

# Tenant Protections in Building Decarbonization Policy

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## ABSTRACT

Decarbonizing residential building stock is crucial to mitigating climate change. But local and national decarbonization policies have the potential to create unintended harms for tenants, including unsustainable rent raises and unnecessary or illegal evictions. These policies must be designed and implemented carefully to protect renters, who are more likely than homeowners to be from Black, Brown, and low-income groups that already disproportionately bear the negative effects of climate change. Not doing so will exacerbate the housing crisis while driving more Americans into homelessness.

This is a crucial moment for decarbonization policy: the momentum around climate regulation is increasing, evidenced by new federal and state investment in decarbonization efforts. And many governments are in the process of drafting tenant protections as part of their climate strategies; for example, the Inflation Reduction Act's energy efficiency and electrification rebate programs require states to develop enforceable agreements for landlords, including protections against rent increases and evictions (DOE 2023a, at 16). This paper provides an overview of the risks decarbonization policies pose to tenants and proposes model policy elements to minimize them. Our analysis is based on a review of existing decarbonization programs and proposed tenant protections, a case study of New York City's tenant protections and how they interact with similar types of retrofits, and interviews with tenant organizers and advocates.

## Introduction

Climate change is a global issue caused by greenhouse gas emissions and buildings are a large source of these emissions. Recognizing that residential building decarbonization is an essential step toward mitigating these harmful effects, there is a nationwide movement to reduce or eliminate greenhouse gas emissions attributed to buildings. State and local governments across the country are taking action to mandate or incentivize building efficiency and restrict new gas appliances. Notably, more than 40 mayors and governors agreed to design or implement one type of building-decarbonization regulation—building performance standards—as part of the Biden Administration's National Building Performance Standard Coalition, which launched in 2022. The footprint covered by this commitment is on the scale of 20 billion gross square feet of building floor area, an estimated 4.5 billion of which is residential.<sup>1</sup> The federal government, meanwhile, is making a large amount of funding available for building decarbonization, a significant amount of which will be funneled through state-implemented programs.

At the same time, the nation is facing a severe housing affordability crisis. Renters bear the greatest burden of this crisis, in part because they have more precarious living situations.

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<sup>1</sup> Institute for Market Transformation analysis using 2018 CBECS and 2021 ACS 5-year survey results, published 2022 benchmarking datasets for 10 cities, and CoStar extracts for additional coalition member cities.

Depending on the jurisdiction, landlords may have near-complete control over housing costs and even the tenant’s ability to remain in their home. Rents and eviction rates have also shot up since COVID-19 protections expired (Eviction Lab 2023; Moody’s Analytics 2023). The need for low-cost housing far outstrips the availability, and the slow rate of production of government-subsidized “affordable housing” is not meeting the existing need (NLIHC 2024).

These two crises—climate change and housing affordability—are about to collide. Building decarbonization policy will lead to massive investment of capital in buildings across the country, including rented housing. For example, New York City’s Local Law 97, which requires large buildings in the city to reduce their greenhouse-gas emissions 40% by 2030, is projected to trigger \$20 billion in investments by that date (Urban Green Council 2019). This should bring real benefits to tenants, such as lower energy bills and healthier homes. But the large scale of investment flowing into existing buildings, especially when used for the deep retrofits needed to meet these requirements, may also give building owners the incentive and opportunity to raise rents and evict tenants to an even greater extent than they already do. Existing tenant-protection laws are insufficient to protect tenants against this risk. Most jurisdictions have no rent protection and few defenses against eviction (NLIHC n.d.). Many of the tenant protections that do exist do not apply to the major renovations that building decarbonization will often require (Kirk 2023).

