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Tenant Rights in Focus

Cuomo-Formed Unit Takes an Aggressive Approach That Has Owners Crying Foul

By JOSH BARBANEL

New York City building owners are crying foul over new investigative tactics—including broad subpoenas seeking landlord records and emails—by an office set up last year by Gov. Andrew Cuomo to protect tenant rights.

Since it was formed last year, the Tenant Protection Unit has conducted audits demanding landlords turn over paperwork—used to remove apartments from the rent-stabilization program—that wasn't routinely required before. Now it has gone further, issuing subpoenas covering the entire operations of some building owners.

Tenant-advocacy groups support the unit. But the industry says it is making decisions outside the rules and appeals process of the Division of Housing and Community Renewal, a state agency that, among other things, holds hearings on disputes between landlords and apartment-dwellers.

"A landlord can never win," said Adam Leitman Bailey, a lawyer who represents building owners and tenants. "They have to spend huge amounts of money on legal fees, and even if they win they can't brag about it, because it will still hurt the landlord's reputation."

Tenant leaders said the new unit was long overdue and would help preserve below-market-rate housing in New York by reducing fraud by some building owners. "The foxes have been completely in charge of the chicken coop for a very long time," Judith Goldiner, the attorney in charge of civil-law reform at the Legal Aid Society, said of New York's landlords.

The unit is funded through the Division of Housing and Community Renewal because Mr. Cuomo failed in 2012 and 2013 to get the Legislature to authorize funding for a separate agency. The division provides the office's budget, which was \$5.7 million in 2013.

A spokesman said in an email that the unit has "broad powers," including "the right to commence investigations on its own initiative," through the enforcement powers of the Division of Housing and Community Renewal. Unlike the housing division,

though, the tenant unit doesn't hold hearings and doesn't handle formal appeals of its determinations.

The unit came about after a failed effort in 2011 in Albany by tenant leaders to win tougher enforcement of rent laws. Landlords were removing thousands of apartments from rent stabilization by renovating them so they could get permitted rents above a limit, now \$2,500 a month. Ms. Goldiner said some faked the renovation work, and tenant groups wanted to force them to document renovations in advance.

Mr. Cuomo and the Legislature made a deal to extend the rent-stabilization law but left out the enforcement provision, and tenant leaders were angry.

Then, in 2012, Mr. Cuomo promised to set up the Tenant Protection Unit. In his state of the state speech, the governor said the unit would "proactively enforce landlord obligations" and investigate owners who "may be involved in fraudulent schemes to deregulate apartments."

To lead the unit, Mr. Cuomo brought in Richard R. White, a former Manhattan assistant district attorney who assembled a group of lawyers, auditors and computer experts. The unit now has 22 employees and says it has conducted 1,100 audits.

Building owners say its investigations violate rules of due process and misuse subpoenas—a request for documents—to intimidate owners of small buildings. One subpoena sought a range of information on all rental buildings owned or managed by a particular owner, from business strategies to laundry-room equipment. "They are so onerous in tone that if you were on the receiving end of it, you would feel the sky is about to fall," said Sherwin Belkin, a landlord lawyer who reviewed one recent subpoena.

Real-estate groups say that while the attorney general has broad powers to investigate financial fraud under the state's Martin Act, the state housing agency has only limited subpoena power.

Mr. White disputed that, saying: "The TPU's authority to enforce the law is clear and unassailable."

In its first year, the Tenant Protection Unit mainly conducted audits, looking at landlords who failed to file registration forms. It also asked landlords to document their spending on vacant-apartment improvements. In the past, landlords had to provide such documents only when a tenant filed an objection. The result, the unit said in a June news release, was to add back 20,000 apartments in 2,000 buildings to the rent-stabilized rolls.

Landlords said much of that gain was because of clerical errors being corrected that didn't change rents paid by tenants.

Mitchell Posilkin, general counsel to the Rent Stabilization Association, a landlord group, said the review of renovations of vacant apartments was arbitrary and snared smaller landlords, who sometimes worked with contractors without formal record keeping.

A spokesman for the Tenant Protection Unit said owners had 30 days to respond to an audit, and the responses were reviewed before the unit "issues its final determination and demand for compliance." It said it follows existing guidelines and case law in reviewing apartment improvements.

Last week, Mr. Cuomo said the unit issued a broad subpoena into all buildings owned by Yeshaya Wasserman, who was facing complaints from tenants at Homewood Gardens on the border of Crown Heights and Flatbush.

Tenant Marquette Bell, a military veteran, said residents were concerned about an influx of new tenants from outside the neighborhood who were paying much higher market rents in apartments that were deregulated after renovation.

Mr. Wasserman didn't respond to requests for comment.

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