Protracted Rent Control War Takes Toll on Housing Stock

SUMMARY: Cities contend that rent control protects poor tenants from escalating rents in a tight housing market. But several studies indicate that the controls worsen the shortage, deteriorate the rental stock and incite warfare between tenants and landlords. A landlord in San Jose, Calif., is challenging the city's rent control law in the Supreme Court. The decision could affect landlords in 200 cities.

Red Robinson, an 87-year-old Harlem landlord, sits in a ramshackle office on 144th Street off Adam Clayton Powell Boulevard. He has been sent to jail three times — once for 30 days — for failing to supply heat to squatters in the burned-out building he owns next door.

"The judge strictly told me that regardless of who it is, I'm supposed to give them heat and hot water," says Robinson. "I can leave from here tonight and nail up the doors. I'll come back tomorrow morning and somebody's done moved in there. And I'm supposed to take care of them." Robinson, who estimates he has spent more than $40,000 heating the building over the past two years, is near bankruptcy.

Down on Mott Street, in Chinatown, John and Denise Casalinuovo are on the verge of losing, for delinquent interest on taxes, their 35-unit apartment house. They came from Colorado five years ago to rescue the building for John's father. Casalinuovo, a steelworker who moonlights as a boiler repairman, last year lost $11,000 on it. By law, rents on 17 units are less than $100 a month; only four tenants pay more than $200.

Neither Casalinuovo nor Robinson can sell their property at anything but a loss. Both blame New York City's rent control.

They might look west for succor. There a landlord is once again taking rent control before the U.S. Supreme Court. At issue in Pennell vs. City of San Jose, Calif., is whether the city can force landlords to subsidize low-income tenants by tying rent increases to tenant incomes. The decision could affect landlords in some 200 cities — mostly in California, New Jersey and New York. Cities contend rent control protects poor tenants from escalating rents when housing is in short supply. But study after study indicates that what results is a worsening shortage, a deteriorating rental stock, declining property tax revenues, an immobilized tenantry and warfare between landlords and tenants. The tighter the controls and the longer they are in place, the more pronounced these effects.

New York provides a striking illustration because its controls are among the nation's oldest and strictest. The city has the nation's lowest rental vacancy rate, yet the state ranks last in rental housing starts per capita. Owners abandon some 2,000 dwelling units a month — a loss of nearly a quarter-million units over the past decade. Some estimates put the figure at twice that. Swedish economist Assar Lindbeck wrote in 1971: "Next to bombing, rent control seems in many cases to be the most efficient technique so far known for destroying cities."

Ostensibly aimed at helping poor tenants, rent control seems to proliferate in cities with large proportions of middle- and upper-income tenants. Beverly Hills, Santa Monica, Berkeley, Palm Springs and Los Gatos, all prosperous California cities, control rents. So do many of New Jersey's affluent suburbs. "Clearly, the major beneficiary is a population that is firmly entrenched in the middle class," says a study by Richard Devine of the Center for Community Change in Oakland, Calif.

Economists note that the housing shortages which are used to justify controls rarely existed before the controls; where they did, restrictive municipal zoning laws were often to blame. More commonly, controls are remnants of national price and wage freezes. The World War II price freeze gave birth to New York's laws, which then splashed over to New Jersey. Migrants carried them to a handful of cities in Massachusetts and Connecticut. Many of California's rent laws appeared just after President Nixon's price controls. The rest of the country is by and large free of them.

Rent controls subsidize all tenants, rich and poor, as long as tenants stay put. People who move a lot benefit least, especially newcomers and the poor. Berkeley's law, for example, was supposed to aid university students; now many students no longer can find housing in Berkeley. Since the city adopted controls in 1979 it has lost more than 4,000 rentals, a 20 percent decline in its stock. "That's a municipal disaster," says Martin Overstreet, a Berkeley attorney who represents landlords. "It's the legislative equivalent of shooting yourself in the foot."