At its heart, this clash is a question of racial and economic equity. Renters are far more likely to have lower incomes; to be Black, Brown, Asian, or Native American; and to not have a college diploma (Census Bureau 2022a; Census Bureau 2022b). Black renters are disproportionately targeted by evictions. A majority of formal eviction filings are made against Black tenants, even though they make up less than one fifth of the tenant population (Graetz et al. 2023). Meanwhile, low-income renters are far less likely to live in housing that is affordable to them, making them particularly vulnerable to further cost increases (Census Bureau 2022a). These populations are also disproportionately impacted by climate change, and due to a history of disinvestment and redlining, are the least prepared to adapt (e.g., Wessler 2021). In other words, failing to protect tenants from the unintended consequences of building decarbonization will cause further harm to the populations that have already been left behind by decades of environmental and housing policy.<sup>2</sup>

## **National Context**

### **National Housing Crisis**

There is no state that has sufficient affordable housing to house its low-income population; in fact, there are nearly 7 million more households with “extremely low” incomes (incomes below the poverty line or below 30% of area median income) than there are homes that are affordable to them (NLIHC 2024). The federal programs that are meant to make up for this shortfall have been underfunded for decades (CBPP 2021). Meanwhile, the deals made with private developers to keep their housing affordable at the end of the 20th century are beginning to expire en masse, potentially leading to the loss of hundreds of thousands more units (NLIHC 2018, 12).

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<sup>2</sup> By addressing solely the question of how tenants may be impacted by building decarbonization, we do not mean to imply that enabling landlords to decarbonize is trivial. We recognize that ensuring that landlords have the resources and incentives to undertake these retrofits in the first place is crucial, but it is beyond the scope of this paper.

In the U.S., rental housing is provided almost exclusively by the private market—i.e., individuals and corporations who have invested in real estate for the primary purpose of extracting profit, turning housing into a commodity. As noted, this does not produce enough rental housing, especially for low- to moderate-income households (NLIHC 2024). Further, many developers need to charge market rate rents in order to cover construction and operating costs and also receive a return on investment. Even after decades of tax credits, density bonuses, inclusionary zoning laws, housing vouchers, and other private-developer incentives, the U.S. is still millions of affordable units short.

The scarcity of affordable housing is driving rents up at a faster rate than home prices. Over 40% of U.S. renters are now rent-burdened, and the gap between housing costs and wages is widening in 80% of U.S. markets—outcomes that are exacerbating the affordability crisis even more (Ghent 2023). In spite of this, the U.S. government has not intervened in any major way to create more affordable housing. Currently, there are just 1.1 million units of public housing—fewer than 1% of the nation’s residential housing stock—serving 2.2 million residents (NLIHC 2019). Profit-maximization and commodification in real estate have also led to practices such as raising rents, minimizing expenditures on property maintenance and repairs, and viewing evictions as a strategic component of a business plan designed to maximize rental income. As a result, dependable tenants who pay rent punctually face illegal and legal eviction or rents they cannot absorb if it leads to higher profits for landlords.

The COVID-19 pandemic has further exacerbated this crisis, as many renters lost their income and were unable to pay rent. While the temporary emergency protections created during this period delayed evictions for a time, those programs have ended and eviction rates are back to pre-pandemic levels, and in some states have surpassed those rates (e.g., Moody’s Analytics 2023; Salviati & Warnock 2023; Eviction Lab n.d.).

Another symptom of this crisis is the low quality of housing with which many renters must contend. This is particularly the case for low-income and BIPOC households, who are more likely to live in “severely” or “moderately inadequate” housing (Census Bureau 2021a).<sup>3</sup> Many of these housing issues—such as insufficient or nonexistent heating, ventilation, and air-conditioning (HVAC) systems or poor insulation and sealing—create health concerns that will be exacerbated by climate change (e.g., GHHI 2023). While many of these conditions are unlawful under local housing codes, poor code enforcement allows them to continue (e.g., Stacey, Schilling & Barlow 2018). Additionally, racist land-use practices have left low-income and BIPOC communities more exposed to extreme heat, an increasingly common climate impact, which housing codes often do not address at all (e.g., Marx & Morales-Burnett 2022; Galarza et al. 2022).

