

# CLOSING THE LOOPHOLES

WHAT SIX RENTAL HISTORIES TELL US ABOUT  
**FIXING RENT REGULATION** IN NEW YORK

BY OKSANA MIRONOVA AND JEFF JONES



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## **Methodology Statement**

This brief includes six representative case studies. The rental data, lease year, and tenant turnover information are based on real rent histories provided by members of the Housing Justice for All campaign. Rent stabilized apartment rent histories are generated on tenant request by Homes and Community Renewal (HCR), the state agency that oversees rent stabilization. We have anonymized the case studies included in this brief due to the sensitive nature of the data.

*Historical Rent Guidelines Board (RGB) guidelines are available on the RGB website:*

*<https://www1.nyc.gov/site/rentguidelinesboard/index.page>*

*Request your apartment's rent history:*

*<https://rent.hcr.ny.gov/RentConnect/Tenant/Overview>*

# **WHY NEW YORK NEEDS TO CLOSE THE RENT REGULATION LOOPHOLES**

This is a pivotal time for the future of the rental housing market in New York City, as the state's rent stabilization law, which protects about a million households, comes up for renewal in June 2019.

The current law is characterized by loopholes that undermine the effectiveness of the rent stabilization system to protect tenants' rights. Over the past 25 years, legislative decisions by the city and state have weakened rent regulation, encouraging tenant harassment and allowing for sudden and permanent rent hikes. The same loopholes create an environment where fraud is rampant. The vacancy bonus, Major Capital Improvements (MCI), Individual Apartment Improvements (IAs), preferential rents, and vacancy decontrol all work in tandem to push out low-income tenants and undermine neighborhood-level stability. New York City has lost 291,000 stabilized units since 1994. The evidence is overwhelming. We need to close the loopholes in the rent stabilization law.

**The following six case studies are based on real tenant rent histories. They illustrate the way loopholes interact to drive up stabilized rents, undermining the rent regulation system.**

For additional analysis on New York City's affordable housing landscape, see related publications on page 12.

# What Rent Regulation Protects



## Protections from sudden rent increases

This core element of rent regulation makes rent a predictable expense. While sudden rent increases can be difficult to absorb for tenants across income levels, they are most likely to be catastrophic for low-income tenants. In New York City, there are 365,000 low-income households living in rent regulated apartments, twice the number who live in public and subsidized housing combined.



## Security of tenure (right to a lease renewal)

Rent regulation provides tenants with the right to a lease renewal if the tenant is paying rent and is not in violation of their lease. This facet of the rent laws provides renters with the stability to plan for the near-future. CSS's 2018 Unheard Third survey data showed that regulated renters are more likely to feel that they will be able to afford to stay in their neighborhood long term, as compared to unregulated renters.



## Enforceable maintenance standards

The rent laws outline the basic services and living conditions that should be maintained by the landlord and a process for challenging poor living conditions. While this has not stopped many landlords from using withdrawal of services as a harassment tool, the city legislature has passed several anti-harassment laws to strengthen this aspect of the rent regulation system.



## Limits on security deposits and other fees

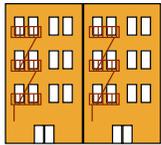
A 2018 report by New York City Comptroller Scott Stringer found that the cost of entry into the housing market is a growing problem, especially for low-income tenants. Rent regulation caps security deposits to one month's rent and defines the procedure for setting other types of fees, including those associated with air conditioners, washing machines, window guards, etc.



## Framework for organizing and litigation

Rent hikes and lease termination are both potential tools landlords can use against tenants who organize a tenants association or ask for repairs. By regulating rents and providing tenants with a right to a lease renewal, the rent laws create a platform for individual or collective action by tenants.

# Rent Regulation **Loopholes** Defined



## High rent vacancy deregulation

High rent vacancy deregulation was implemented by the city in 1994 and the state in 1997. It permanently deregulates apartments when the rent reaches an annually adjusted threshold—currently set at \$2,775—upon vacancy. Since 1994, at least 291,000 apartments have been permanently deregulated.



## Individual Apartment Improvements (IAI)

Individual Apartment Improvements (IAI) allow landlords to increase rents in individual units to incentivize apartment renovations beyond regular maintenance, like countertop and cabinet replacement. The landlord does not have to go through an approval process to levy IAI increases on tenants. And, a clear cost schedule for qualifying improvements does not exist.

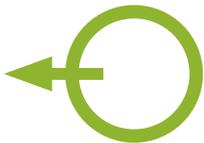
IAs permanently increase a unit's rent, even after the improvement is paid off. IAs are systematically exploited by landlords to hike up rents. For example, landlords inflate the cost of labor and materials by padding invoices and using in-house contractors.



## Major Capital Improvements (MCI)

Major Capital Improvements (MCI) allow landlords to increase rents to incentivize capital improvements, like boiler or roof replacements. Approval is required for MCIs, but enforcement capacity is low and a clear cost schedule for repairs does not exist.

MCIs permanently increase a unit's rent, even after the improvement is paid off. MCIs are systematically exploited by landlords to hike up rents. As with IAIs, landlords inflate the cost of labor and materials by padding invoices and using in-house contractors.



## Vacancy bonuses

Vacancy bonuses were implemented by the state in 1997 and allow landlords to increase rents by about 20 percent when a new tenant moves into a rent stabilized apartment. CSS analysis has shown that vacancy bonuses were responsible for 48 percent of total rent increases in rent stabilized apartments between 2011 and 2014.



