

Tenant Experiences at Linden Plaza

ABOUT THE AUTHORS

The *Linden Plaza Leaseholder's Tenant Association Council* represents the 1,500-plus households that reside at Linden Plaza, a Mitchell-Lama development that has seen drastic rent increases over the past several years. The 26-member Tenant Association Council has worked tirelessly to fight back against the landlord, as well as the federal and city agencies responsible for their plight, while building knowledge and power within their community.

With community residents leading the way, the mission of *Cypress Hills Local Development Corporation (CHLDC)* is to build a strong, sustainable Cypress Hills and East New York, where youth and adults achieve educational and economic success, secure healthy and affordable housing and develop leadership skills to transform their lives and community. The Tenant Organizing and Counseling program helps residents of Cypress Hills and East New York meet their needs for healthy, safe, affordable housing.

The *Community Development Project (CDP)* partnered with the Linden Plaza Leaseholder's Tenant Association Council and CHLDC to conduct this research. CDP provides legal, participatory research, and policy support to strengthen the work of grassroots and community-based groups in New York City to dismantle racial, economic, and social oppression. CDP's Research and Policy Initiative partners with and provides strategic support to grassroots community organizations to build the power of their organizing and advocacy work. We utilize a participatory action research model in which low-income and excluded communities are central to the design and development of research and policy.

INTRODUCTION

The Deregulation and Conversion of Mitchell-Lama Units

Article 2 of the New York State Private Housing Finance Law, known as the Mitchell-Lama Law, was enacted in 1955 to accommodate the housing needs of middle income families. The Mitchell-Lama program spurred the creation of nearly 70,000 middle-income rental units by incentivizing developers with cheap land, low-interest financing of up to 95% of development costs, lucrative tax abatements, and the ability to opt out of the program after as few as 20 years.ⁱ Mitchell-Lama owners agree to a limit on their profit and to charge rents significantly below the prevailing market rate for the area, with the ability to enact rent increases based on operating expenses.ⁱⁱ Owners also agree to be under the supervision of New York State's Division of Homes and Community Renewal or New York City's Department of Housing Preservation and Development.

In addition to the New York State law, federal mortgage laws also govern some Mitchell-Lama developments. Federal housing programs created under the 1937 National Housing Act provided decent and safe rental housing for eligible low-income people. One of those programs was the Section 236 Program. Some Mitchell Lama developments chose to participate in the Section 236 mortgage Interest Reduction Program (IRP), providing an added benefit of offering even lower rents to those in their Mitchell-Lama developments.ⁱⁱⁱ

Now, nearly half of Mitchell-Lama rental stock has been lost, with many units leaving the Mitchell-Lama program, converting to market rents, and becoming completely deregulated.^{iv} Mitchell-Lama developments fully occupied before January 1974 were fortunate to enter into rent stabilization after leaving the program, with the units in those developments receiving the protections of rent stabilization and below-market rate rents.^v In 2004, the state revised Mitchell-Lama to make sure that, when Mitchell-Lamas are preserved, tenants are not footing the bill through rent payments, for the landlord's cost of obtaining financing.^{vi} However, some New York City Mitchell-Lamas were converted to market rate rents, while still in the Mitchell-Lama program.

The Mitchell-Lama units of both New York City's Housing Preservation and Development (HPD) and the state's Division of Homes and Community Renewal (DHCR) have been heavily criticized by advocates, elected officials, and the media for their failure to enforce rules regarding financial reporting, rent increases, and for the lack of any clear process to address tenant grievances and complaints.^{vii}

Linden Plaza: Mismanagement, Lack of Oversight, Tenant Displacement and the Power of Tenant Organizing

At Linden Plaza, which with 1,525 units is the largest remaining City-managed Mitchell-Lama rental complex in Brooklyn,^{viii} **tenants have suffered for years from R.Y. Management's negligent business practices, and from HPD's insufficient oversight.** Many of these problems date back to 2008, when, following a refinancing of the building's mortgage, HUD approved and HPD implemented an astonishing 93% rent increase.^{ix} Some refinanced Mitchell-Lama developments are insured by HUD under the National Housing Act, and HUD exercises oversight over these developments. However, for other developments that are assisted by the federal Section 236 mortgage Interest Reduction Program but *not* insured under HUD, HUD plays a limited role, and there is a lack of clarity in the regulation and oversight structures.^x Speculators can exploit these deficiencies in regulations to acquire developments and increase rents above market levels while the projects are still in the Mitchell-Lama program. Linden Plaza is one of those unfortunate developments. During the refinancing process, Linden Plaza was newly designated as a market rate / low income housing tax credit development, and tenants saw their rents increase astronomically.^{xi}

Many long-term residents had no choice but to flee their homes in order to escape the drastic rent increases. Many more tried to keep up with the new rent burden, but were eventually evicted after

falling behind.^{xii} Meanwhile, tenants continued to complain about R.Y. Management's unscrupulous practices, like refusing to honor their leases, and adding fees and surcharges to their rent statements.

