# P.A.'L.A.N.T.E.

People Against Landlord Abuse & Tenant Exploitation

# DHCR FACT SHEETS

NEW YORK STATE OF OPPORTUNITY. | Homes and Community Renewal

P.A.'L.A.N.T.E.

People Against Landlord Abuse & Tenant Exploitation

# OUR MISSION

To reduce poverty and advocate for safe housing by organizing, educating, and empowering residents. We are committed to supporting communities and to preserving our quality of life, our health, and our personal safety by assisting tenants when their rights have been violated and by holding unresponsive property owners accountable.

P.A.'L.A.N.T.E.

People Against Landlord Abuse & Tenant Exploitation

# PROGRAMS

- ***Homelessness Prevention and Affordable Housing Preservation:*** A community-based intervention program with a bottom-up approach that combats illegal evictions and prevents the loss of New York City's rent-stabilized and rent-controlled affordable housing stock. The program aims to identify tenants at risk of homelessness; address their critical need to remain in their homes, and ensure that their homes; and ensure that their homes are safe and affordable.

- ***Tenant Organizing and Leadership Development:*** Helps residents to organize formal tenant associations and empowers community residents to hold landlords accountable.

- ***Legal, Mediation, and Referrals:*** Provides direct legal and mediation assistance by acting as a tenant or tenant association representative.

- ***Homeownership***: Provides technical assistance and training to tenant's associations enrolled in the Tenant Interim Lease (TIL) apartment purchase program, Affordable Neighborhood Cooperative Program (ANCP). We also assist and organize shareholders living in low-income Housing Development Fund Corporations (HDFC).

- ***Stand & Deliver:*** Supports the development of academic and social skills of the youth residing in our community.

P.A.'L.A.N.T.E.

People Against Landlord Abuse & Tenant Exploitation

# TABLE OF CONTENTS

NEW YORK STATE OF OPPORTUNITY.

Homes and Community Renewal

Office of Rent Administration

FACT SHEET # 1

# Rent Stabilization and Rent Control

3 PAGES

**Introduction**

A number of communities in New York State have rent regulation programs known as rent control and rent stabilization. Two aspects of rent regulation are to protect tenants in privately-owned buildings from illegal rent increases and to allow owners to maintain their buildings while realizing a reasonable profit.

Rent control is the older of the two systems of rent regulation. It dates back to the housing shortage immediately following World War II and generally applies to buildings constructed before 1947. Rent stabilization generally covers buildings built after 1947 and before 1974, and apartments removed from rent control. It also covers buildings that receive J-51, 421-a and 421-g tax benefits. These tax benefit programs have their own specific rules as to which apartments are covered. Outside New York City, rent stabilization is also known as ETPA, short for the Emergency Tenant Protection Act and is applicable in some localities in Nassau, Westchester and Rockland counties. With the enactment of the Housing Stability and Tenant Protection Act (HSTPA) on June 14, 2019, any locality in New York State can enact rent stabilization if "a declaration of emergency" regarding available apartments is made in the subject locality pursuant to the Emergency Tenant Protection Act (ETPA) of 1974. "A declaration of emergency" can be made if the vacancy rate for the housing accommodations or a class of housing accommodations within such municipality is less than five percent.

It is the responsibility of the locality to secure and obtain a survey of the housing accommodations to determine the existence of an emergency.

Prior to June 14, 2019, the rent laws provided for the deregulation of apartments based on rents exceeding a certain threshold or based on the occupants' income and rents exceeding certain thresholds. Pursuant to HSTPA, these forms of deregulation were repealed as of June 14, 2019.

**RENT STABILIZATION**

Rent stabilization provides protections to tenants besides limitations on the amount of rent increases. Tenants are entitled to receive required services, to have their leases renewed, and may not be evicted except on grounds allowed by law. Leases may be renewed for a term of one or two years, at the tenant's choice. Tenants can file relevant complaints on a variety of forms created by the Division of Housing and Community Renewal (DHCR). DHCR is required to serve the complaint on the owner, gather evidence and then issue a written order which is subject to appeal.

If a tenant's rights are violated, DHCR can reduce rents and levy civil penalties against the owner. Rents may be reduced if services are not maintained. In cases of overcharge, DHCR may assess penalties of interest or treble damages payable to the tenant.

**Rent Increases**

The Rent Guidelines Boards (one in New York City and one each in Nassau, Westchester, and Rockland counties) each set rates for

rent increases in stabilized apartments. These guideline rates are set once a year and are effective for renewal leases beginning on or after October 1st of each year. Effective June 14, 2019, there is no statutory vacancy rate and no rent guidelines board vacancy rate. However, if authorized by the rent guidelines board, a one or two-year lease guideline rate can also be applied to vacancy leases.