## Preferential rents

Preferential rents allow landlords to register a rent with HCR that is higher than the actual rent paid. In neighborhoods with modest rents, stabilized legal rents often climb above market levels as a result of vacancy bonuses, IAIs, or MCIs, all of which are susceptible to illegal overcharges because the onus for monitoring and enforcement falls on the tenant. Landlords offer tenants preferential rents, hedging on future spikes in the rental market. If a sudden change, like a rezoning, heats up the local rental market, landlords can then revoke preferential rents at will. In 2003, the laws changed to allow landlords to revoke a “preferential” rent when a lease comes up for renewal, thus nullifying the tenant protections that are central to rent regulation. There are now over 266,000 apartments with preferential rents.



## Preferential rent & vacancy bonuses undermine rent stabilization in Pelham Parkway (Bronx)

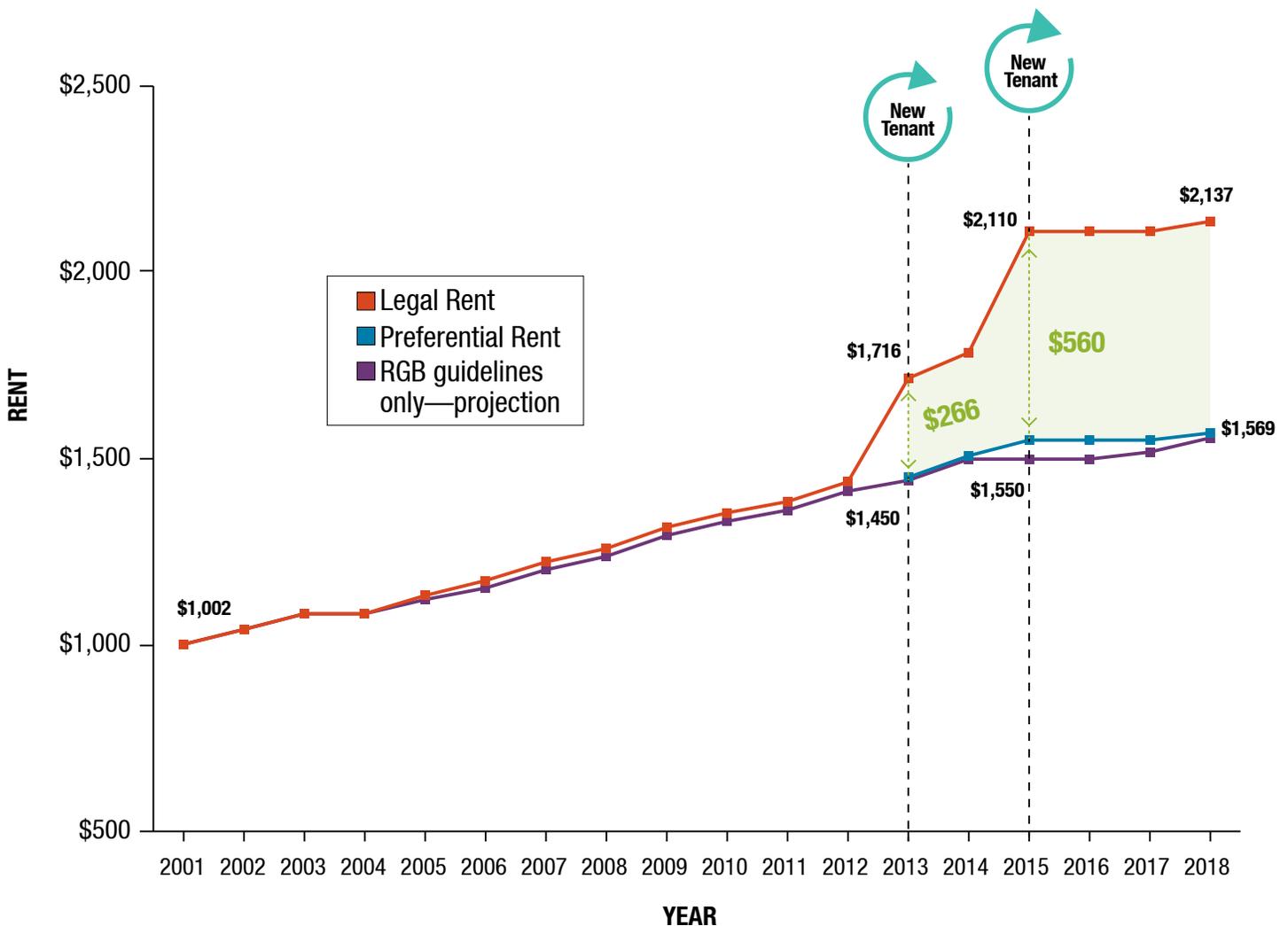
A family moved out at the end of their lease term in 2013, after spending 13 years in their two bedroom apartment. They were paying \$1,438 in rent. After the landlord claimed a vacancy bonus, the registered rent went up to \$1,716.

This brought the rent above market rates in Pelham Parkway at the time. The landlord rented the apartment at a preferential rate of \$1,450, approximately what the rent would have been if the vacancy bonus did not exist.

The new tenant stayed for two years, moving out in 2015. The landlord was able to claim an additional vacancy bonus, bringing the registered rent up to \$2,110. This was substantially above market rates in the area.