In June 2018, Linden Plaza ownership announced intentions to request another rent increase from HPD, citing the costs of vendors for various contracts as well as mortgage payments and other expenses.^{xiii} A recent report from the New York state Comptroller's Office found that a lack of oversight by HPD (and the fact that its rules only require contracts above \$100,000 to receive competitive and approved bids) allowed for \$10.7 million in unmonitored spending by Linden Plaza from January 1, 2016 through August 31, 2017.^{xiv} Had HPD exercised more scrutiny, there may have been significant cost savings, and less spending for the owners to attempt to pass on to tenants.

After the initial building refinancing and its impact on tenants, Linden Plaza Leaseholder's Tenant Association Council started working with community organizers from the Cypress Hills Local Development Corporation (CHLDC) to fight back. In 2016, with the help of CHLDC, the Tenant Association Council teamed up with Brooklyn Legal Services Corporation A (Brooklyn A) to address the many overlapping and complicated legal issues affecting tenants. In January 2018, represented by Brooklyn A, the Tenant Association Council and a number of individual tenants filed a Federal Lawsuit against HUD, HPD, and Linden Plaza Preservation (R.Y. Management), seeking relief for damages from alleged fraud, waste and abuse.^{xv}

With Linden Plaza Preservation/R.Y. Management and HPD continuing to deny any systemic wrongdoing, and disputing the negative impact that the 2008 refinancing had on tenants, the Tenant Association Council and CHLDC partnered with the Community Development Project (CDP) to initiate a participatory research project to document the issues at Linden Plaza, elevate tenant voices, and make the case that HPD, as a Mitchell-Lama supervisory authority, failed to maintain and pursue the Mitchell-Lama rent protections during the very questionable 2008 sale, acquisition and mortgage refinancing of Linden Plaza.

Our Research: Who We Surveyed and Demonstrating the Need for Oversight and Reform

We surveyed nearly two hundred of the tenants that remain at Linden Plaza to document the hardships they have endured to hold on to their homes (188 tenants). Nearly one quarter had lived in Linden Plaza 16 to 30 years (23%) and 47% had resided in Linden Plaza 30 years or longer. Of the households surveyed, nearly three-quarters made less than \$50,000 a year (72%), with more than a third making less than \$25,000 a year (39%). 19% of the respondents made more than \$50,000 a year. Nearly 83% of the tenants surveyed were Black and Latino, 85% were female and 13% were male. Almost half (47%) of tenants surveyed earned retirement income, including pensions, Social Security, and Workman's Compensation. About a quarter of tenants (23%) received SNAP benefits. The large majority of these low-to middle-income households had seen charges and fees added to their rent statements, many of which are permitted by federal laws but forbidden by state laws, leaving a lack of clarity in

regulations that can be exploited.^{xvi} They had also been subjected to repeated rent increases, with a third of tenants seeing their rent increase six times or more in the past ten years.

Two of every three tenants we surveyed had made sacrifices in order to continue to keep up with their rent. And while building management fails to address its tenants' concerns, it continues to pocket taxpayer-funded subsidies through regular and enhanced Section 8 and one-shot deals. A third of those surveyed received at least one of the New York City Human Resource Administration's "one shot deals" in the past ten years, and nearly one in ten received 3 or more one shot deals in the past ten years (8%).

While the City focuses its attention on building new affordable housing as a part of the rezoning taking place in East New York, already-existing, below-market housing is being eliminated from East New York and other re-zoned neighborhoods to the detriment of those communities. Our research demonstrates the damaging impact that HPD's lack of oversight has had on the lives of the tenants at Linden Plaza. It also directly contradicts R.Y. Management's/Linden Plaza Preservation's assurances that their business practices have done no harm to the residents of their buildings.

While our research shines a light on the consequences of allowing landlords to operate unchecked by regulation and oversight in just one Mitchell-Lama complex, it also poses serious questions about what the future holds for all the New Yorkers living in the nearly 30,000^{xvii} remaining Mitchell-Lama rental units throughout the City.

METHODOLOGY

Survey design

Our survey was designed through a participatory process by the members of the Linden Plaza Leaseholder's Tenant Association Council, the Cypress Hills Local Development Corporation, and the Community Development Project. The survey was translated from English into Spanish by CHLDC and was administered in both English and Spanish.

