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Residential Landlord-Tenant Law in New York, 2015-2016 ed.

Andrew Scherer
New York Law School

Fern A. Fisher

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INTRODUCTION TO THE 2015-2016 EDITION

The City of New York, recognizing that representation by counsel in eviction proceedings often enables tenants to remain in their homes and communities and avert the trauma of homelessness, has significantly increased funding for tenant representation in recent years. Historically, less than 10% of tenants facing eviction were able to obtain counsel; that statistic is changing and Judges and practitioners report that the influx of counsel for tenants in Housing Court is beginning to alter the culture of the court for the better. It is gratifying to see that residential landlord-tenant law, the subject of this treatise, is becoming more relevant than ever, as a growing portion of litigants are able to obtain counsel to advance and protect their rights under the law. The growth in funding and representation is an enormously helpful step toward establishing a right to counsel for those who face losing their homes.

My partnership with Hon. Fern Fisher in initially creating and annually revising this volume has now lasted well over two decades. Fern's contribution to this endeavor is immeasurable, as is my gratitude to her for her involvement. Her work on access to justice and her leadership in the judiciary and the legal profession are legendary and have grown beyond New York to become national and international. I am very lucky to have her as a friend and colleague.

I continue to be deeply indebted to Sheryl Karp of the Legal Aid Society in New York City for her compilation and summary of housing decisions, which significantly eases my task of annual revisions. Thanks also to those colleagues and readers who made useful suggestions and comments this past year: Michael Bressler, William Leavitt and Robert Salzman. And many thanks as well to my editor at Thomson Reuters, Emily Howard.

Andrew Scherer
New York City
November 2015

It is still hard to believe Andy and I have been collaborating more than 20 years. It has been my honor to work with him. My thanks go to Emily Morales Minerva and Honorable Jaya Madhavan for keeping me updated.

Justice Fern A. Fisher, 2015

Some highlights in this edition:

- A new section in Chapter 2 on the rights and responsibilities of guarantors to leases.
- Discussion in Chapter 2 of recent developments in the rapidly changing and intensely litigated legal questions arising out of short-term rental arrangements through Airbnb and other online systems.
- Extensive revisions to Chapter 4 made necessary by the passage of the Rent Act of 2015 by the New York State Legislature.

ABOUT THE AUTHORS

Andrew Scherer, Esq.



Andrew Scherer, Esq., is the Policy Director of the Impact Center for Public Interest Law at New York Law School. The Impact Center was established in 2014 to promote and support the practice of public interest law as well as to develop the public interest lawyering skills of NYLS students. Mr. Scherer is also an independent consultant in legal and public policy matters, particularly with respect to: landlord-tenant, housing and land use rights; access to justice, delivery of legal services and the rule of law; and social, economic and civil rights. His consulting projects are both domestic and international. In addition, he is an Adjunct Professor at the Columbia University Graduate School of Architecture Planning and Preservation, where he has been teaching Planning Law since 1996. From 2001 to 2010, he was the Executive Director of Legal Services NYC, the largest civil legal services program in the United States. Prior to that, he was a staff attorney and then a senior attorney at Bronx Legal Services. From 1989 to 1996, he taught housing law at CUNY Law School and 1988 to 1992, he co-taught a seminar in Housing Policy and Law at NYU Law School. Mr. Scherer has frequently appeared as a lecturer at academic, community and bar association seminars. He is also a frequent legal consultant to the media on New York landlord-tenant issues. He has written for a variety of legal and other publications including the Harvard Civil Rights-Civil Liberties Law Review, the International Review of Contemporary Law, the New York Law Journal, and the Encyclopedia of Housing and has numerous authored and co-authored training materials and reports on housing issues. His professional activities include membership on the boards of directors and advisory boards of housing and civic organizations and committees of the New York State Bar Association and the New York City Bar Association. He is a graduate of NYU Law School and the University of Pennsylvania.

Hon. Fern A. Fisher



Hon. Fern A. Fisher is the Deputy Chief Administrative Judge for the New York City Courts. Justice Fisher is responsible for overseeing the day-to-day operations of the trial-level courts located in New York City. Justice Fisher works with the Administrative Judges of the various courts in New York City in order to allocate and assign judicial and non-judicial personnel resources to meet the needs and goals of those

courts. Justice Fisher also serves as the Director of the New York State Courts Access to Justice Program, providing oversight in developing and implementing programs to assure meaningful access to justice for all.