Existing housing conditions can have two important impacts on building decarbonization: On the one hand, when properly planned and resourced, building retrofits and other efficiency and electrification measures have a large potential upside for tenants. But on the other hand, poor building conditions can also make such measures more difficult to implement. Housing-quality issues can often lead to poor health outcomes (Swope & Hernández 2019). These health hazards can often be resolved with building-decarbonization measures: For example, inadequate ventilation and envelope sealing can lead to worse indoor air quality, and insufficient heating and

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<sup>3</sup> Housing adequacy is defined according to a range of factors; for example, a unit that has no full bathroom or a bathroom shared with other units is “severely inadequate” while a unit with no kitchen or a shared kitchen is “moderately inadequate” (Census Bureau 2021b).

cooling can create or exacerbate a host of health problems. But the decarbonization measures that address those conditions can be more expensive in older and lower-quality housing and, absent policy intervention, they are less likely to be performed in buildings where they could create the greatest health benefits (e.g., Rose et al. 2015).

The introduction of decarbonization mandates, aimed at combating climate change, adds another layer to this already complex picture. These mandates, while environmentally crucial, may require significant investment and push landlords to offset these additional costs through measures like increasing rents or displacing tenants. This dynamic underscores the challenge of aligning climate goals with the realities of a profit-driven housing market.

## **Overview of Decarbonization Mechanisms Landscape across the Country**

Against this background, a new wave of effort to reduce or eliminate the greenhouse gas emissions from housing is taking shape at all levels of government. Even prior to the passage of the Inflation Reduction Act, early adopter cities and states started to take action to mandate improvements in building performance by advancing code requirements for new construction and renovations, but also through more innovative policy types that seek to phase out the use of gas in new buildings and to mandate improvements in existing building performance at scale. Broadly speaking, these efforts fall into four categories:

**New construction.** This category of policy, inclusive of codes, is aimed at limiting the greenhouse-gas impact of new appliances and new or renovated buildings. Standards requiring new construction to achieve a certain level of energy efficiency, or requiring certain energy-efficiency measures, are quite common at the state level; some local jurisdictions have also passed “reach codes” that go beyond their state standards (e.g., DOE 2023b). Among those reach codes are requirements that new or renovated buildings include on-site solar energy (e.g., California Energy Codes & Standards 2024). Energy codes are typically based on modeled energy performance as opposed to actual energy use.

**Appliances.** Appliance standards, meanwhile, are primarily established by the federal government, because most appliance efficiency standards are preempted at the state and local level (Energy Policy & Conservation Act § 6297). With that said, there is a growing movement toward state and local appliance emissions standards, which regulate the amount of pollution created by appliances rather than the amount of energy that they use.<sup>4</sup> It is also worth noting that many federal efficiency standards began as state standards that were eventually incorporated into federal regulations (ASAP n.d.).

**Building Performance Standards (BPS).** States and localities are beginning to regulate existing buildings through building performance standards, which unlike the categories described have a compliance timeline determined by the law (e.g., IMT 2024). These standards require properties actual performance (not modeled) to meet or fall below a predetermined performance metric, typically either the energy use or the greenhouse gas emissions of the buildings (on-site

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<sup>4</sup> Most notably, the air regulator for the San Francisco Bay area has prohibited sale or installation of water or space heaters that emit any amount of nitrogen dioxide after 2030 (BAAQMD Regs. 996-301.5, -303.5). For more on the distinction between emissions standards and energy-efficiency standards from a preemption standpoint, see Dadashi, Horowitz & Stein (2022) and Dadashi (2023).

emissions). These requirements can be set based on the use of the buildings—for example, multifamily apartment buildings must hit different targets from hospitals—though more recent BPS policies are defining individual performance trajectories that are based on each building’s current level of performance. All targets are designed to decrease every few years, achieving their energy use or emissions reductions over a decade or more and giving building owners the discretion to plan how to sequence retrofits. Most existing building performance standards provide additional levels of compliance flexibility to deed-restricted affordable housing. Some, such as Washington, DC’s BPS, extend that treatment to housing that is rented at below-average rates or rented to low-income households (District of Columbia Municipal Regulations Title 20, § 3520.6).