Data collection

The Linden Plaza Leaseholder's Tenant Association Council collected surveys from 188 tenant heads of household. The survey defined "head of household" as the person who holds the lease, or who manages the rent records and payments for the household. Participants who did not self-identify as the head of the household were excluded from the data. There are five buildings in the Linden Plaza complex, each of which comprises approximately 300 units, as well as 32 townhouses. Linden Plaza Leaseholder's Tenant Association Council volunteers recruited participants through a flyer campaign and through direct outreach, asking heads of household to attend one of several survey administration sessions in the Linden Plaza community room. The surveys were administered during these group sessions, with each participant marking the answers to their own anonymous survey as Tenant Association Council

volunteers answered participant questions. Following the group survey administration sessions, Tenant Association Council leadership also went door to door to tenants who were known to be homebound to administer the survey to them one-on-one. Surveying took place in February and March of 2018.

Background Research

CDP researchers conducted a review of relevant literature to provide an overview of the Mitchell-Lama program, a sense of how tenants and regulatory bodies are being portrayed in the news media, and to identify the policy solutions proposed by various stakeholders. In addition, legal research was conducted to outline the legal framework and regulations that govern the Mitchell-Lama program in general, and Linden Plaza in particular.

FINDINGS

The tenants we surveyed reported unrelenting rent increases from a management company that fails to adequately address their complaints. Tenants have been dragged through housing court, slapped with fees and charges that the law does not permit, and have sacrificed food, medical care, and quality of life in order to keep up with the heavy rent burden.

RENT INCREASES

- **The vast majority of surveyed households had seen their rent increase at least twice over the last decade.**
 - 54% had their rent increased 2-5 times.
 - Another 33% had their rent increased six times or more, including 8% who had seen their rent increase more than 10 times.

SACRIFICES

- **In the last 10 years, more than two thirds of surveyed households made at least one sacrifice in order to make their rent payments (69%).**
 - 45% borrowed money from family and friends to pay the rent.
 - More than one in three households surveyed (38%) had to cut back on food in order to pay rent.
 - 30% depleted their savings to make rent, and 14% depleted their retirement accounts to pay for their rent.
 - Surveyed tenants even sacrificed their own health in order to hold on to their homes, going without needed doctor's visits (16%) and prescription medication (16%).

HOUSING COURT

- **More than half of households surveyed (53%) had been taken to housing court for at least one reason over the last 10 years.**
 - Of those, nine out of ten (89%) had been taken to court for a non-payment proceeding.

CHARGES AND FEES

- **79% of households surveyed had charges added to their rent bills, and more than half have been more confused since 2008 about how much rent they are supposed to pay.**
 - While federal law permits adding fees and other charges, state law prohibits many of these fees. This leaves a lack of clarity in what is permissible that can be exploited.
 - 34% had charges related to repairs or replaced items.
 - 17% had charges related to legal matters (legal fees, court date change fees, dispossess notice fees, and warrant ordered charges).
 - 58% of respondents have been more confused since 2008 about how much rent they are supposed to pay.

SUBSIDIES

- More than half of the households surveyed (57%) relied on subsidies like Section 8.

HRA EMERGENCY RENTAL ASSISTANCE

- **A third of households surveyed were forced to use a “one shot deal” at least once over the past ten years to stay in their homes (33%).**
 - 15% needed more than one one-shot deal.

INTERACTIONS WITH MANAGEMENT

- **75% of respondents rated their interactions with development management as fair or worse.**
- **Nearly half of the respondents had filed complaints against management (48%).**
 - 35% of the respondents called 311.
 - 12% of the respondents filed with HPD.
 - 17% filed a complaint with management.

RECOMMENDATIONS

For Tenant Associations:

Strengthen tenant organizing and build tenant power.

- Join Tenant Advocacy groups to learn more and build a stronger Tenant Association Council.
- Advocate for outside assistance to help tenants.
- Forge relationships with elected officials, housing advocates, community leaders and legal organizations to learn more about the laws, the regulations and tenants' rights.
- Educate tenants about their housing rights – knowledgeable tenants know what to do when faced with the complex issues of housing.

For New York State and City Lawmakers:

Create enforcement mechanisms and means of redress for harms to tenants that have been overcharged.

- Lawmakers should introduce and support laws that will issue and enforce violations, fines, sanctions, and other penalties when owners and/or managing agents misrepresent the financial facts, misuse tenant rent monies, or intentionally overcharge tenants. Owners and managing agents should also be required to issue refunds/reparations for any and all portions of the misused or overcharged rental income.

For HPD and the New York City Comptroller:

Make the rent increase process more transparent and more accountable.