The landlord rented the apartment for \$1,550, around the rate the rent would have been without the two vacancy bonuses. The new tenant, who moved in 2015, is temporarily paying a preferential rate. **However, there is now a \$568 gap between the rent the tenant is actually paying and the registered rent.**

**Because the preferential rent is revocable, the tenant is functionally not protected by rent stabilization laws.**



The RGB guidelines projection (purple line) uses annual RGB guidelines to show how rent in the apartment would have changed without the impact of loopholes.

Source: Anonymized NYS Homes and Community Renewal (HCR) rent history data and NYC Rent Guidelines Board (RGB) annual rent guidelines.



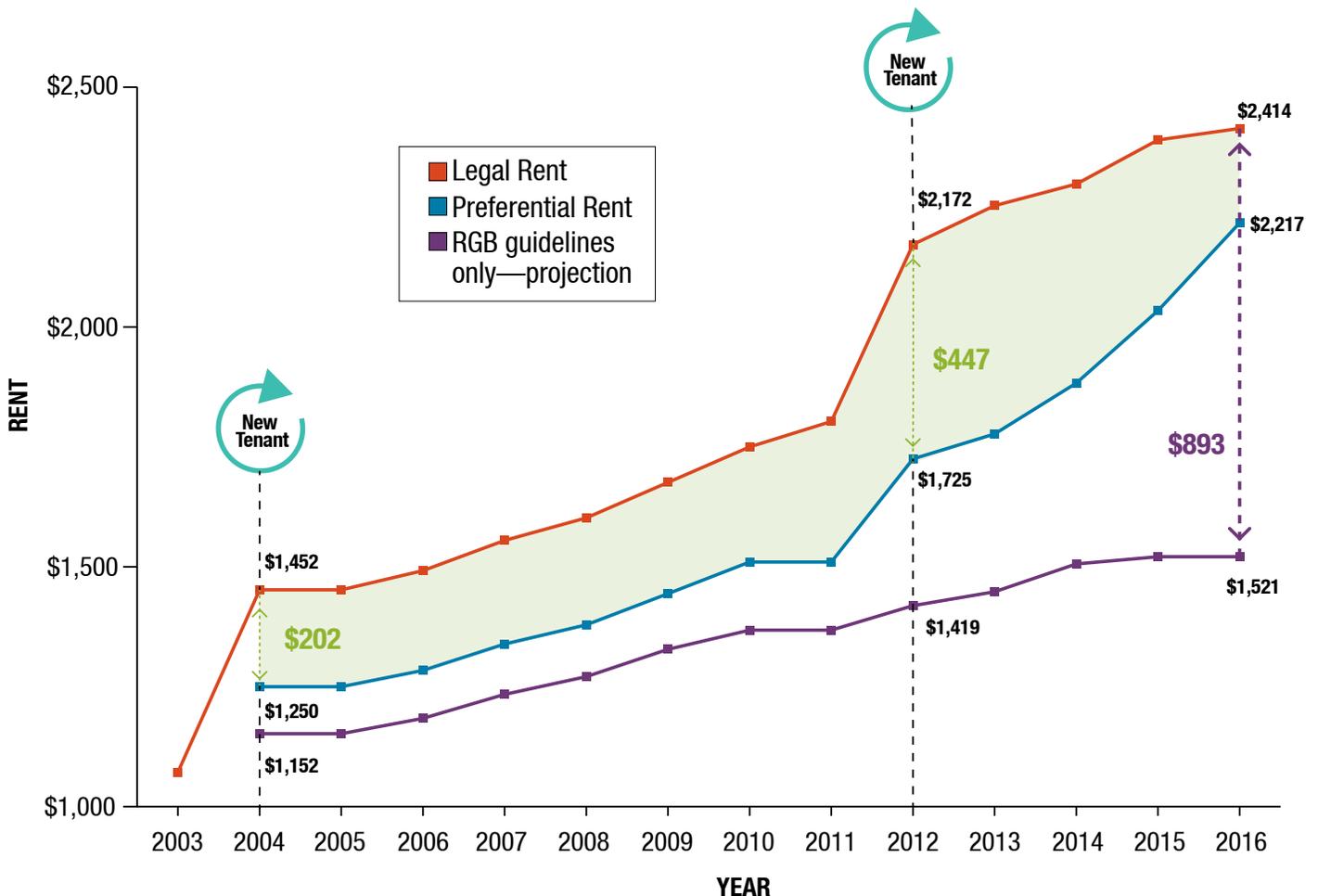
## Preferential rent allows landlord to cash in on old rent hikes in Corona (Queens)

When a new tenant moved into this three bedroom apartment in 2004, the landlord was able to claim a vacancy bonus and a major capital improvement (MCI) increase to raise the rent by 35 percent, to \$1,452. This was above market for the neighborhood; the landlord offered the tenant a \$1,250 preferential rent. The building underwent additional major capital improvements in 2010, nudging the legal rent up.

In 2013, a new tenant moved in; the landlord claimed a vacancy bonus increasing the legal rent to \$2,172.

By 2015, the landlord began to collect on the MCIs and vacancy bonuses from previous years.