Justice Fisher's career started in the Civil Court as a Legal Services attorney practicing in Manhattan Housing Court. Justice Fisher served as Deputy Director of Harlem Legal Services, Inc. and as an Assistant Attorney General of the New York State Department of Law. For four years, she provided pro bono legal services to Harlem-based community organizations as a project director of the National Conference of Black Lawyers. In 1989, she was appointed Judge of the Housing Part of the Civil Court, and later, in 1990, was elected to the Civil Court where she served as Deputy Supervising Judge. Justice Fisher was elected in 1993 to the Supreme Court of the State of New York where she was assigned to the City and Matrimonial Parts. In December 1996, she was appointed Administrative Judge of the Civil Court of the City of New York where she served until March 2009 when she was appointed to her current position.

Justice Fisher received her B.A. summa cum laude, Phi Beta Kappa in 1975 from Howard University and a J.D. in 1978 from Harvard Law School.

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Justice Fisher is the Deputy Chief Administrative Judge for the New York City Courts. Justice Fisher is responsible for overseeing the day-to-day operations of the trial-level courts located in New York City. Justice Fisher works with the Administrative Judges of the various courts in New York City in order to allocate and assign judicial and non-judicial personnel resources to meet the needs and goals of those courts.

Hon. Fern A. Fisher



PREFACE

More housing cases are filed in New York State each year than all the civil and criminal cases filed annually in all the federal district courts of the 50 states combined. Because landlord-tenant law determines access to, and quality and cost of, such a fundamental necessity, it has a profound impact on people's lives and livelihoods. Modern-day landlord-tenant law attempts — however unsatisfactorily — to balance the competing personal and commercial stakes in housing. The aim of this book is to provide both experienced and novice practitioners in New York with a concise, reliable guide to this large, complex, and ever-changing area of law.

In the more than four years it took for this book to evolve into being, I was able to draw upon the support, assistance, advice, guidance, ideas, and research of many people. I am extremely grateful to the Board of Consultants, as well as: the New York Community Trust; Wilhelm Joseph, Esq., of the Legal Support Unit of Legal Services for New York City (LSNY) for his ongoing support and encouragement; and Stanley Rothenberg, Esq., for his counsel. I am also very grateful to: Laura Gach, Esq., Sandra Russo, Esq., Marilyn Sequerra and Joyce Smith of LSNY; Cathy Larsen and Julie Lim, Esq., of CUNY Law School; Paris Baldacci, Esq., of Cardozo School of Law; Marc Bierman, Esq., of Finder, Novick, Kerrigan & Anderson; Lori Brooks, Esq., and Paula Smith, Esq., of Community Law Offices of the Legal Aid Society; Russell Engler, Esq., of the New England School of Law; Fred Fuchs, Esq., of the Legal Aid Society of Central Texas; James E. Gaskin; Allan Gropper, Esq., and Despina Kartson of White and Case; Kent Karlsson, Esq., and James O. Hivnor, Esq., of Karlsson & Ng, P.C.; Minna Kotkin, Esq., of Brooklyn Law School; Pat Murray, Esq., and Wayne Saitta, Esq., of Brooklyn Legal Services Corp. A; Stephen Myers, Esq., of MFY Legal Services; Tim Plenk of Copacetic Computers; Martha Rayner, Esq., of Neighborhood Defender Service of Harlem; Ellen Regis, Esq.; Scott Rosenberg, Esq., of the Civil Appeals Unit of the Legal Aid Society; Nancy Rosenbloom, Esq., of the Homeless Family Rights Project of the Legal Aid Society; Robert Salzman, Esq., of Salzman and Salzman; Dorothy Thomas; Michelle Zweig, Esq.; the Association for Neighborhood and Housing Development; and the Community Training and Resource Center. To the following people who were law student research assistants: Earl Baxter Moore, Ron Coley, Tim Cumiskey, Yolanda Gonzalez, Susan Kemp, Vickie Neilson, Carolyn Rose, Larry Sharpe, and Todd Turner of CUNY Law School; and Paul Burkhalter and Deborah Creane of NYU Law School. To the following people who, as law students, also provided research: Ursula Abrams, Rebecca Baehr, Mary Clement, Elizabeth Cooney, Jan Costello, Deborah Dubinsky, Raymond Grant, Cherry Hargrove, Nick Kambolis, David Lawrence, Steve Levin, Lisa Menda, Benjamin Meskin, Robin Moses, Andrea Mujahid, Pearl Murphy, John O'Donnell, Laura Parker, Ben Rivera, Bob Rose, Alan Strauss, Arlene Vasquez, Barbara Washington, and Michael Zen, of CUNY Law School; Mindy Birman of SUNY Law School at Buffalo; Cindy Goen and

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Scope

To represent a client effectively in the landlord-tenant arena, the practitioner must be familiar with an array of substantive and procedural laws. This chapter provides a general introduction to the sources of residential landlord-tenant law and summarizes some of the principles that recur throughout the book. The chapter then sketches the various stages of a summary eviction proceeding, including the avenues of appeal after an adverse determination.