**Subsidies and Incentives.** Finally, there are many subsidies available for building-decarbonization measures. These run the gamut from broad, long-established programs like the federal Weatherization Assistance Program (DOE 2024), to brand-new, targeted programs like the City of Boston’s Healthy and Green Retrofit Pilot (City of Boston 2023). Subsidies are the primary building-decarbonization strategy at the federal level, particularly since the 2021 Infrastructure Investment and Jobs Act added \$3.5 billion to the Weatherization Assistance Program (§ 40551), and the Inflation Reduction Act created two rebate programs for building-decarbonization measures worth a total of \$8.8 billion (§§ 50121-50122). Although they are federal programs, both the Weatherization Assistance Program and the Inflation Reduction Act’s rebate programs rely on the states for implementation and for enforcement of any obligations attached to the subsidies, such as tenant protections; this important intersection point is discussed in more detail below.

With the exception of the subsidies and incentives, the other regulatory actions have evolved to a critical point, requiring strong and thoughtful action to protect tenants. Historically, on the existing building side, foundational policies like energy benchmarking, or even audit and retrocommissioning laws, required a smaller scale investment by building owners. Building performance standards make efficiency and electrification investments materially significant within the context of building operating budgets. BPS could trigger the need for major system upgrades over the course of the compliance timeline or considerable fees for non-compliance. Such extensive capital upgrades puts tenants at a higher risk than previous iterations of building performance related policies. Moreover, there are two sides to this risk. First, there is the risk that building owners pass the cost to upgrade down to tenants and raise rents. This is a particular risk for the segment of the market where rent levels are not protected through the receipt of a subsidy. Second there is the risk that building owners choose to let go of under-performing or costly assets and that leads to changes in the use of the building itself.

## **Unintended Consequences**

Every decarbonization strategy that requires the investment of large amounts of capital in building renovations carries significant risks for tenants (Kirk 2023). The primary issue is that capital investments give landlords an incentive to raise rents and, in some cases, displace their tenants. These investments carry substantial up-front costs, and, unlike owner-occupied housing, the health, comfort, and energy-savings benefits flow to the tenant rather than the building owner (e.g., Rosen 2022, at 10). Landlords looking to recoup these investments—or to capitalize on the rental value they create—will likely do so by raising rents or, in some cases, by selling the property. Both of these outcomes can lead to increased evictions, or “informal evictions”

achieved by deceiving or harassing tenants into leaving the property: Rent increases are themselves a driver of displacement as tenants are priced out or, in some rent-regulated jurisdictions, because building owners use evictions to raise rents faster (e.g., Stacy et al. 2021). Meanwhile, property sales are themselves strongly associated with tenant displacement, particularly when the sale is from a small landlord to an institutional landlord (e.g., Raymond et al. 2021).

While some jurisdictions have rent regulations that limit rent hikes, these do not always function in situations where landlords are recouping major capital investments. Many rent regulations permit landlords to exceed the standard caps on rent increases in order to recover the up-front costs of work on the property. For example, landlords in Los Angeles can ordinarily only increase rent by a percentage equal to the local inflation rate, but if a landlord makes certain types of improvements to the property, they can increase rents by an additional amount, which depends on the cost of the improvement but can be up to 10% (Los Angeles Municipal Code, §§ 151.06(D), 151.07(A)(1)(c)).