The accounting firm Arthur D. Little Inc. found that in New York City, upper-income tenants each year are spared $500 million via rent regulation; lower-income tenants are spared $110 million.

RICK BROWNE / PICTURE GROUP / FOR INSIGHT

A building under rent control in Berkeley, Calif., where law has cut rental supply

NIK KLEINBERG FOR INSIGHT

Red Robinson, a landlord in Harlem, is struggling to maintain his property.

Controls transfer income and property rights from landlords and new tenants to tenants who happen to be renting when controls first take effect. In time, the value of those rights can soar. For example, tenants enjoy "insider prices" if they buy their apartments in a condominium conversion. In New York, insider prices represent about a 50 percent discount to tenants, who then can capitalize on their lease rights by selling at full market value. Or landlords simply buy out tenants.

In Berkeley those payments can routinely run $10,000 or more; in New York, more than $40,000. One tenant, a banker, told The New York Times: "I couldn't be happier — paying an artificially low rent and then having the opportunity to buy at a below-market price."

Black markets develop. New tenants pay "key money" to old tenants to sublet at the regulated rent. Or the original tenants sublet at market rents and pocket the difference. New tenants shoulder higher rents to offset the building costs that existing tenants do not pay. "It's horrible," says a woman who moved to New York from Oklahoma. She and her husband paid $4,000 in broker fees and key money the last time they moved. "We'll never leave this apartment as long as we're in New York." She is not alone. Single tenants cling to three-bedroom apartments because they cannot afford to move, while families squeeze into one-bedroom units for the same reason. Newcomers find little available. More than 85 percent of the New Yorkers in rent-controlled apartments have not moved in 15 years. Casalinuovo says one tenant who pays $42 a month in rent uses his apartment for storage.

Market rents soar as controls create their own housing shortage. Investment evaporates. "What bank in its right mind is going to give you money?" asks Ed Santiago, a developer in Jersey City, N.J. "How are you going to pay it back?"

Daniel Rose, head of the housing committee for the Real Estate Board of New York, says the city's credibility with investors is zero. Rental housing is too great a risk. "The city is awash with money. The pension plans, the banks, the insurance companies are happy to lend on office buildings, hotels, shopping centers," Rose says. "They are not interested in lending on rental housing." In Santa Monica and Berkeley, notes Devine's study, "the private sector has, for all practical purposes, abandoned new rental housing construction."

Legal rent increases in many cities fail to keep up with even operating expenses. Average rents in New York in 1983 were $78 a month below such costs, according to the Rent Stabilization Association. Owners become strapped. They stop investing capital and start cutting maintenance. Roberta Bernstein, president of the Small Property Owners of New York, tells of a building she owned in Chelsea, south of midtown Manhattan, whose four-bedroom apartments rented for $150 a month. "The tenants get a rent increase and they say, 'I'm not paying this. I want a paint job; I want a new window.' They want to make sure I put the big $14-a-month increase into a $1,000 paint job. You're forced to do patchwork maintenance."