This introductory discussion also identifies the chapters in the book where topics are fully developed for use by practitioners.

Research References

West's Key Number Digest

Landlord and Tenant ⇨ 200.16

A.L.R. Library

A.L.R. Index, Landlord and Tenant

KeyCite®: Cases and other legal materials listed in KeyCite Scope can be researched through the KeyCite service on Westlaw®. Use KeyCite to check citations for form, parallel references, prior and later history, and comprehensive citator information, including citations to other decisions and secondary materials.

I. SOURCES OF RESIDENTIAL LANDLORD-TENANT LAW

§ 1:1 Legal conflicts between landlords and tenants

Under common law principles, a lease reflected the feudal origins of the landlord-tenant relationship. It was the conveyance of an estate for a specified term—the transfer of an interest in real property, with all rights in the landlord and all liabilities in the tenant.

However, landlord-tenant law has become increasingly complex over the course of the 20th century. Housing codes, rent regulation, government subsidy programs, procedural requirements for summary eviction proceedings, and a profusion of other laws have all contributed to what the court of appeals has referred to as “an impenetrable thicket, confusing not only to laymen but to lawyers.” *La Guardia v. Cavanaugh*, 53 N.Y.2d 67, 440 N.Y.S.2d 586, 423 N.E.2d 9 (1981). (See *The Residential Landlord-Tenant Relationship* Ch 2, and *Rent Control and Rent Stabilization* Ch 4.)

The residential landlord-tenant relationship in New York is now one of the most regulated of private economic relationships. And with good cause. The conflict between finding and retaining housing on the one hand and realizing a

return on investment on the other causes friction, and often high levels of emotion as well.

The laws governing the landlord-tenant relationship attempt—and not always successfully—to balance these competing interests. These laws have transformed the landlord-tenant relationship from the conveyance of an estate into a relationship grounded in principles of contract. It is now a sale of shelter and services in exchange for rent, altering the historical rights and responsibilities of the parties in fundamental ways. (See *The Residential Landlord-Tenant Relationship* Ch 2; *Nonpayment Proceedings: Defenses and Counterclaims* Ch 12.)

◆ **View from the Bench** The New York State Access to Justice Program has tried to address the crisis in housing, intensified by the current economic crisis, by adding services and programs for both small owners and tenants. For example, the Volunteer Lawyer for the Day Program for both small owners and tenants is a program designed to provide limited scope representation to litigants who are unable to afford representation. Help Centers provide both court employees and volunteer attorneys to assist litigants with legal information or legal advice. More information can be found at www.nycourts.gov/ip/nya2j/index.shtml.

§ 1:2 Legal conflicts between landlords and tenants—Conflict manifested in particular issues

The inherently conflicting interests of landlords and tenants produce tension over such issues as rights of tenure, building conditions, and rent levels. These tensions can—and often do—erupt into litigated conflicts. Although eviction proceedings based on nonpayment of rent or other causes are, by far, the most frequently litigated landlord-tenant disputes, litigation can also involve several other proceedings, including tenant-initiated actions for repairs (see *Obtaining Repairs and Services* Ch 19), discrimination complaints (see *Protections Against Housing Discrimination* Ch 3), bankruptcies and foreclosures (See *Owner Foreclosures and Bankruptcies* Ch 20), or declaratory judgment, injunction, or other actions in Supreme Court.

Landlord-tenant conflicts do not always involve one landlord and one tenant. Tenants in a building can, for example, organize and withhold rent as a group, a strategy usually designed to cause the landlord to initiate nonpayment proceedings against the group. Tenants can then assert defenses and counterclaims and in this way obtain repairs, services, and damages, usually in the form of rent abatements. These collective rent withholding actions are generally referred to as “rent strikes.” (See *Obtaining Repairs and Services* Ch 19.)