Landlords may also use decarbonization work as a tool to remove tenants (Kirk 2021). Many tenant-protection laws have exceptions that allow evictions to facilitate major renovations, such as those that may be required to decarbonize an older building (e.g., California Civil Code § 1946.2(b)(2)(D); Revised Code of Washington §§ 59.18.200(2)(c)(i), 59.18.650(2)(f); Baltimore City Code art. 13, § 8C-2(b)(2)(iv)). Even when landlords do not have a legal right to remove their tenants, retrofit work could be used as an excuse to decrease services—for example, cutting off power or water for substantial periods of time—creating large amounts of dust or noise, or otherwise harming tenants’ health and quality of life (e.g., STS & TakeRoot Justice 2022). This “harassment by construction” can force tenants to leave their homes without a formal eviction; those that remain live in substandard and dangerous conditions, potentially for years. The problem of harassment by construction also demonstrates the need for housing policy to be shaped by tenants, since the problem has been largely overlooked or ignored by housing agencies, and it is only through the efforts of tenant and community organizations—such as the Stand for Tenant Safety Coalition in New York City and Chinatown Community for Equitable Development, the Los Angeles Tenants Union, and Strategic Actions for a Just Economy in Los Angeles—that the issue has been brought to light (e.g., STS 2015; CCED 2022; Kirk 2021).<sup>5</sup>

## **The Inflation Reduction Act and DOE’s Guidelines to Avoid Unintended Consequences**

The Inflation Reduction Act (IRA) is the most substantial recent action that the Congress has taken against climate change and will trigger major upgrades in our building stock. The White House estimates that it will invest \$370 billion into climate-change and energy measures (White House 2023, at 5). This includes a number of programs that promote building decarbonization, most notably, rebate programs for energy-efficiency and electrification projects in residential homes worth a total of \$8.8 billion (White House 2023, at 110-111). Depending on the project and the income of the affected tenants, these rebates could pay for up to \$8,000 per unit for efficiency measures and \$14,000 for electrification—potentially the entire cost of building-decarbonization work (DOE 2023a, at 12, 51-52).

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<sup>5</sup> This is not meant to imply that landlords typically conduct retrofit work in order to harass tenants; retrofit work is important to protect the safety and well-being of tenants as well as to preserve housing stock. The trouble is that some landlords abuse the exceptions in tenant protections meant to encourage retrofits.



As discussed above, the large influx of capital into building-decarbonization projects has the potential to create unintended harms for tenants. The U.S. Department of Energy (DOE), which is the federal agency responsible for approving IRA rebate programs, has required states, territories, and Tribes to include certain tenant protections in their implementation plans. These requirements are important—particularly states’ and territories’ enforcement obligations—but may not be sufficient to ensure that tenants are protected.

Specifically, grantees must require that any landlords receiving rebates for homes rented to low-income households agree to the following restrictions for at least two years: They must (1) continue to rent to low-income households; (2) not raise rents “as a result of” the retrofit or evict tenants “to obtain higher rent tenants based upon the improvements”; and (3) let their tenants know about these protections (DOE 2023a, at 16, 53-54; DOE 2023c, at 13).

States and territories (but not Tribes) have additional enforcement obligations. First, they must require that landlords receiving funding from their IRA allocation include the above terms in any sale agreement for the property within the two-year protection period (DOE 2023a, at 17, 54). Existing contracts related to a property do not automatically transfer to a new owner after the property is sold; this requirement attempts to make it so IRA obligations are passed on as part of the sale of the property.

Second, states and territories must have an enforcement program in place that is “clear and sufficient to act as a deterrent for owner violations.” In addition to the clawback provision that funding recipients agree to, this enforcement program must allow tenants themselves to recover both “damages”—monetary payments reflecting the harm done to tenants by the violation—and attorneys’ fees for litigating the case against landlords.

While these requirements provide an important foundation, there are at least two concerns for their implementation: First, it may be difficult to prove that a tenant is being evicted, or their rent is being increased, because of the improvements funded by the rebate program. Second, an adequate enforcement program will require extensive monitoring of properties after the work is done, providing tenants with the legal education and resources to enforce the agreements themselves, or both. The case study below highlights that more comprehensive protections are needed to protect tenants from the unintended consequences discussed above.

