



December 12, 2025

**Testimony Submitted in Relation to the New York City Department of Housing Preservation and Development Proposed Rule: Tenant Right of First Return to Basement or Cellar Residence Following Alteration to Achieve Compliance.**

Dear New York City Department of Housing Preservation and Development:

My name is Bianca Zarate-MacPherson, and I'm a staff attorney at Queens Legal Services which is a member of the BASE coalition. Our office provides legal advice and representation to tenants facing eviction or harassment from their landlords, including working with tenants in the Queens County area who live in basement apartments. It is from these experiences that we provide this testimony in relation to the HPD proposed rule: **Tenant Right of First Return to Basement or Cellar Residence Following Alteration to Achieve Compliance.**

It is apparent that New York City has a housing crisis, and a major factor in this crisis is affordability. Because so much of New York City's housing stock is unaffordable, many tenants turn to basement apartments as a last resort because they are often more affordable than other types of housing. Additionally, in Queens, where there are many more small landlords who own two- and three-family homes as compared to skyscraper apartment buildings like you may find in Manhattan, basement apartments are a way to expand the limited affordable housing stock. But let's be clear: the financial affordability of these basement apartments often comes with a high price of living in hazardous and risky conditions.

Many tenants who live in these basement apartments face hazardous conditions such as mold, pest infestations, water leaks, flooding, and other conditions dangerous to the tenant. We've seen how dangerous it can get for these tenants in the news, especially when Hurricane Ida hit New York City. See [Queens Eagle 'Unimaginable loss': Eleven from Queens die in storm](https://queenseagle.com/all/unimaginable-loss-eleven-from-queens-die-in-storm), dated September 02, 2021, available at <https://queenseagle.com/all/unimaginable-loss-eleven-from-queens-die-in-storm> (last visited on December 11, 2025). Still, it is difficult to get violations placed or to hold the owner accountable.

The biggest risk these tenants face is an eviction either by a landlord commencing an eviction proceeding in court or a vacate order from the city. I've spoken to tenants in situations where they are facing severe repair issues or harassment, and they fear that, if they complain to the owner of the house, then either their rents will increase to an amount they can no longer afford; the owner will refuse to extend their lease; or the owner will start an eviction proceeding against them.

These tenants also fear the option to call 3-1-1 to complain about conditions in their apartments in need of immediate repair because it might annoy their landlord, who could then

retaliate against them with harassment or an eviction proceeding. It also can be a burden on the tenant because they don't want to miss work to wait for an HPD inspector to come, or, if the inspector does come, the inspection could lead to an order to vacate the apartment if it is not up to code. In other words, they fear the risk of losing their home.

It's a relief to be here today and see that the City is taking action to address these issues, and we appreciate the opportunity to comment.

First, the proposed rule regarding a tenant's relocation add a burden to tenants and risk the loss of their home. In Section 65-03 (a): Owner Notice to Tenant of Right of First Return requiring tenants to be responsible for their relocation if such relocation is necessary is a detrimental burden for these tenants. Many of these tenants have low or moderate incomes, live alone and have no family to depend on for support, or have a family that lives with and depends on them. For these tenants, it is extremely difficult to find another apartment or temporarily relocate because they cannot afford to pay for moving services, much less rents in more convenient, standard apartments. These tenants should not be expected to be solely responsible for their relocation and must be provided with assistance. Without any assistance, the City risks contributing to the housing crisis.

Additionally, the 30-day notice provided in subsection (c) of this rule does not allow tenants enough time to plan for their relocation. Most tenants who face evictions after losing a court proceeding have a hard time finding a new place to move to which they can afford. Our job is to explain this to the judge and ask, in many cases, more than 30 days.

It follows that Section 65-04: Tenant Disqualification From Claiming Right of First Return only penalizes tenants who understandably struggle with relocation. The rule states that tenants who do not vacate, and has not obtained written approval from the owner of an extension of time to vacate, forfeit their right of first return. As explained, it is not a light process for tenants living in basement apartments to relocate when they face evictions through a vacate order or an eviction proceeding, and it should not be expected to be a light process throughout the execution of this program. Tenants should not be penalized for this burden and instead be provided support from the City.

Second, even if a tenant is able to move out or relocate, they still face a severely complicated situation under the proposed rule regarding tenant's notification of their intent or interest in their right to return. In Section 65-05 – Owner's Notice to Tenant of Ability to Return to Residence and Tenant's Responsibility to Respond, the tenant must provide the owner notice of their intent of returning to their home within 30-days of receiving notice from the owner about the anticipated date to return to their home. I've spoken to tenants who had to vacate their apartments due to a vacate order when the City discovered an apartment was not up to code. Some of those tenants moved to shelters and fell out of communication with our office due to leaving the borough, having longer commutes to work, and/or spending more time searching for a new place to live, while others just gave up and moved out of New York. For these tenants, the 30-day requirement may not be enough time to locate a tenant and have them provide the owner notice. Forfeiting their right of first return as a result only serves to penalize them for the hardships they are enduring because of the relocation.

Third, the proposed rule regarding the definition of a tenant may exclude many tenants from exercising the right to first return. In Section 65-01: Definitions, “Tenant” is defined as an individual whom had been renting “as of” April 20, 2024. This reads that tenants eligible for the right of first return must have been in the basement apartment since April 20, 2024. We understand that this stems from state and local law, but it should be noted that basement apartments frequently have tenants who move in and out of these apartments because of the hazardous and risky conditions they contain. There are many tenants who moved to the basement apartment after April 20, 2024 and may not be eligible for the right of first return.

Finally, the proposed rule does not address the affordable housing issue. While it is important that owners provide tenants with a lease under Section 65-05: Owner’s Notice to Tenant of Ability to Return to residence and Tenant’s Responsibility to Respond, it does not take the opportunity to ensure housing stability. We’ve seen programs like 421-a, J-51 or other rehabilitation programs where the city provides financial support for bringing buildings up to code compliance with massive building structures and repairs in return for housing stability such as regulatory agreements requiring owners to offer rent stabilized or affordable leases. While we understand that there may be legal constraints here, we must acknowledge that the City has a great opportunity to explore and do the same for these tenants.

To conclude, tenants living in basement apartments turn to living in these apartments because they are typically more affordable than other housing options. We cannot expect tenants to afford relocations without any assistance, and to easily continue communications after relocation. It’s not feasible, and the tenants should not be penalized for it. The concept of the proposed rule can help many tenants in Queens County, we just ask the City to take note of these experiences when further discussing their rules.