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Court Decisions Begin to Favor Tenants in Rent Regulation Cases

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Last week, a unanimous Appellate Division, First Department, panel handed down the latest in a series of rulings in the wake of the Court of Appeals' landmark 2009 decision in [Roberts v. Tishman Speyer](#), 13 NY3d 270, that is reshaping New York landlord-tenant law.

The new decision, [73 Warren Street v. State of New York Division of Housing and Community Renewal](#), 116585/09, held that under certain circumstances an apartment that was rent stabilized because it received New York City tax benefits would not only remain stabilized after the benefits ended, but would remain exempt from luxury deregulation. It offers yet more evidence, say attorneys, that after 15 years in which rent deregulation went mostly unchallenged, courts have begun to apply the brakes.

The trend toward deregulation began with a 1993 law allowing rent-stabilized apartments to become deregulated when their rent rose above a set limit and they become vacant. It also provides for so-called luxury decontrol of an apartment when the rent is above the limit and its tenant's income exceeds a set threshold. According to data collected by the city's Rent Guidelines Board, more than 190,000 apartments—about 15 percent of the total—left rent stabilization between 1994 and 2009.

The current reversal is due largely to a pair of rulings from the Court of Appeals that have left trial and appellate courts throughout the state grappling with a changed landscape, with new rules that are still being hashed out case by case.

Roberts, the first of those decisions, concerned the so-called J-51 program. J-51 allows landlords to receive tax benefits if they undertake certain improvements to their property and put their rental units under rent stabilization. Since the 1990s, it had been common practice for landlords to deregulate individual units in J-51 buildings when it became possible through luxury decontrol and then claim a proportionately smaller tax benefit.

In *Roberts*, however, the Court of Appeals said the arrangement, though sanctioned by the Division of Housing and Community Renewal, was illegal. As

Apartment buildings at 73 Warren Street (right) and 501 W. 110th St. (below) were the subject of recent court decisions clarifying New York rent regulation laws. *NYLJ/Rick Kopstein*