Both in New York City and the ETPA covered communities, rents can be increased during the lease period in any one of three ways, so long as the lease provides for the collection of an increase during the lease term:

1. with the written consent of the tenant in occupancy, if the owner increases services or equipment, or makes improvements to an apartment;

2. with DHCR approval, if the owner installs a building-wide major capital improvement; or

3. in cases of hardship with DHCR approval.

**Rent Overcharges**

For rent stabilized apartments, owners may be ordered to refund excess rent collected based upon a finding of a rent overcharge. A finding by DHCR of a willful rent overcharge by the owner may result in the assessment of treble (triple) damages payable to the tenant. With the passing of the HSTPA, the collectability of overcharges has been increased from four to six years and the general period of rent history review (subject to exceptions) has been increased from four years to six years. Pre-HSTPA filed complaints will be reviewed in accordance with the laws in effect at the time of the filing, which limited the rental review to four years.

**Rent Reductions for Decreases in Services**

Rents may be reduced if the owner fails to provide required services, or fails to make necessary repairs for an individual apartment or on a building-wide basis. Examples of such conditions are lack of heat/ hot water, unsanitary common areas (halls, lobby), and broken door locks. If a tenant receives a rent reduction from DHCR, the owner cannot collect any rent increases until services are restored and DHCR restores the rent.

**Harassment**

The law prohibits harassment of rent regulated tenants. Owners found guilty of intentional actions to force a tenant to vacate an apartment can be denied lawful rent increases and may be subject to both civil and criminal penalties. Owners found guilty of tenant harassment are subject to fines.

**Rent Registration**

Within 90 days after an apartment first becomes subject to rent stabilization, an owner is required to file an initial registration. After the initial registration, owners must file an annual registration statement giving the April 1st rent for each unit and provide tenants with a copy of their respective apartment's registration form.

## RENT CONTROL

Rent control limits the rent an owner may charge for an apartment and restricts the right of any owner to evict tenants. Tenants are also entitled to receive essential services. Owners are not required to offer renewal leases, as tenants are considered "statutory" tenants. Tenants may file relevant complaints on a variety of forms created by DHCR. DHCR is required to serve the complaint on the owner, gather evidence and then can issue a written order which is subject to appeal.

If a tenant's rights are violated, DHCR can reduce rents and levy civil penalties against the owner. Rents may be reduced if services are not maintained. In cases of overcharge, DHCR may establish the lawful collectible rent.

**Rent Increases**

In New York City, rent control operates under the

Maximum Base Rent (MBR) system. A maximum base rent is established for each apartment and adjusted every two years to reflect changes in operating costs. Owners, who certify that they are providing essential services and have removed violations, are entitled to raise rents the lesser of either the average of the five most recent Rent Guidelines Board annual rent increases for one-year renewal leases or 7.5 percent each year until they reach the MBR. Tenants may challenge the proposed increase on the grounds that the building has violations or that the owner's expenses do not warrant an increase.

Outside New York City, the New York State Division of Housing and Community Renewal (DHCR) determines maximum allowable rates of rent increases under rent control subject to the limitations of the annual rent guideline board increases. Owners may apply for these increases periodically.

Rents can also be increased in any one of three ways, both inside and outside of New York City:

1. with the written informed consent of the tenant in occupancy, if the owner increases services or equipment, or makes improvements to an apartment;
2. with DHCR approval, if the owner installs a building-wide major capital improvement; or
3. in cases of hardship with DHCR approval.

**Rent Overcharges**

For rent controlled apartments, complaints submitted by tenants will result in an order by DHCR that establishes the Maximum Collectible Rent and directs that any overcharge be refunded for a period of no greater than two years before the filing of the complaint. If the refund is not made, the tenant can proceed to court to calculate the overcharge and enforce the order.

**Rent Reductions for Decreases in Services**

Please refer to the section above under Rent Stabilization.

**Harassment**

Please refer to the section above under Rent Stabilization.

**Rent Registration**

Apartments subject to Rent Control are not required to be registered annually with DHCR.