## **Case Study: New York City**

This section presents an on-the-ground view of what is happening in New York City specifically in the context of Local Law 97, the first building energy performance standard adopted in the United States, gathered from our conversations with local organizers and advocates, as well as our own research and experience (e.g. Kirk 2023; Kirk 2021; Miller et al. 2020; Carpenter-Gold 2023).<sup>6</sup> New York City’s experience with rent regulation and retrofits highlights both the need for and the difficulty of developing tenant-friendly decarbonization policies, as well as some successful tactics that local governments may consider adopting—and some pitfalls to avoid.

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<sup>6</sup> Our specific methodology is omitted for space reasons, but is available on request.

## Background on New York City Rental Housing

New York City’s rental-housing stock is relatively old and stratified by both race and income. About half the city’s rental housing has some maintenance problem, and 15% is “poor quality,” defined as having maintenance problems in at least three categories (HPD 2024, at 37). Households headed by Black and Hispanic renters are more than twice as likely to live in poor-quality apartments as those with White or Asian heads of household, and those earning less than \$50,000 are about twice as likely as those earning more than \$100,000 to live in poor-quality apartments (HPD 2024, at 59). The city’s older multifamily buildings also tend to have centralized heat and hot-water systems that run on gas or fuel oil; as a result, tenants often do not pay directly for heat, hot water, or gas.

Despite the city’s building conditions, its rental market has extremely low vacancy rates and increasingly high rents. Only 1.41% of available rental housing was vacant in 2023, while vacancy rents for apartments with below-median rent is only 0.65%; the median market-rate rent was \$2,000 (HPD 2024, at 28). As a result of this extreme availability crisis, New York City has rent regulations or similar protections that apply to roughly half the city’s rental stock (HPD 2024, at 6). The most prevalent, called “rent stabilization,” is a hybrid state-city program that prevents landlords in the city from raising rent beyond a certain amount, determined each year by a city body (New York City Administrative Code, § 26-510(b)). “Pass-through” provisions allow landlords to increase rents beyond these caps to recover the upfront costs of improvements to the building, however. These increases spread out the cost of improvements over 12 to 15 years, but remain in place for 30 years, meaning that landlords can ultimately earn a profit on these building improvements cost (New York City Administrative Code, § 26-511(c)(4), (13)).

The law also protects tenants in New York City’s rent-stabilized apartments from arbitrary eviction. Landlords are required to offer rent-stabilized tenants renewal leases when their leases expire, and cannot evict those tenants except for specified reasons, including failing to pay rent or causing harm to other tenants (New York Codes, Rules & Regulations, title 9, §§ 2524.2-2524.5). These defenses to eviction are only useful if the tenant can assert them in court, however; unscrupulous landlords may instead push tenants out by falsely claiming that they can be evicted without a court order, or by making conditions in the building so poor that the tenants are forced to leave. Tenants and advocates have fought back against these conditions and won legal protections against deceptive practices, unsafe conditions, and harassment. They have also pushed through a law, known as “Right to Counsel,” that provides low-income and older tenants with free legal services when they are brought to court in an eviction case (New York City Administrative Code, § 26-1302).

While New York City’s rent-stabilization protections are substantial, loopholes remain that can be exploited by landlords. Because of the city’s “pass-through” provisions, tenants ultimately bear the cost of investments in the building, and landlords are even positioned to profit through increased rents. Landlords do not always comply with these restrictions, and the volume of eviction cases is too great for the funding and capacity of the Right to Counsel program. Some landlords push their tenants out without filing a formal eviction case, in which case tenants are not eligible for Right to Counsel and may have no way to know about their rights. Roughly half of the city’s rental-housing stock is not protected by any rent restrictions, and the high rent for those apartments means that tenants that do lose their homes may become unhoused or be pushed out of the city. Finally, landlords that replace at least 75% of the systems in a building that has “substantially deteriorated” can take the building out of rent stabilization entirely (DHCR 2023,



at 2)—potentially creating a perverse incentive for landlords to allow building quality to get worse, force tenants out, then rehabilitate it into market-rate housing.

