We have lived in our loft apartment in lower Manhattan for over 26 years, and filed our application for Loft Law coverage almost 5 years ago. Our application for a determination as to whether we are entitled to Loft Law coverage is still pending. We have been left without recourse against the landlord’s harassment because there is no effective forum or mechanism available that actually gives relief to tenants who are in the situation of living in what is designated in the City’s records as a commercial building, yet living there residentially while their rights are determined. In short, there is a complete disconnection between the existing laws and the available means for enforcement and relief under them.

We ask that the Loft Board’s Rules be amended to allow the Loft Board to hear these claims, or that it expressly state, very clearly for the courts exactly the rights, protections and minimum housing standards that apply to tenants who have received a docket number from the Loft Board (but who cannot yet say they live in an Interim Multiple Dwelling and who do not have a lease that specifies residential use).

The existing Multiple Dwelling Law section 282-a provides that: *“Where any occupant has filed an application for coverage pursuant to this article and has received a docket number from the loft board, it shall be unlawful for an owner to cause or intend to cause such occupant to vacate, surrender or waive any rights in relation to such occupancy, due to repeated interruptions or discontinuances of essential services, or an interruption or discontinuance of an essential service for an extended duration or of such significance as to substantially impair habitability of such unit, at any time before the loft board has made a final determination, including appeals, to approve or deny such application. \* \* \* In addition to any other remedies provided in this article for failure to be in compliance, in article eight of this chapter, or in the regulations promulgated by the loft board, an occupant who has filed an application with the loft board for coverage under this article may commence an action or proceeding in a court of competent jurisdiction, which notwithstanding any other provision of law shall include the housing part of the New York city civil court, to enforce the provisions of this section.”*

Most unfortunately, our experience has shown that even though this is the law, the building owner has freely engaged in multiple and severe cases of harassment, but because our case is still being adjudicated in OATH, we have been in an extended state of limbo in which there is no forum for us, no place for us to turn for enforcement of the rule against harassment of tenants; we have been left stranded with no remedies. We have continually experienced harassment from the building owner. We have attempted to obtain relief from Civil Housing Court and Supreme Court, with very little success, and at great expense.

During the pendency of our application, our landlord has continuously harassed us, including cutting off our gas service for years, falsely filing Tenant Protection Plans in connection with gas restoration stating that there are no residential tenants, removing our front door, changing the locks without prior notice, installing noisy tenants in neighboring commercial spaces with the expressly stated purpose of disturbing our use of our apartment, and making complaints to City agencies in an attempt to obtain enforcement actions against our residential apartment of the commercial regulations that currently apply to our building, which is currently still designated as a manufacturing building.

While the text of the law states that once we receive a Docket Number we can go to the Housing Part of the NYC Civil Court, in reality this is not true. We do not have a residential lease. The Housing Court enforces housing standards in residential landlord/tenant cases and does not view us as residential until the Loft Board says we are. The Housing Court has a binary view of its cases: either they go to the residential part or the commercial part. The housing court actually would not even accept the filing of our papers, and we were told that this was for the Loft Board to hear. In the Supreme Court, without an express statement in the law as to what would be considered an “essential service” in a commercial space with a commercial lease being residentially inhabited without a current IMD determination, the court had problems determining what rights we actually had as tenants and with regard to housing standards that it could enforce against the landlord. The Supreme Court stayed the case pending the Loft Board’s determination of our application, again leaving us without any actual protection or relief from the landlord’s harassment. This is not what Multiple Dwelling Law 282-a intended.

I request that the Loft Board’s Rules be changed to include provisions aimed at bridging the disconnection between the clear intention of the laws that have been enacted to protect tenants with pending applications and their ability to obtain relief. I ask that the Loft Board’s rules need to expressly provide a forum to allow the Loft Board to hear these harassment complaints. The Loft Board Rules also need to include a very clear and express statement for the courts to rely upon as to what an “essential service” is with regard to a commercial unit being inhabited residentially (and often without a residential lease), which unit has not yet been determined to be an interim multiple dwelling, so that the courts can know exactly what rights are afforded to a tenant who has obtained a docket number and then apply those standards and enforce them in the courts.

Also, the Housing Court’s rules should have a requirement that harassment cases brought under Multiple Dwelling Law section 282-a by tenants who have obtained a Loft Board docket number must be heard in the residential landlord/tenant part of the court.

Without these amendments, for residential tenants who have received a docket number and are awaiting final determination of their Loft Board coverage applications, Multiple Dwelling Law §282-a is just a meaningless piece of paper, which does nothing to actually provide relief.