began to track owner incomes.

What will or should tenants do this year?

Five decades of rent setting by the Rent Guidelines Board demonstrates that data does count. But so too does the politics of the mayor who appoints board members. Tenants would do well to calibrate their tactics to the relative credibility of the process. By 2006 it was clear that Albany, fueled by real estate money, was bent on dismantling rent protections over time. Peaceful and measured disruption (civil disobedience) was well within reason. From 2008 through 2013 the Board itself was engaged in a calculated “march to the market” with absurdly high rent adjustments in the midst of the Great Recession when rents were flat throughout the country. Tenants could and should have been more militant during those years.

In the late 19th century Populist reformer Mary Elizabeth Lease counseled impoverished farmers to “raise less corn and more hell”. She identified “two great enemies of thought and progress, the aristocracy of royalty and the aristocracy of gold”. Last year the City’s tenants stared across a smoky battlefield not knowing for sure whether they were facing the forces of gold - the mercenaries of landlords’ political power - or the allies of reason. They would have done well to hold their fire until the smoke cleared. The storming of the stage in 2023 was at best inconsequential and, at worst, damaging to the process.

One million apartments, housing two million people, are affected by the orders of the Rent Guidelines Board. That human impact, along with the economic health and sustainability of the housing stock, line up as coequal concerns on a second tier of public policy issues at stake in the rent setting process. The first tier is the preservation of the process itself. If human centered pragmatic models (like boards composed of real people who must listen to testimony and weigh evidence) fail, the alternatives are power centered ideological models - and despite claims and delusions to the contrary, market driven pricing is every bit as much a power centered ideological model as state ownership of the means of production.

Tenants have long criticized the Rent Guidelines Board as little more than a political cover for the power and influence of the real estate industry. Whether that was once the case, it is not the case today.

In conjunction with last year's vote, Nestor Davidson, the current chair of the Rent Guidelines Board issued a statement explaining the factors that weighed in his vote – including tenant affordability as well as the economic health of the housing stock. The chair ended up voting with the two tenant members in a painful compromise which lifted rents 3% for one-year leases and imposed a bifurcated increase of 2.75% for the first year of two-year leases and 3.2% for the second year of those leases.

Given the raucous nature of the crowd Davidson's statement would have never been heard if read aloud. Given both sides' understandable preoccupation with results over process, it is likely that few have read his statement since. In his concluding paragraph Davidson wrote:

In evaluating that data, I return to the necessity of considering both current conditions and long-term trends. Some stakeholders have urged us to prioritize one side of this balance over the other. Some have argued that we should set guidelines that respond primarily (in whichever direction) to immediate challenges. Others have argued, conversely, that we should primarily center the long term, discounting recent disruptions. Rather than take either of those approaches, our long-standing practice as a Board reflects that we balance both, seeking to ensure the stability of the rent stabilization system for tenants and owners and preserving this truly foundational aspect of housing in our city.

This is the central issue that still remains before the Board. Long term data (particularly a 48.4% increase in net operating income since 1990 after adjusting for inflation) clearly counsels the board to hold rents back. Short term data (given a 3.9% rise in the Board's price index of operating costs this year) suggests another increase along the same lines as in past years.

Excessive long term rent increases have added to the speculative bubble in real estate values, placed excruciating rent burdens on tenants, witnessed a tripling of the City's homeless population and contributed little if anything to alleviating the housing shortage.

Long term economic impacts are substantive. Short term developments are optics.

This is the message the Rent Guidelines Board needs to hear. Will they listen? Perhaps not. But long-term factors did weigh more heavily in the rent setting process last year. Despite the chair's (misplaced) homage to "long standing practices" the gap between one year rent increases (3%) and the price index (8.1%) was the greatest it has been in two decades. That fact alone suggests he was willing to listen and move in the right direction. Add to that the chair's willingness to join a coalition with the tenant members to secure the final result and it is clear this was not just a political pageant. The data mattered.

And the data has moved the Board in the right direction for the last decade. Rent guidelines for one year lease renewals averaged 1.3% over the last ten years. They averaged 3.3% over the previous ten years. Nonetheless, overcompensation of landlords in that earlier decade is still being felt.