Even though the Rent Guidelines Board (RGB) issued historically low guidelines in 2015 (1 percent) and 2016 (rent freeze), **this apartment's rent increased by 8 percent in 2015 and 9 percent in 2016. This illustrates the insidious relationship between rent law loopholes and gentrification. The landlord can collect on historic rent hikes after the real estate market heats up. This is why you see the space between the legal rent (red line) and the preferential rent (blue line) narrowing.**



The RGB guidelines projection (purple line) uses annual RGB guidelines to show how rent in the apartment would have changed without the impact of loopholes. Source: Anonymized NYS Homes and Community Renewal (HCR) rent history data and NYC Rent Guidelines Board (RGB) annual rent guidelines.

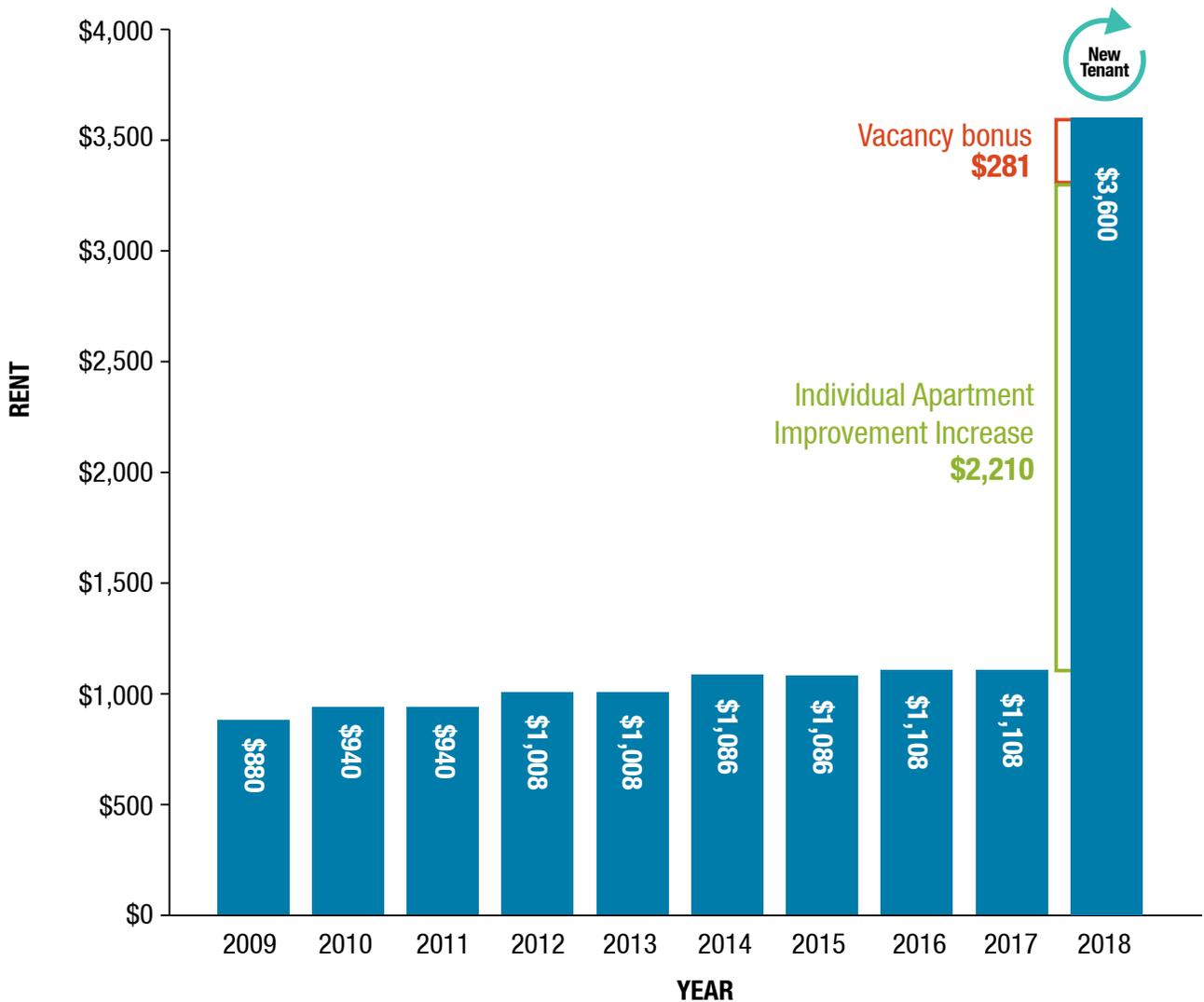


## Individual Apartment Improvement (IAI) leads to a 225 percent rent hike in Bed-Stuy (Brooklyn)

A family lived in this five bedroom apartment since at least 2009, likely for much longer, and were paying \$1,108 in rent when they vacated the apartment mid-lease in 2017.

The landlord was able to claim a 20 percent vacancy bonus which increased the vacancy rent by \$281. The owner claimed an additional \$2,210 Individual Apartment Increase (IAI). To justify an increase of this size, the owner would have to have completed \$88,000 of work on the apartment.

**Even though the Rent Guidelines Board issued a rent freeze in 2017, this apartment's rent went up by 225 percent, to \$3,600, making it eligible for permanent deregulation.**



Source: Anonymized NYS Homes and Community Renewal (HCR) rent history data and NYC Rent Guidelines Board (RGB) annual rent guidelines.



