

# Video Technology Gains Credibility In Housing Court

Landlords use cameras to investigate, monitor rent-regulated tenants; 'Perry Mason' moment

By JOSH BARBANEL

Miguel Cruz, an 18-year veteran of the New York Police Department, testified under oath that he visited his brother several times a week at his apartment on West 16th Street in Manhattan.

It turned out to be a pivotal moment in a classic New York court battle over a \$151.47-a-month, rent-controlled apartment. The landlord said Mr. Cruz's brother, Victor, had lost his right to the apartment because he didn't live there. The police officer said he did.

But then the landlord produced video evidence collected in secret over 15 months that contradicted Mr. Cruz's testimony. The video, recorded in 2014 and 2015, led to the officer's indictment and conviction for perjury.

Video evidence is becoming a powerful tool in housing-court battles over valuable rent-regulated apartments, say lawyers for both landlords and tenants.

The most common applications of the technology: investigations of tenants who may live elsewhere but say their rent-regulated apartment is their primary residence; and monitoring tenants who may try to pass along rights to regulated apartment to a relative who doesn't live there with them as required under the rules.

Courts have upheld the right of building owners to mount security cameras or hidden cameras in lobbies and public hallways as long as they aren't focused inside tenant apartments, said Andrew Scherer, a law professor at New York University and an expert on land-

lord-tenant law.

Landlords have a lot of incentive to ferret out foul play. When regulated apartments become vacant, they can sometimes rent the units at market rates. In some cases, buildings can be demolished and replaced.

Some tenant lawyers, however, see the cameras as a form of harassment.

"Video surveillance is very intrusive and frequently used to monitor tenant movements," said Mark Bierman, a lawyer who represented the Cruz brothers at a deposition. "Tenants should not be subjected to that." Mr. Bierman declined to discuss the case.

Bradley Silverbush, a senior litigator at Rosenberg & Estis, represented the building's landlord. His use of video evidence turned out to be a "Perry Mason" moment.

"Is that a true statement?" Mr. Silverbush said as he asked Mr. Cruz about his frequent meetings with his brother during the deposition.

"Yes, it is true," Mr. Cruz said, according to a transcript.

Mr. Silverbush then pulled out a folder with about two dozen 8½-by-11-inch time-stamped photos taken by a hidden motion-activated camera. It showed each time Mr. Cruz or his brother stopped by the apartment over more than 12 months. They were never photographed there together, Mr. Silverbush later said.

"Do you want to give a different answer than you gave earlier?" Mr. Silverbush asked.

Mr. Cruz stood by his statement.

According to Mr. Silverbush, Mr. Cruz was seen on video a few weeks later back at the apartment building and discovering an electrical box at the end of a hallway that had two pinholes drilled into the sides for cameras. He reached up and disabled the cameras but that, too, was captured in a video.

Miguel and Victor Cruz each



A screen grab of video evidence presented in the Cruz case, above. The building, below left, and its custom-made surveillance equipment.



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## Taking a Leaf From The Landlord's Book

Tenants make recordings to strengthen their beefs

Tenant harassment is usually difficult to prove because it often comes down to the tenant's word against the landlord's. But more tenants are using video and audio recordings to bolster

their complaints, lawyers say. Tenants in a rent-regulated building in Manhattan's East Village were able to win a \$1.3 million settlement in May after assembling 34 audio and video recordings that showed building representatives urging low-income tenants to accept buy-outs, with warnings that renovations might make the apartments uninhabitable.

The tenants of eight apartments in the six-story tenement

on East 13th Street are among many using technology to document cases against landlords, including some who cut heat and services to pressure tenants to move out, said Stephanie Rudolph, a lawyer at the Urban Justice Center, which provides legal services and advocacy.

Samuel Himmelstein, a tenant lawyer, said he often advises clients not to negotiate with landlords, but added: "if you are going to do it, record

the conversation." In the East Village case, building owner Raphael Toledano, the principal of Brookhill Properties, said he decided to settle the case after hearing testimony from tenants, including some recordings showing harassment. Mr. Toledano blamed the harassment on building managers and said he had been unaware of it.

—Josh Barbanel

were indicted by a Manhattan grand jury on charges of perjury and offering a false statement. Miguel Cruz also was charged with tampering with evidence.

Miguel Cruz retired from the NYPD to save his pension. Both men pleaded guilty to one count of perjury in September.

They are due to be sentenced later this month.

Lawyers representing the brothers either declined to comment or didn't respond to a request for comment.

Paul Babakitis, a licensed investigator and retired NYPD sergeant, said he put together the package of high-definition

cameras, a server and wireless infrastructure outside the Cruz apartment.

He was able to review the video remotely, he said, soon after Mr. Cruz searched the hallway and the camera went dark.

Mr. Silverbush, the lawyer, said he has at least a dozen

video investigations under way at any one time.

The railroad-flat style apartment, on the top floor of a five-story walk-up, had been in the Cruz family for decades. Late last year, Victor Cruz gave up his rights to the apartment. Now it can be renovated and rented or sold.