Some issues were addressed by state legislation in 2019, the same year that New York City passed Local Law 97 (Lebovits, Lansden & Howard 2019). These reforms eliminated two key threats to tenant protections—the “vacancy bonus,” which allowed landlords to raise rent on an apartment to a greater extent than normal after a tenant moved out, and “luxury decontrol,” which allowed buildings to be completely removed from rent regulation once they reached a certain rent—and made “pass-through” rent increases both temporary and smaller. These provisions had created a strong incentive for landlords to increase rents quickly by forcing tenants out of their home and performing expensive work on the building, until rents were high enough that the building was no longer subject to rent stabilization. Building decarbonization would have played into this strategy by providing cover for construction as harassment and large capital investments. Thus, strengthening state legislation to remove this threat was an important element of preventing unintended impacts on tenants from Local Law 97.

### **Concerns for building-decarbonization policy**

**Construction as harassment.** One major concern for tenants and tenant organizers in New York City is the use of repair or renovation work as a tool to force tenants out of their home. This practice of “construction as harassment” involves performing construction work in a manner that harms tenants directly, cuts off their services, or makes their homes unpleasant places to live. Tenants report indoor dust pollution, weeks without heat or hot water, and conditions bad enough that city officials required them to leave their homes—along with “buyouts,” or offers of lump-sum payments to tenants in exchange for giving up their rent-stabilization rights (STS 2015). Building-decarbonization policy, because it requires or encourages disruptive retrofit work, could give cover to landlords using construction as harassment.

**Shifting utility burdens.** Building electrification in New York City may in many cases include replacing centralized gas or oil boilers with in-unit electric heat pumps. While this transition will greatly improve both efficiency and air quality, it could have the unintended consequence of shifting the cost of utilities from landlords to tenants: since many tenants do not pay for central heat or hot water, but do pay for in-unit electricity, electrification could suddenly shift a large amount of energy costs from landlords to tenants.<sup>7</sup> The rent-stabilization program should provide tenants in covered apartments a reduction in their rent commensurate to the loss of free heating, but tenant organizers report that the state agency responsible for making such determinations is backlogged by several years.

**Enforcement.** New York State and City tenant protections have not been sufficiently implemented or enforced. The state agency responsible for reversing illegal rent increases has a yearslong backlog, Right to Counsel has not been able to keep up with the pace of eviction cases, and the city departments responsible for investigating construction-as-harassment cases have not done so adequately (STS & TakeRoot Justice 2022). Adequate resourcing of the relevant agencies and programs is crucial. It may also help to give tenants a role in the enforcement process. New York State’s rent-stabilization laws give tenants a defense in court against arbitrary

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<sup>7</sup> This concern was raised by tenant organizers, but is also being considered by city and state agencies, particularly for affordable-housing buildings where rent is more tightly restricted (e.g., HPD & NYSERDA n.d.).

eviction, for example, though in New York City better resourcing of the Right to Counsel program is necessary to make these protections a reality for all rent-stabilized tenants. New York City has also given tenants the power to sue over landlord harassment (and to recover the cost of doing so) and it is also piloting a “certificate of no harassment” program, one part of which requires city staff to interview tenants to determine whether a landlord has engaged in harassing behavior, in certain circumstances.