## Four vacancy bonuses in a row undermine rent stabilization in Pelham Parkway (Bronx)

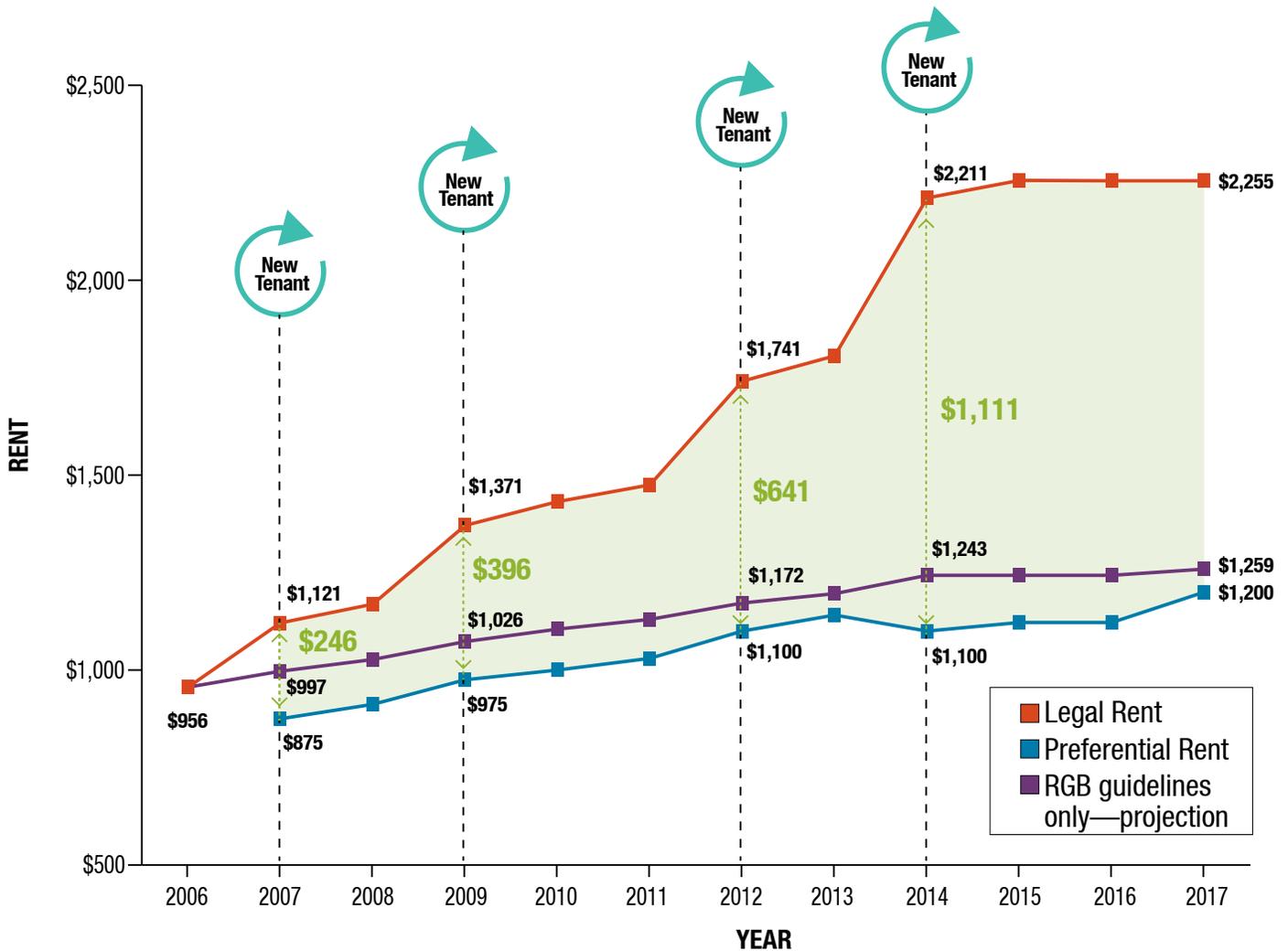
Tenant A moves into a one bedroom in 2007. After the landlord claims a vacancy bonus, the registered (legal) rent goes up to \$1,121, above the market for the neighborhood.

The landlord offers Tenant A preferential rent of \$875. Tenant A moves out in 2009, and the apartment is taken over by Tenant B. The landlord claims a second vacancy bonus, raising the registered rent to \$1,371, but offering Tenant B a \$975 preferential rent.

Tenant B moves out in 2012. Landlord claims a third vacancy bonus, raising the registered rent to \$1,741, but offering Tenant C a preferential rent of \$1,100.

Tenant C moves out in 2014. **After claiming the fourth vacancy bonus, the registered rent climbs to \$2,211**, almost double what it would have been if the vacancy bonus did not exist. Tenant D rents the apartment for a preferential rent of \$1,100. Because the preferential rent is revocable, the tenant is functionally not protected by rent stabilization laws. **If the landlord decides they want the tenant out, they can hike up the rent by \$1,111 at the end of their lease term.**

The landlord does not have to follow the Rent Guidelines Board annual guidelines when setting the rent at the end of the lease term. In 2017, even though the RGB issues a 1.25 percent rent increase guideline, the landlord (legally) raises the rent by 7 percent.