- **HPD should introduce an internal agency process that will allow individual tenants or the TA to review and challenge rent increases after HPD's Preliminary Analysis, including the ability to review and challenge HPD's official Recommendations and Findings Memorandum that is sent to the Commissioner.** Currently, individual tenants and/or the TA can only "comment" on or "challenge" the owner's rent increase application, as well as HPD's Preliminary Analysis. But the TA and the tenants have no idea what is stated in HPD's Final Analysis. Therefore, the TA should be permitted to review the Final Analysis, alternatively known as the Assistant Commissioner's "Recommendation and Findings," because it is this document that the Commissioner uses as a basis for his or her rent increase approval. Tenants and the TA should be permitted to internally challenge any rent increases approved by the Commissioner, prior to filing an Article 78 in New York state court.

- **The New York City Comptroller should exercise final approval of all HPD Mitchell-Lama increases, including those with HUD 236 IRP subsidies, and check for financial irregularities or violations of regulations and laws.** Currently, there are no unbiased third parties fact-checking an owner's rent increase projection or estimates or monitoring the feasibility and legality of HPD's rent increase approvals. The City Comptroller should have the power to deny any rent increases approved by HPD if the Comptroller finds financial irregularities in the owner's operating or capital budget projections and/or audit reports. The City Comptroller should also have the power to deny any rent increases approved by HPD if the Comptroller finds that the owner has violated Mitchell Lama rules, HUD 236, or local rent laws and regulations.
- **The City Comptroller should conduct an annual review for multi-phase rent increases.** After the Comptroller verifies and approves HPD's initial multi-phase (2 or 3 year) rent increase, the Comptroller should conduct an annual review for the remaining year(s) or phases of the rent increase to see if the finances of the development have improved, which would make some or all of the second and third phase of the rent increases unnecessary. In addition, HPD and/or the owner should forward verifiable invoices, receipts, contracts and other documentation to the Comptroller to support the first phase of the rent increase before allowing the owner to proceed with the second or third phases of the rent increase order.

Implement a more transparent and unbiased administrative review and appeals process.

- **Establish a grievance process for tenants or shareholders to file complaints against the owner or managing agent and HPD.** Currently, HPD's tenant and shareholder grievance process is incomplete and inadequate. An internal agency tracking, response, and filing system for complaints should be established. For complaints that are not for an individual tenant or shareholder's unit—such as suspicion of financial irregularities, lack of essential services, owner or management misconduct, or questionable rent increases— an individual should be permitted to file an anonymous complaint. Anonymous complaints should be investigated with the same vigor as a complaint filed by an individual who provides their name. For complaint decisions or agency decisions that are inconclusive, evasive or not satisfactory to the complainant, the complainant should be afforded the opportunity to request a review or appeal of the agency's findings and decision. That review or appeal should be reviewed by HPD's Commissioner and/or HPD's Legal Department, whereby a final report or decision will be rendered.
- **All appeals of owner holdover evictions, including succession rights, should be reviewed and decided by HPD's legal department, exclusively.** HPD's legal department should provide at least one opportunity for the aggrieved to appeal the legal department's decision. If a Certificate of Eviction is warranted after the final appeal, the legal department should be the only office or

department in HPD authorized to grant permission to the owner to evict the resident, respondent, or tenant.

- **The owner and HPD should be required to notify all tenants of the rules, regulations and laws of the New York State Mitchell-Lama Program, and any other rent or subsidy programs under which the development is operated, and which affect an individual tenant or household.** The notification should include topics such as Mitchell-Lama rent setting, Mitchell-Lama and other rent increase approval processes affecting that development, general and specific grievance processes, Mitchell-Lama administrative review and holdover eviction processes, Mitchell-Lama succession rights, and tenants' rights and protections under the Mitchell-Lama program and any other program that is utilized in the development. When there are overlapping programs, the owner and HPD, in clear and concise language, with supporting documentation from the agencies involved, should provide in writing (backed by the laws/legislation) which program has jurisdiction over the development and which programs determine how the development is operated.

CALL TO ACTION

Our findings demonstrate the heavy burden that the low- and middle-income tenants of Linden Plaza have carried over the last decade, including frequent and confusing rent increases, unexplained charges and fees, many of which are not allowed under the law, and the threat of eviction through housing court. Families have sacrificed their health and their savings, all to keep a roof over their heads. Far too many have been unable to do so and were forced to leave the development. Lawmakers, HPD and the New York City Comptroller must take immediate action to protect the tenants of Linden Plaza, prevent further displacement, and preserve below-market, affordable housing in New York City. We call on them to implement the recommendations of our report.

Endnotes

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