### **Lessons for Building-Decarbonization Policy**

New York City’s experience with addressing the impacts of building retrofits highlight some of the unintended tenant impacts that may arise with building-decarbonization policy. First, the case study highlights the difficult problem of promoting retrofits in rent-stabilized jurisdictions: Rent-stabilization policies generally permit landlords to raise rents for substantial investments in their property, and often permit some form of vacancy decontrol— that is, increased rents when there is no tenant in the building. These policies mean that tenants are more vulnerable when a building is undergoing substantial retrofits, and that landlords have an incentive to use those retrofits as cover for pushing out their tenants. New York City has combated this by both instituting stronger protections for tenants in buildings undergoing renovation and by reforming vacancy decontrol. This has provided additional protections for tenants as Local Law 97 begins to encourage retrofits on a large scale in the city.

The case study also indicates some problems that cities may encounter with or without rent-stabilization policies. These include the fact that existing utility and lease structures in many areas could be disrupted by electrification. A building that shifts from centralized heat to in-unit heat may also shift the cost of heating from the landlord to the tenant, in a way that could drastically increase energy burdens. Similarly, incentivizing energy conservation by exposing tenants to more of their energy costs can also create unfair burdens, such as for tenants with medically necessary electrical equipment, or perverse incentives, such as when landlords submeter a building and are able to make a profit off of their tenants’ electricity usage.

Finally, New York City’s recent history of tenant-protection policy shows the paramount need for implementation and enforcement. Delays and neglect by both city and state agencies have prevented sound tenant protections from being effective in practice. At the same time, New York City has employed some effective approaches to improving enforcement, most notably the Right to Counsel program which aims to provide tenants with lawyers when they face eviction, making it far more likely that they will receive the protections to which the law entitles them.

### **Conclusion and Recommendations**

The two crises of housing and climate change require careful policy design and adequate enforcement structures in order to prevent unintended and inequitable consequences. In particular, policies that require the owners of rental housing to undertake expensive retrofits could result in increased rental burdens and displacement for tenants. To avoid this outcome, building-electrification programs should be paired with tenant protections adequate to the task.

No single policy will be appropriate everywhere; much depends on the legal framework, administrative structure, and economic and housing situation of each jurisdiction. However, the experience of tenants and advocates gives rise to a few common themes: First, the cost of capital investments in rental housing may ultimately fall on tenants, despite the fact that building owners retain the value of the investments; without safeguards, building decarbonization could

drastically increase the rent burden of lower-income households. Second, bad-faith landlords could use work done on their buildings as cover for forcing tenants out of their homes, either through a formal eviction process or by creating such poor conditions that the tenants leave “voluntarily.” Third, whatever tenant protections are put in place for a building-decarbonization policy must be paired with strong enforcement mechanisms, including well resourced government enforcement and, for subsidy programs, protections that tenants themselves can assert in court. We offer the following recommendations for building-decarbonization policies:

Table 1. Recommendations

Outcome	Policy	Description
Prevent rent burden & maintain affordability	Rent stabilization	Cap the amount that rent can be raised per year. Caps are typically tied to the local Consumer Price Index.
	Ban pass-through costs for work related to energy efficiency and electrification	Prohibit rent raises and/or related renters’ fees associated with retrofitting for energy efficiency or electrification.
Keep people housed	Just cause protections	Establish just cause protections for all tenants to prevent arbitrary evictions.
Minimize disruption to tenants during retrofit work	Tenant Habitability Plan	Ensure living conditions are habitable during construction or renovation. These plans often include provisions to prevent unjust evictions and safeguard tenant mental and physical health.
	Petitions for construction-related rent reductions	Allow tenants to petition for rent decreases if construction activities result in a decline in services, deferred maintenance, or health and safety hazards. Rent reductions may be retroactive or prospective.
	Adopt stringent penalties for illegal construction	Require that property owners who violate laws regulating construction work in occupied units pay stiff penalties.
Improve enforcement	Require a landlord-tenant contract	The contract should stipulate the terms and conditions of participating in the subsidy program and establish enforcement authority, clear penalties for violations, and remedies (e.g., a civil action).
	Provide enforcement resources	Provide adequate funding and staff to government agencies and local organizations that can enforce tenant protections.

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