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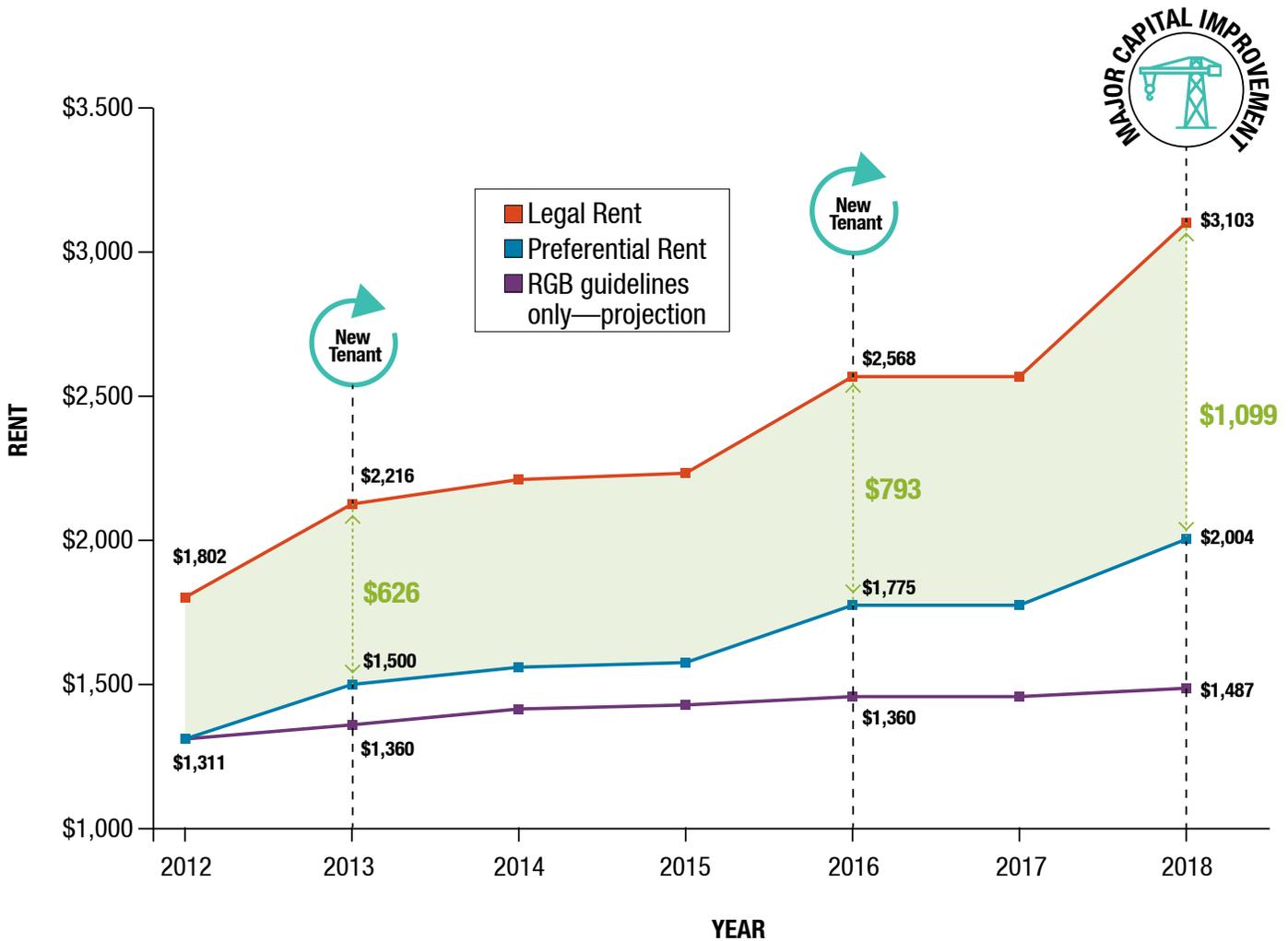
## Major Capital Improvement (MCI) in Jamaica leaves tenant without renter protections (Queens)

A family moved into a two bedroom apartment in 2013, with a preferential rent of \$1,500 and a registered (legal) rent that was \$626 higher.

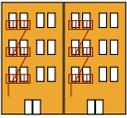
In 2016, the landlord forced the existing tenant to add a family member to the lease, triggering an additional vacancy bonus. The legal rent ballooned to \$2,568, above market rates for the neighborhood. The new tenant moved in with a \$1,775 preferential rent.

In 2018, the landlord applied for a Major Capital Improvement (MCI) for the building, registering \$2.5M in painting and roof work. After amortizing this sum over 108 months and subdividing it among the rent stabilized units in the building, the registered rent in the apartment went up by \$472 because of the MCI, rising to \$3,103, or \$1,099 above the preferential rent.

Even though the Rent Guidelines Board (RGB) guideline was 2 percent for two-year leases in 2018, the amount this tenant pays in rent went up by 13 percent, to \$2,004 a month. MCI rent hikes should be phased in over time in 6 percent annual increments, **but the preferential rent + MCI combination in this apartment leaves the tenant completely unprotected, and paying above market rent.**



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## Landlord illegally deregulates stabilized apartment in Crown Heights (Brooklyn)