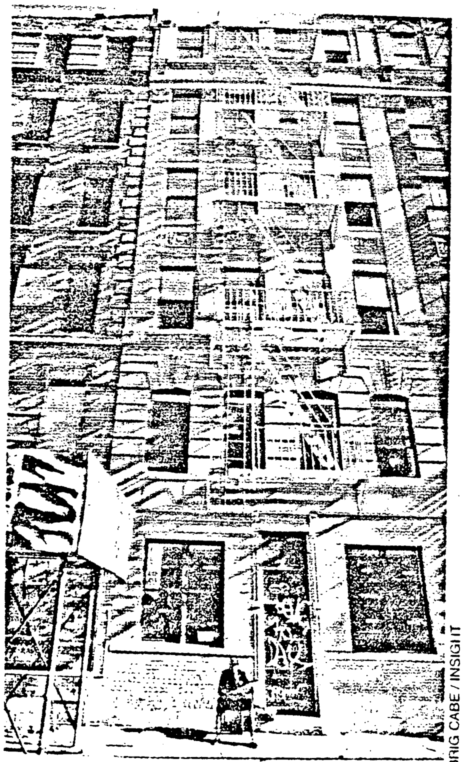
Tenants commonly perceive landlords as being rich. "My landlord's making more money than I'll ever see in my lifetime," says one who pays $155 for a two-bedroom apartment on Manhattan's Upper East Side. "I mean, he's the landlord. He owns property." Yet more than 80 percent of New York's rental market is owned by small landlords, and 64 percent of those are just breaking even or losing money. Bernstein says a quarter of her group's 1,000 members earn less than half their tenants' incomes. "On 10 apartments you might make $50 per apartment. That's $6,000 a year," says Teddy Hwang, a Jersey City landlord. "Then you have to go to church every day to pray that . . . nothing goes wrong, that the tenant doesn't take you to court. Who can live on that?"

Housing courts and rent boards favor tenants; tenant activists often write the rent laws. One Berkeley landlord paid tenants $250,000 in an out-of-court settlement for imputed rent overcharges because the rent board recognizes no statute of limitations on tenant claims. Getting evictions, even when tenants do not pay rent, is difficult, often requiring going to court. "Even when you win, you lose," Hwang says. "One case dragged on two months. Then they move out, together with your rent, your fridge, break your windows. It's happened more than once. They even took the door with them. You wouldn't believe it. But how are you going to chase them?"

Bernstein tells of a pending nonpayment eviction she has filed that twice was thrown out of court, once on a technicality and once because the city lost the file. The tenant has since reported a violation: A window does not open and close smoothly. "Now what he's going to be doing is calling [the city housing agency] on a regular basis," she says. "If violations do not exist, he will damage the apartment, and we'll go to court. And you know what? The court's going to say, 'Make the repairs, you bad landlord, or we're going to put you in jail.' If he plays his cards right, he can live rent-free for two or three years and then vacate, and I can't do anything."

Legal aid lawyers have kept Casalinuovo in court for three years over a $16-a-month rent increase. Another tenant took him to court complaining that her $54-a-month rent was too high. Says Santiago: "You feel like it's a crime to own property, to be a landlord in this town. That's exactly the feeling you get when you're in court."

Once installed, controls are very rarely lifted. And they tend to get more, not less, strict because they build powerful political constituencies and generate a rental shortage. "The worse the shortage gets, the more desperate people become," says George Sternlieb, a housing expert at Rutgers-The State University in New Jersey. "People are terrified that if they fall off the


BRIG CABE / INSIGHT

New York's housing shortage is critical.

housing train, they'll never be able to get back on."

Peter Salins, chairman of the department of urban affairs at Hunter College in New York, explains that controls are politically popular because they aid a small group of tenants, while the damage is spread over the entire housing market. "People who benefit from legislation in a broad way are never grateful," he says. "The people that are harmed individually are incredibly bitter and retaliatory."

New York may soon give inheritance rights to regulated apartments. Condominium conversion restrictions are growing tighter. A judge in Jersey City recently upheld a city ordinance ordering landlords to rent their units; they cannot keep apartments vacant. "Getting something for nothing has replaced baseball as America's national sport," observes Sternlieb.

In the meantime, New York's housing shortage is reaching monstrous proportions. Mayor Ed Koch has responded with a $4.5 billion housing proposal. The city also aims to seize up to 12,000 occupied apartments in Harlem for back taxes to house the homeless now living in hotels, according to the New York Daily News.

The city already manages some 45,000 confiscated units. Once the city owns a building it lifts rent control and waives property taxes; in other words, New York refuses to apply the same rules to itself that it applies to landlords.