§ 1:3 Legal conflicts between landlords and tenants—Essential tasks for the attorney

In taking on representation of a client, counsel must always be sure to ascertain accurately whether the housing premises involved in the case are either rent regulated or subsidized. Attorneys representing tenants or landlords of housing units that are covered by one of the forms of rent regulation, (See *Rent*

Control and Rent Stabilization Ch 4.) or by other housing programs (See Federally Subsidized Housing Programs Ch 5 and Particular State-regulated and City-owned Housing Ch 6.) must become familiar with the laws and regulations that govern the operation of the housing involved. Rights and remedies in these programs are significantly different from those in unsubsidized, unregulated, privately owned housing, and a client's case could be severely prejudiced if the attorney does not pay attention to the regulatory status of the premises.

◆ **Practice Tip** Important information pertaining to particular housing premises may now be retrieved from the internet. The New York State Division of Housing and Community Renewal and housing-related New York City agencies have web sites designed to help owners and managers obtain information about their buildings. Among the more relevant resources are the following:

- Division of Housing and Community Renewal (DHCR) – <http://www.dhcr.state.ny.us> Supplies information concerning the status and determination of a tenant's over-charge or reduced-service complaint by entering the docket number. DHCR advisory opinions, fact sheets, and operational bulletins are also available. (See Ch 4.)
- Department of Finance (DOF) – <http://www.nyc.gov/html/dof> Allows site visitors to view building-specific information by entering a building block and lot number, including: a building's current tax bill, a history of charges and payments for the building, water bills, and tax rates.
- Department of Buildings (DOB) – <http://www.nyc.gov/html/buildings> Provides access to a building's "Property Profile Overview" listing information regarding: community boards, tax block and lot numbers, outstanding DOB complaints and violations with related hearing dates and fines imposed, boiler compliance history, and DOB disciplinary actions. (See Ch 12.)
- Department of Housing Preservation and Development (HPD) – <http://www.nyc.gov/html/hpd> Permits visitors to look up outstanding housing violations as well as emergency repairs performed on buildings and related charges. (See Ch 12.)

◆ **View from the Bench** The public can also obtain information from the court's web site <http://NYCOURTS.gov/nychousing>. Calendar information, judges' rules and civil court directives and advisory notices are available online. The court is also providing pro se litigants limited internet access to various sites relating to housing issues in each of its Civil Court Resource Centers.

§ 1:4 Sources of substantive landlord-tenant law

Federal, state, and local laws and regulations govern landlord-tenant relations, as does case law at the federal and state level. While most administration of landlord-tenant relations is handled by state and local agencies, some is handled at the federal level as well.

§ 1:5 Sources of substantive landlord-tenant law—Real Property Law

Article 7 of the New York State Real Property Law is the primary source of state law governing the substantive terms of the landlord-tenant relationship. Unless they conflict with some other provision of law or are inapplicable as

specified in the Real Property Law, the Real Property Law provisions apply to all rental housing throughout the state. The Real Property Law contains provisions governing, for example, the following:

- the implied warranty of habitability in every lease for residential use (The Residential Landlord-Tenant Relationship Ch 2; Nonpayment Proceedings: Defenses and Counterclaims Ch 12)
- the right to sublet and assign (The Residential Landlord-Tenant Relationship Ch 2)
- rights with respect to additional occupants who are not signatories to a lease (The Residential Landlord-Tenant Relationship Ch 2)
- the right of tenants to form, join, and participate in tenants' groups (The Residential Landlord-Tenant Relationship Ch 2; Obtaining Repairs and Services Ch 19) and the defense of retaliatory eviction, available when a landlord commences an eviction proceeding in retaliation for a tenant's assertion of those rights (Holdover Proceedings: Defenses and Counterclaims Ch 11)
- the termination of residential leases by senior citizens entering health care facilities, adult care facilities, or housing projects (The Residential Landlord-Tenant Relationship Ch 2)
- the rights and responsibilities of mobile home park operators and tenants (The Residential Landlord-Tenant Relationship Ch 2; Particular State-Regulated and City-owned Housing Ch 6)
- protections from discrimination against children and with respect to bearing children (Protections Against Housing Discrimination Ch 3)
- the rights of tenants to recover attorney's fees in actions or summary proceedings arising out of leases of residential property (Attorney's Fees, Costs, and Sanctions Ch 16)

§ 1:6 Sources of substantive landlord-tenant law—Laws against housing discrimination

The U.S. and New York constitutions, and federal, state, and local laws provide protection and remedies for people in certain protected categories who have experienced housing discrimination. (See Protections Against Housing Discrimination Ch 3.) The 14th Amendment of the U.S. Constitution guarantees equal protection of the laws, and Article 1 of the New York Constitution prohibits discrimination based on "race, color, creed or religion."