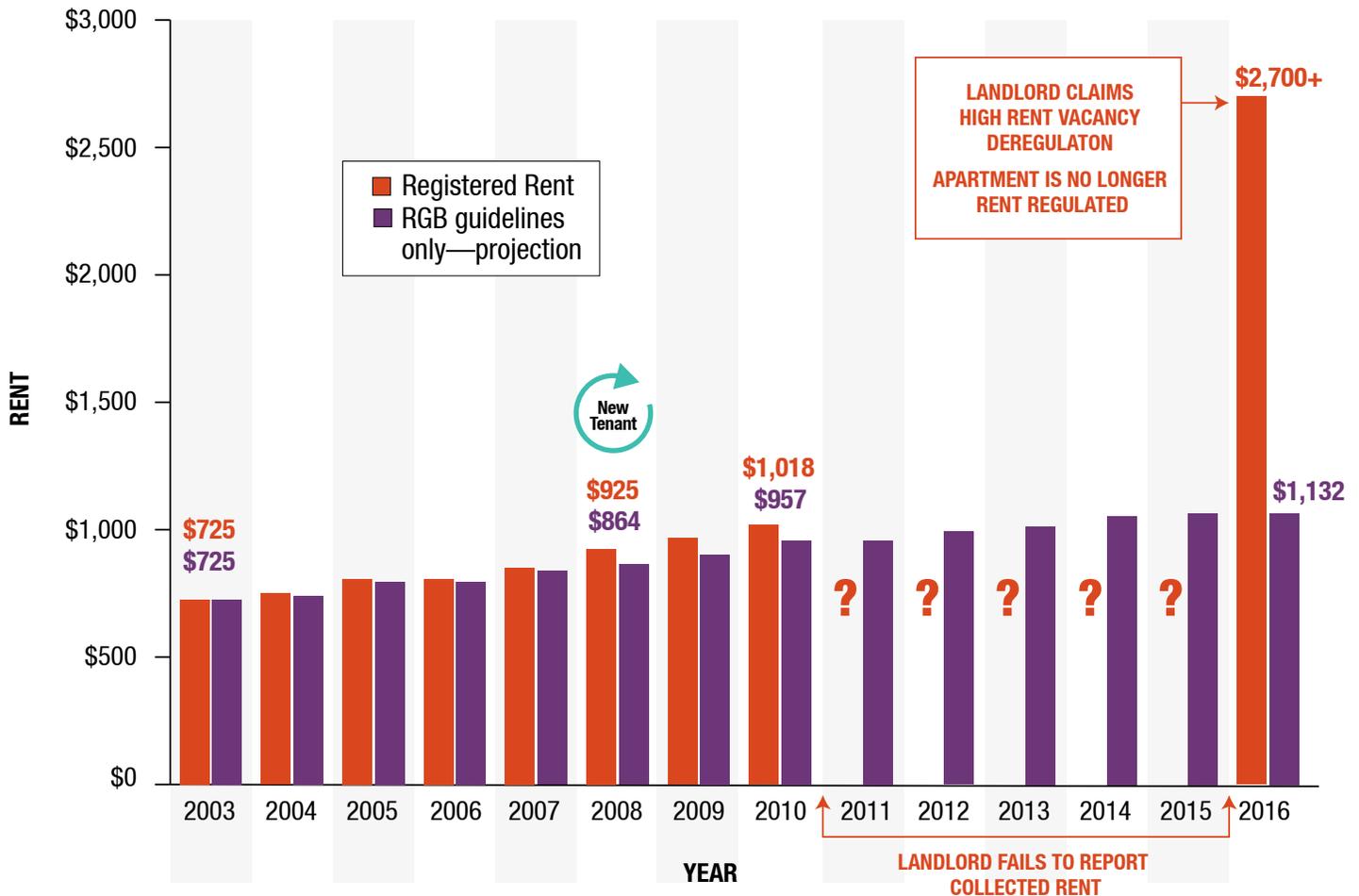
A family moved out their one bedroom apartment in 2008, in the middle of their two-year lease. The landlord did not claim the full vacancy bonus, raising the rent by 9 percent, to \$925. A new tenant moved in, and the landlord followed the rent guidelines until 2011, at which point the rent reached \$1,018.

The landlord stopped registering the legal rent with NYS Homes and Community Renewal (HCR) in 2012.

In 2016, the landlord registered high rent vacancy deregulation with HCR, indicating that the rent surpassed the deregulation threshold: \$2,700 at the time. Assuming that the landlord followed Rent Guidelines Board (RGB) rent guidelines between 2012 and 2016, the rent would have only reached \$1,132 in 2016.

Theoretically, it is possible that the landlord could have claimed a 20 percent vacancy bonus (\$225) and done about \$54,000 worth of improvements on the apartment to claim a \$1,340 individual apartment improvement.

**But, the landlord stopped registering the rent and did not inform HCR of the vacancy bonus or the IAI. The apartment did not look like it has been substantially renovated and the landlord's portfolio has multiple other units that follow a similarly suspicious pattern. This a likely illegal deregulation.**



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## Conclusion

New York City and New York State have the progressive momentum to strengthen and expand renter protections and to remove rent law loopholes that incentivize harassment, fuel rent increases, and lead to the loss of regulated units. We should not miss the opportunity to begin reversing the trends that are making New York City increasingly unaffordable to the vast majority of renters.