As private landlords flee the market, experts see pressure building for more public housing. "In Santa Monica, no one will build," says economist Anthony Downs of the Brookings Institution. "That leads to pressure to do something else, and that something else is public housing."

But landlords contend they can house people far more efficiently — if cities would let them. "Believe me, the government can never run a building the way I run it," avers Hwang. "It's only the small landlords like us who can produce housing for regular people. We can do that because we do a lot of the work ourselves. For me to keep a welfare family, if they pay me $500 a month, I can make a profit. They won't let me do that. They'd rather pay $32,000 for a hotel, or limit my income by saying, 'You rent to the same welfare people, but you're only allowed to charge $300.' "

Legal scholars doubt the courts will overturn rent controls, regardless of the outcome of the San Jose decision. Governments enjoy broad powers over property rights when the public good is deemed at stake. The Supreme Court in 1921 ruled rent control constitutional, citing "a public interest so great as to justify regulation by law." As Stephen St. Hilaire, a Hudson County Legal Services lawyer, put it for a Jersey City newspaper: "Private property has a social mortgage attached to it."

But economists say such thinking rests on false premises. "It would be one thing to trade property rights for a clear benefit," Salins observes. "But to trade property rights for a mess of potage is an entirely different matter. The courts have to be persuaded that the advertised benefits are not there." Eventually the issue may disappear along with landlords. "It's almost as if as a group they're being legislated slowly and surely out of business," says Daniel Berke, a New York real estate appraiser. Landlords who stay hope for condominium conversion, which is usually the only profitable way out. Rent-controlled property sells at a fraction of its unregulated value.

Red Robinson struggles to hang on to his Harlem property — a gift from an old employer for whom he worked as a plumber and handyman for 23 years. "In 1981, I was worth something like $90,000," he boasts. Now, "I ain't got $10 in the bank." He owns seven buildings, where tenants pay as little as $55 a month for five rooms. "I don't make a nickel out of it," he says. Still he refuses to sell. "If I give it up, it might be the last of me."

— Carolyn Lochhead

Luxury Spending Among Renters

The California cities of Santa Monica and Berkeley adopted two of the strictest rent control laws in the country on the grounds that they would protect the economically vulnerable. Santa Monica specifically cited "the poor, minorities, students, young families and senior citizens" as beneficiaries of rent control.

Yet a study by Richard Devine of the Center for Community Change, a group that describes itself as "dedicated to the empowerment of low-income and minority persons," found that residents of both cities spend unusually large sums on luxuries. Devine found that per person, Berkeley residents spent 310 percent more on gourmet foods than did other Californians. Santa Monicans spent 95 percent more on restaurant dining.

On sporting goods, books, jewelry, cameras and so on, per person spending was 191 percent higher in Santa Monica and 169 percent higher in Berkeley than in the rest of the state. Spending in radio, television and music stores was 204 percent higher in Berkeley and 161 percent higher in Santa Monica, Devine found. "Not even in such notorious centers of wealth as Orange County or Santa Barbara did per capita expenditures for truly discretionary consumer items like liquor, radios and televisions and miscellaneous goods equal those recorded in Berkeley," he said.

Devine cited a 1985 letter to The Wall Street Journal written by Marty Shiffenbauer, an architect of Berkeley's ordinance: "Berkeley's rent controls, in existence for seven years, have produced some unanticipated benefits for the city's retail and restaurant trade. Many of these businesses have experienced remarkable growth since the advent of rent controls."

Devine says Shiffenbauer's diagnosis is correct but adds, "One must question whether it is an appropriate use of public power to subsidize the purchase of stereos and jewelry and the consumption of liquor and gourmet cuisine; and whether the stated purpose of rent control can be better and more directly accomplished by measures that are free of such unwarranted externalities." ■

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Comm. from Joseph E. Connarton, City Clerk, transmitting for informational purposes a copy of an article from Insight Magazine entitled "Protracted Rent Control War Takes Toll On Housing Stock".

In City Council,

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