## SOURCES:

New York City Rent Stabilization Code
Tenant Protection Regulations
New York City Rent and Eviction Regulations
New York State Rent and Eviction Regulations

**Rent Connect:**
rent.hcr.ny.gov

**Ask a question:**
portal.hcr.ny.gov/app/ask

**For translation help:**
hcr.ny.gov/language-accessibility

**Our website:**
hcr.ny.gov/rent

**To visit a Borough Rent Office, by appointment only, please contact:**

**QUEENS**
92-31 Union Hall Street
6th Floor
Jamaica, NY 11433
718-482-4041

**UPPER MANHATTAN**
163 W. 125th Street
5th Floor
New York, NY 10027
212-961-8930

**BRONX**
1 Fordham Plaza
4th Floor
Bronx, NY 10458
718-430-0880

**BROOKLYN**
55 Hanson Place
6th Floor
Brooklyn, NY 11217
718-722-4778

**LOWER MANHATTAN**
25 Beaver Street
New York, NY 10004
212-480-6238

**WESTCHESTER**
75 South Broadway
3rd Floor
White Plains, NY 10601
914-948-4434

NEW YORK STATE OF OPPORTUNITY.
Homes and Community Renewal
Office of Rent Administration

FACT SHEET # 3

# Required and Essential Services

2 PAGES

**Services owners are required to provide**

An owner must provide and maintain services and equipment furnished or required by Rent Control or Rent Stabilization regulations. Required or essential services include repairs, heat, hot and cold water, maintenance, painting and janitorial services, elevator service and ancillary services such as garage and recreational facilities. This may include services that were provided but not registered by the owner on the Initial Apartment Registration (DHCR Form RR-1(i)) or, the Initial Building Services Registration (DHCR Form RR-3(i)).

Under rent stabilization, an owner must generally maintain all services required by the Rent Stabilization Law on rent stabilization's base dates of May 31, 1968 and/or May 29, 1974. The base date for apartments under the Emergency Tenant Protection Act (ETPA) outside of NYC is May 29, 1974, or the day immediately prior to the local effective date, whichever is later. The base date for buildings which were governed by Mitchell-Lama regulations is the day they became subject to rent regulation.

Under rent control, the owner must generally provide and maintain all services furnished or required to be furnished on the base date of May 1, 1950 for rent controlled apartments outside of NYC, and March 1, 1943 for those within NYC.

**Minor (De Minimis) Service conditions**

Certain conditions complained of as constituting a decrease in a required service may have only a minimal impact on tenants, do not affect the use and enjoyment of the premises, and may exist despite regular maintenance of services. Such conditions, which are minor (de minimis) in nature, do not rise to the level of a failure to maintain a required service. See Fact Sheet # 37, De Minimis Conditions, for a schedule of these conditions.

**Repair or replacement of defective equipment**

When an owner provides equipment or services within an apartment, such as a refrigerator, stove or air conditioner, the owner must maintain it in good working order. Defective equipment can be:

1. Repaired at the owner's expense or;

2. Replaced with reconditioned or used equipment, provided it is in good working order and is comparable to the item replaced. The owner is not entitled to any increase in rent based on the cost of reconditioned or used equipment or;

3. Replaced with a new one, for which the owner may be entitled to an Individual Apartment Improvement (IAI) rent increase. For occupied apartments, however, the tenant's voluntary written consent is required before the owner may collect the increase. If an installation of new equipment is done while the apartment is vacant, the new tenant's consent is not required for the owner to collect the IAI rent increase. See Operational Bulletin 2016-1.

## Filing complaints with DHCR

Tenants can file a written complaint of a decrease in services on the appropriate DHCR form. For additional information, see Fact Sheet # 14, Rent Reductions for Decreased Services.

## SOURCES

New York City Rent Stabilization Code, Section 2523.4
Tenant Protection Regulations, Section 2503.4
New York City Rent and Eviction Regulations, Section 2202.16
New York State Rent and Eviction Regulations, Section 2102.4

## RELATED MATERIALS

**FACT SHEET #14**
**Rent Reductions for Decreased Services**

**FACT SHEET #37**
**De Minimis Conditions in Building-Wide or Individual Apartment Areas**

**OPERATIONAL BULLETIN 2016-1**
**Individual Apartment Improvements**

**Rent Connect:** rent.hcr.ny.gov

**Ask a question:** portal.hcr.ny.gov/app/ask

**For translation help:** hcr.ny.gov/language-accessibility

**Our website:** hcr.ny.gov/rent

**To visit a Borough Rent Office, by appointment only, please contact:**

**QUEENS**
92-31 Union Hall Street
6th Floor
Jamaica, NY 11433
718-482-4041

**BROOKLYN**
55 Hanson Place
6th Floor
Brooklyn, NY 11217
718-722-4778

**UPPER MANHATTAN**
163 W. 125th Street
5th Floor
New York, NY 10027
212-961-8930

**LOWER MANHATTAN**
25 Beaver Street
New York, NY 10004
212-480-6238

**BRONX**
1 Fordham Plaza
4th Floor
Bronx, NY 10458
718-430-0880

**WESTCHESTER**
75 South Broadway
3rd Floor
White Plains, NY 10601
914-948-4434

NEW YORK STATE OF OPPORTUNITY.