Placing aside the boost in rents due to the deregulation of hundreds of thousands of apartments from 1993-2019, along with massive and often fraudulently acquired increases for major capital improvements and individual apartment improvements prior to the 2019 reforms, what would it have taken for regular rent guideline increases and statutory vacancy allowances to cover all operating cost changes and to preserve net operating incomes from the effects of inflation – without burdening tenants with wholly unwarranted increases? Over the thirty-year period from 1990 to 2020 the Board would have had to increase rents by 171% to achieve that goal – a goal which, again, does not even factor in tenant affordability. Instead, the Board authorized increases amounting to 211%. That excess between what was needed to “keep owners whole” and what was actually authorized began in 2009 and still exists today. While the annual guidelines authorized during the de Blasio years declined significantly, they were supplemented by large statutory vacancy allowances (20% on turnover) which continued until mid-2019. With the end of those allowances and a continuation of lower relative guidelines, the 40 point spread between what was needed to “keep owners whole” and what was actually authorized declined to a 14 point spread. Converting this point spread into percentages, rent increases on renewal and turnover pushed rents to about 15% above what they should have been by 2020. Today, cumulative guidelines result in a 6% excess. While the overall effect still favors owners, the direction is good news for tenants.

To be clear, this 6% excess authorization is not an account of actual rent collections – only an estimate of how much past guidelines and vacancy allowances would have increased rents with all other things being equal. We know that packing in other increases due to deregulation, major capital improvements and individual apartment improvements caused average building net operating incomes to jump by 48.4% after adjusting for inflation, between 1990 and 2022.

Those statutory increases, coupled with excessive rent guidelines in the 2009-2014 period sent rent burdens skyrocketing to unprecedented levels. According to the City’s periodic Housing and Vacancy Survey (“HVS”) rent stabilized households spent an average of 36.2% of household income on gross rent in 2021, 36% in 2017 and 36.2% in 2014. Rent to income ratios in the order of 30% have long been considered what is reasonably affordable. By tapping the brakes on rent increases the Rent Guidelines Board and legislative reforms brought those rent burdens down to 30.5% as of 2023 – a remarkable achievement, even though it cannot undo the severe damage to tenants in those earlier years. And that damage was extreme. It is not surprising that Tenant advocates developed an increasingly distrustful and militant attitude towards the process in those years. I was one of them.

Despite recent improvements in affordability, according to the latest HVS, two in five rent stabilized tenants are still considered rent burdened (paying over 30% of their income in rent) and a full quarter spend more than half of their incomes in rent. A further word of caution is due. The most recent statistics may have been distorted by temporary market and regulatory changes stemming from Covid related impacts and programs. It will take a few more years to see if these trends are durable or anomalous.

Two clear lessons emerge from all of this. First, rents are still too high and the Rent Guidelines

Board should not be allowed to ignore past excesses baked within current rent levels. Second, despite apprehensions and understandable distrust among tenants, the past few years demonstrate that the data does count and that a majority of Board members are beginning to listen and move in the right direction.

When someone is listening, there is no reason to shout. This may well be a year when civility is the best strategy.

Some tenant leaders will no doubt, argue that my view is both naïve and myopic. Naïve because pressure and disruption are necessary for progress. Myopic because I omit consideration of tenant hardship as an independent basis for holding rents down. Neither is true. It's clear that pressure – even open rebellion - is sometimes necessary for progress. I think I've amply presented that here.

As for tenant hardship, I do think it is deserving of consideration, but not for the reasons often asserted.

Distilled to its essence, the basic function of the Rent Guidelines Board is to simulate normal market rents where a normal market does not exist (and really hasn't existed for well over a century). In a normal market when tenant incomes fall relative to rents, rents remain flat and sometimes fall as well. That is exactly what happened during the Great Recession when median rents remained flat nationwide and actually fell in New York City's unregulated sector. In that sense, consideration of tenant economic hardship is a natural point of reference in any attempt to construct a normal market.

But there is another important reason to consider tenant hardship. The consequences of repeatedly excessive rent increases are clear: severe rent burdens, economic displacement, evictions, homelessness and social instability. That is still happening. Taxpayers are called upon to pick up the tab for these problems. Indeed, the real estate industry repeatedly demands that state and local taxpayers do just that by expanding taxpayer supported rent subsidies to low-income tenants. Subsidizing economic hardship is a legitimate and laudable use of taxpayer money. But it is an outrage when such funds are used to justify excessive rents which sustain some of the wealthiest people on the planet. Chief Justice Hughes' admonition in the 1937 paradigm shifting decision of *West Coast Hotel v. Parrish* (upholding minimum wage laws) is no less applicable here:

What these workers lose in wages, the taxpayers are called upon to pay. The bare cost of living must be met... The community is not bound to provide what is, in effect, a subsidy for unconscionable employers.

Nor is the community bound to provide what is, in effect, a subsidy for rent gouging landlords.

*Timothy Collins is a partner in the law firm of Collins Dobkin & Miller LLP, an adjunct faculty member at Pace University where he teaches American and constitutional history, and a former executive director of the NYC Rent Guidelines Board.