### **The New York State legislature and the governor should:**

- **Repeal vacancy decontrol to stop the rapid loss of rent stabilized units.**
- **Make preferential rents last for the duration of the tenancy, to extend the protections of rent stabilization—predictable rent adjustments and security of tenure—to the 266,000 renter households who have preferential leases.**
- **Repeal the vacancy bonus, Major Capital Improvements (MCI), and Individual Apartment Improvements (IAI), which drive up regulated rents above the annual rent guidelines, are highly susceptible to fraud, and, when combined with preferential rents and vacancy decontrol, encourage harassment and displacement.**
- **To protect tenants who are not covered by rent stabilization, remove geographic restrictions in the Emergency Tenant Protection Act (ETPA) and pass good cause eviction protection.**



## ABOUT THE AUTHORS

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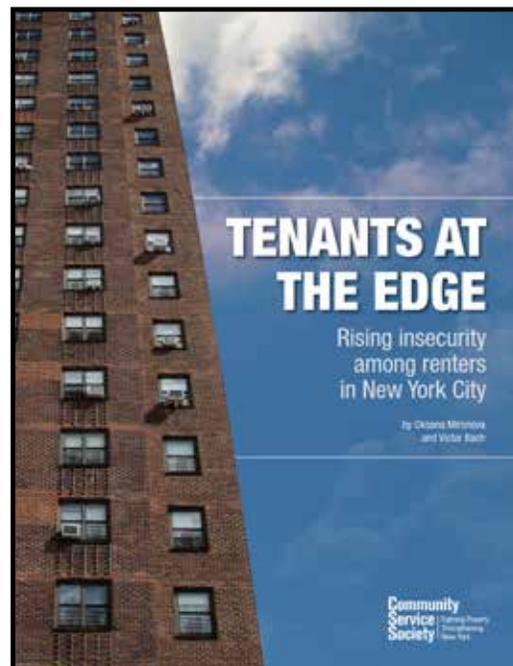
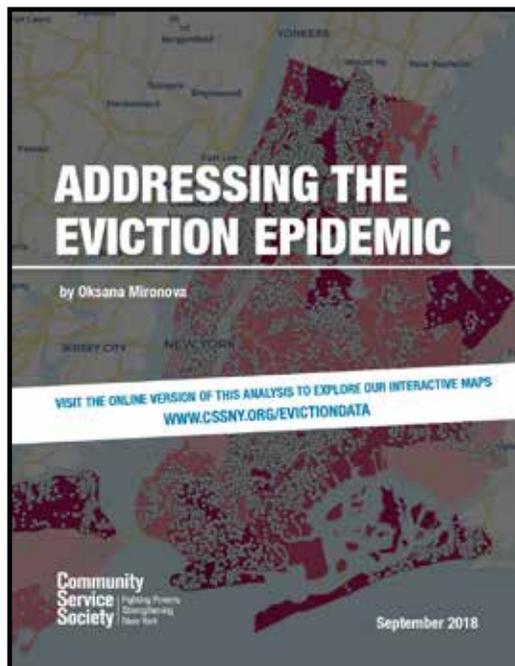
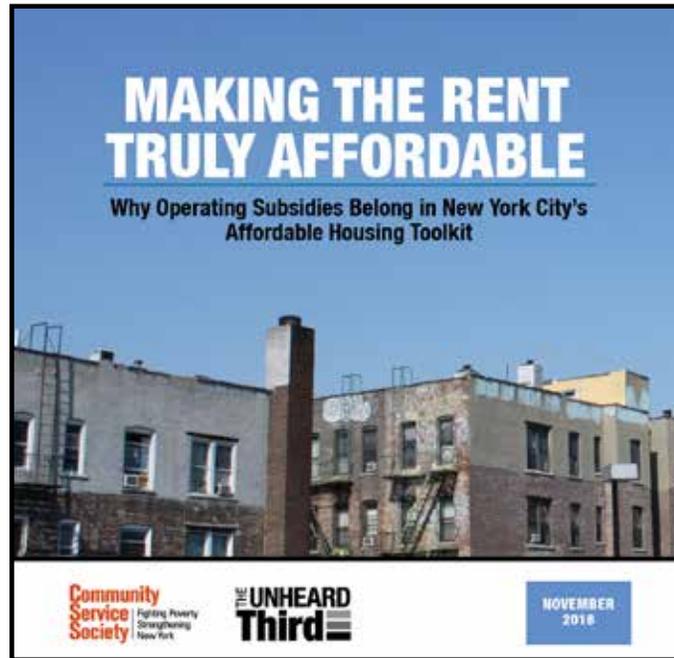
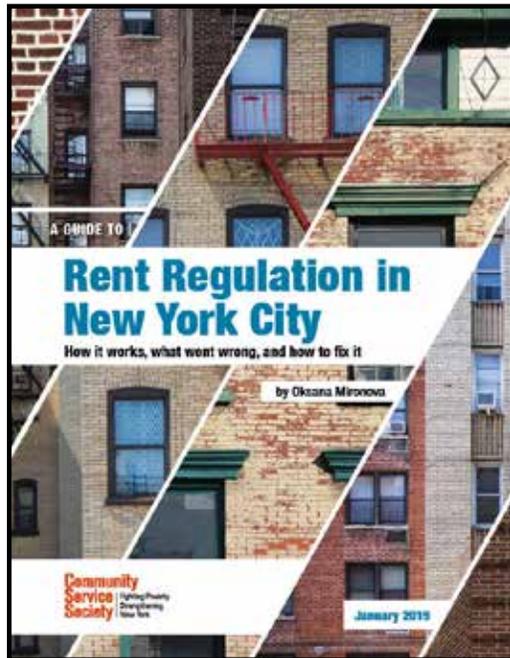
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