§ 1:7 Sources of substantive landlord-tenant law—Laws against housing discrimination—Federal housing statutes

Federal statutes that prohibit housing discrimination include:

- the Fair Housing Act
- the Civil Rights Act of 1866
- the Americans With Disabilities Act

§ 1:8 Sources of substantive landlord-tenant law—Laws against housing discrimination—State housing statutes

New York State statutes that prohibit housing discrimination include:

- the New York State Human Rights Law
- the New York State Civil Rights Law

§ 1:9 Sources of substantive landlord-tenant law—Rent regulation

New York State has four systems of rent regulation: Rent Control within New York City, Rent Control outside New York City, Rent stabilization within New York City, and Rent stabilization outside New York City. The rights and responsibilities of landlords and tenants differ under each of these four systems. (See Rent Control and Rent Stabilization Ch 4.)

Rent Control within New York City is governed by the New York City Rent and Rehabilitation Law, and the regulations promulgated under that statute, the New York City Rent and Eviction Regulations. Outside New York City, Rent Controlled apartments are governed by the Emergency Housing Rent Control Law and the State Rent and Eviction Regulations.

Rent Stabilized apartments in New York City are governed by the Rent Stabilization Law. Rent Stabilized apartments outside New York City are governed by the Emergency Tenant Protection Act. The regulations promulgated pursuant to statute are the Emergency Tenant Protection Regulations (outside New York City), and the New York City Rent Stabilization Code (inside New York City).

§ 1:10 Sources of substantive landlord-tenant law—Federal, state, and local housing programs

Federal, state, and local housing programs have been developed over the past several decades to provide housing assistance to low and moderate income households. (See Federally Subsidized Housing Programs Ch 5; Particular State-regulated and City-owned Housing Ch 6.) Under some of these programs, such as Public Housing and City-owned housing, the government is the landlord; under most of these programs, government subsidizes the housing and the landlord is either a nonprofit or for-profit private entity. Each of these programs has some form of statutory or regulatory authority governing its operation. The rights and responsibilities of tenants differ from program to program.

Some of the major housing programs that operate in New York State include federally subsidized Public Housing, the federal Section 8 Program (See Federally Subsidized Housing Programs Ch 5.) the New York State Mitchell-Lama Program, and the New York City In Rem Program. (See Particular State-regulated and City-owned Housing Ch 6.)

§ 1:11 Sources of substantive landlord-tenant law—Federal, state, and local housing programs—Federally subsidized public housing

Federally subsidized Public Housing for low income tenants is owned and

operated by Public Housing authorities, which are chartered by the state. Tenants generally pay 30% of their household income for rent. Commonly referred to as “the projects,” Public Housing is governed by federal, state, and, in some cases, local law. (See Federally Subsidized Housing Programs Ch 5.)

§ 1:12 Sources of substantive landlord-tenant law—Federal, state, and local housing programs—The federal Section 8 Program

The federal Section 8 Program generally provides subsidies to low income tenants to enable them to rent private housing. As in Public Housing, tenants generally pay 30% of their household income for rent and receive subsidies that make up the difference between their contribution and a “fair market rent” or other legally established rent for the unit. (See Federally Subsidized Housing Programs Ch 5.)

§ 1:13 Sources of substantive landlord-tenant law—Federal, state, and local housing programs—The New York State Mitchell-Lama Program

Under the Mitchell-Lama Program, authorized by Articles 2 and 4 of the New York State Private Housing Finance Law, state-financed loans are provided for the development of middle income housing. The Mitchell-Lama Program regulates the operation of the housing, including such areas as tenant selection, rent levels, and eviction. (See Particular State-regulated and City-owned Housing Ch 6.)

§ 1:14 Sources of substantive landlord-tenant law—Federal, state, and local housing programs—The New York City In Rem Housing Program

New York City owns more than 45,000 occupied housing units that were acquired through in rem tax foreclosure proceedings when private landlords defaulted on payment of real property taxes. This program generally houses low income households. There is no statute governing the program’s operation, but the City of New York has promulgated some regulations for certain aspects of the program. (See Particular State-regulated and City-owned Housing Ch 6.)

§ 1:15 Authority and sources of procedural law for summary proceedings

The procedure for summary eviction proceedings is primarily governed by the RPAPL Article 7. There are, however, other sources of procedural law as well, including the Civil Practice Law and Rules and the various court Acts and Rules. (See Jurisdiction, Venue, and Forum in Summary Proceedings Ch 7.)

§ 1:16 Authority and sources of procedural law for summary proceedings—Summary eviction proceedings are “special proceedings”

Summary eviction proceedings are special proceedings and not plenary actions.