

Rent Regulation: Buying Into the Rhetoric

By Timothy L. Collins

The Citizens Budget Commission has issued a strategically timed report to persuade state legislators to continue the dismantling of New York's rent protection laws over the long term.

Despite its title, "Rent Regulation: Beyond the Rhetoric," the CBC report peddles the same discredited "subsidy" rhetoric the real estate industry cooked up over two decades ago – the notion that rent regulation is a flawed system of tenant subsidies.

In fact the history of rent regulation in New York City and State makes clear that it is not properly seen as a subsidy program at all. Rent and eviction regulation is a system of protections designed to preserve economic fairness, and to prevent disruption and dislocation, in a market where chronic shortages allow landlords to exert excessive bargaining power. Because this market failure affects all tenants, rent regulation should not be targeted by income.

Stable housing markets are needed for all income groups, particularly when one considers the probable consequences of allowing landlords to fully exploit the ongoing shortage: the displacement of families rooted in neighborhoods, schools, civic and religious organizations, and the gradual balkanization of the city into homogeneous class enclaves.

Rent regulation cannot guarantee an affordable home for everyone, but it has certainly limited the kind of disruption that the shortage would otherwise inflict.

The CBC report does not advocate a complete end to rent regulation. Rather, it recommends accelerated deregulation through the removal of high rent/high income units from coverage – removal that the CBC acknowledges has already resulted in the loss of over 117,000 regulated units since 1994.

This would take rent regulation in the wrong direction. It would exacerbate, not reduce, the general problem of rent profiteering in the face of an ongoing housing shortage.

Until about 20 years ago it was widely understood that the purpose of New York's rent regulation system was to eliminate the ability of landlords to exploit the ongoing housing shortage by charging excessive rents – regardless of tenant income.

Since then, a growing number of elected officials, editorial writers and policy analysts quietly discarded this “fair rent” objective of the system and bought into the notion that tenants in rent regulated apartments are the beneficiaries of subsidies paid for by their landlords.

The CBC participated in this paradigm shift in its 1991 report describing rent regulation as a subsidy system. This study, along with an earlier one commissioned by the Rent Stabilization Association (the city’s largest landlord group), influenced Albany lawmakers who, in 1993, adopted a means test for a narrow slice of rent regulated tenants who earn over \$250,000 per year (later lowered to \$175,000) and reside in apartments renting for more than \$2,000 per month.

Following the enactment of the 1993 law, John Gilbert, then head of the RSA, was quoted as saying “[t]he biggest victory here is that people have finally acknowledged that rent regulation is a subsidy.”

Daniel Margulies, the head of another landlord group, the Community Housing Improvement Program, was equally explicit: “they have applied a means test and exposed the system for what it is, a subsidy system.”

But the idea that rent regulations were designed to secure “fair” rents and to control profiteering is evident from the history of New York’s responses to its chronic housing problems. New Yorkers struggled with rent gouging and dangerous housing conditions throughout the 19th and early 20th centuries.

In the 1920s rents were regulated for the first time even as tenant incomes grew and new construction hit record levels, eventually lifting vacancy rates to unprecedented levels which allowed a phasing out of controls by 1929.

Why did the state see fit to regulate rents and evictions as we entered the Roaring Twenties? The answer is simple. Vacancy rates fell below 1 percent from 1920 to 1924. With such strong demand for apartments, landlords exerted abnormal and excessive bargaining leverage and thousands of tenants were evicted when they protested. Tenants – at all income levels – demanded protections against rent gougers.

During World War II, the Roosevelt administration implemented federal rent controls as part of a larger effort to curb wartime profiteering, to eliminate unfair market advantages bestowed upon landlords by the decline of new housing starts during the war – not to subsidize the poor.

Similarly, in the late 1960s when the production of new apartments stalled due to a zoning change and rents shot up in newer post-war buildings, rent stabilization was adopted to counter the new-found market power of landlords who owned those buildings. This expansion of regulation protected the newest and previously uncontrolled class of housing in the city – occupied by its more affluent tenants.

Beyond asking us to buy into the “failed subsidy” rhetoric, the new CBC report makes several myopic and unfounded assumptions about the impact of rent regulation.

We are told, for example, that an end to rent regulation would result in an increase of \$283 million in property tax revenues for the City. Nowhere is there an explanation of what will happen to the local economy when the rent increases needed to cause this jump in tax revenues are imposed on tenants.

The CBC proposals project that an expansion of current deregulation provisions will actually lift rents among deregulated units by over \$2.5 billion. This will cause a massive shift in local consumption patterns. As rents go up tenants will have less to spend in local restaurants and shops, but landlords are more likely to invest their windfalls in T-Bills or hedge funds. Under the CBC recommendation, local economic activity is likely to decline and sales tax revenues will suffer. This impact is neglected in the report.

CBC further informs us that with deregulation, rents in unregulated apartments will actually fall by an aggregate of some \$1,872 million (thus partially reversing the transfer to landlords). This assumption lacks credibility. According to the 2008 Housing and Vacancy Survey there is a 4.7 percent vacancy rate among unregulated apartments – more than twice the 2.14 percent vacancy rate among rent stabilized units.

With a relatively large vacancy rate, unregulated apartments are already at or close to market rents. Deregulation is likely to send formerly regulated tenants displaced by large rent hikes shopping in the broader market of unregulated apartments and inflate rents there. There is no good reason to assume, as the CBC does, that rents in the current unregulated sector will fall if rents are deregulated elsewhere.

Further, we are warned by the CBC that rent regulation causes distortions in the allocation of apartments. This echoes the old criticism that rent regulation promotes underutilization of units – with countless individuals rattling around huge empty dwellings. But the report quietly admits that the one million rent stabilized tenants use their units most efficiently

with a lower average number of rooms per tenant (1.49) than their unregulated neighbors (1.67).

The CBC report draws attention to rent controlled apartments where underutilization is clearly present – no surprise, given that the median age of these tenants is 70, and that elderly people often live alone. But a 1999 report by the City’s Rent Guidelines Board found that single elderly tenants in non-regulated units underutilize their housing in greater numbers (43.5 percent) than those in rent controlled (34 percent) or rent stabilized (24 percent) units. So even in the dwindling rent controlled sector – there are fewer than 40,000 left in the city – our rent laws result in favorable patterns of housing utilization.

The main problem with the CBC analysis rests upon the notion that rent regulation produces subsidies for tenants – subsidies that, they argue, should be targeted through universal income tests.

If New York lawmakers want fair, stable rents for tenants in an overheated rental market, it is well within our history and traditions to use regulation for that purpose. As a strategy to control profiteering and to stabilize our neighborhoods – by protecting tenants from all economic backgrounds – rent regulation has proven to be effective and worthwhile. Economic data on building profitability has repeatedly demonstrated that it is also fair to owners.

The carefully engineered rhetorical transformation of New York’s “fair rent” system to a “subsidy” system by the real estate industry should not mislead lawmakers into further dismantling the last protections tenants – of all incomes – have against unwarranted profiteering.

To the contrary, a correct policy analysis should lead to repeal of the various decontrol mechanisms that have been enacted in recent years, and re-regulation of the units that have been removed from affordable rent-regulated status.

Timothy L. Collins is a partner in the law firm of Collins, Dobkin & Miller. He served as Executive Director of the New York City Rent Guidelines Board from 1987 through 1994. He is the author of *Fair Rents or Forced Subsidies, Finding a Regulatory Taking Where Legal Fictions Collide*, 59 Albany Law Review 1293-1319 (1996).

Timothy L. Collins
(212) 587-2407
Tcoll378@aol.com