# Homes and Community Renewal

## Office of Rent Administration

FACT SHEET # 4

# Lease Renewal in Rent Stabilized Apartments

4 PAGES

### AT A GLANCE

**This Fact Sheet explains the policies behind renewal leases for tenants who want to remain in rent-stabilized apartments.**

## DEFINITIONS

**Division of Housing and Community Renewal (DHCR)**: DHCR is the New York State agency that invests in communities, preserves and protects affordable housing and enforces the state's rent control and rent stabilization laws.

**Rent Guidelines Board (RGB)**: Each municipality that enacts rent stabilization creates a Rent Guidelines Board (RGB) that sets the allowable rates for rent increases in rent stabilized apartments.

**Rent stabilization**: Rules that provide protections to tenants besides limitations on the amount of rent. Tenants are entitled to receive required services, to have their leases renewed, and may not be evicted except on grounds allowed by law. Leases may be renewed for a term of one or two years, at the tenant's choice.

## SUMMARY AND HIGHLIGHTS

Tenants may choose a one- or two-year renewal lease at a rate set by the local Rent Guidelines Board. The owner must offer the renewal lease on a form from the Division of Housing and Community Renewal (DHCR), or on an approved facsimile of the DHCR form. Here's how a lease is renewed.

| | |
|---|---|
| **Process** | • In New York City, the owner must mail or hand-deliver a *DHCR Renewal Lease Form* (RTP-8) between 90 and 150 days before the current lease expires.<br>• Outside New York City, the owner must sign and date a renewal notice (RTP-8 ETPA), then send it by certified mail between 90 and 120 days before the current lease expires.<br>• After they receive the renewal offer, tenants have 60 days to choose a lease term, sign the lease, and return it to the owner.<br>• When a tenant signs the Renewal Lease Form and returns it to the owner, the owner must return the fully signed and dated copy to the tenant within 30 days. |
| **Effective date** | A renewal should go into effect on or after the date it is signed and returned to the tenant — but it shouldn't begin earlier than the expiration date of the current lease. |
| **Owner does not return a signed lease form** | If the owner doesn't return a copy of the fully executed Renewal Lease Form to the tenant within 30 days of receiving the signed lease from the tenant, the tenant should still pay the new rent. The tenant can file a "Tenant's Complaint of Owner's Failure to Renew Lease and/or Failure to Furnish a Copy of a Signed Lease" (DHCR form RA-90). |
| **Renewal forms must include these documents:** | **For NYC apartments:** *New York City LEASE Rider For Rent Stabilized Tenants*<br>**Outside NYC:** *Emergency Tenant Protection Act (ETPA) STANDARD LEASE ADDENDA For Rent Stabilized Tenants*<br>These documents describe the rights and obligations of tenants and owners under the Rent Stabilization Law. |

## FACT SHEET #4: IN DETAIL

Generally, tenants in rent stabilized apartments must be offered renewal leases. The renewal lease can be for a term of one or two years, at the tenant's choice and is at a rate set by the local Rent Guidelines Board. The renewal lease offer must be made on a form created by or on a facsimile approved by the Division of Housing and Community Renewal.

### The Lease Renewal Process

1. In New York City, the owner must give written notice of renewal by mail or personal delivery not more than 150 days and not less than 90 days before the existing lease expires on a *DHCR Renewal Lease Form (RTP-8).*

   For tenants outside of New York City, an owner must first sign and date the renewal notice (RTP-8 ETPA), and then send it by certified mail not more than 120 days and not less than 90 days before the existing lease expires.

2. After the renewal offer is made, the tenant has 60 days to choose a lease term, sign the lease, and return it to the owner. For tenants outside of New York City, the lease must be returned to the owner by certified mail. If the tenant does not accept the renewal lease offer within this 60-day period, the owner may refuse to renew the lease and may also proceed in court after the expiration of the current lease, to have the tenant evicted.

3. When a tenant signs the Renewal Lease Form and returns it to the owner, the owner must return the fully signed and dated copy to the tenant within 30 days. A renewal should go into effect on or after the date that it is signed and returned to the tenant but no earlier than the expiration date of the current lease. In general, the lease and any rent increase may not begin retroactively. **(See Example #1 below)**

### Other Considerations

If the owner does not return a copy of the fully executed Renewal Lease Form to the tenant within 30 days of receiving the signed lease from the tenant, the tenant should nevertheless pay the new rent, and may file the *"Tenant's Complaint of Owner's Failure to Renew Lease and/or Failure to Furnish a Copy of a Signed Lease" (DHCR form RA-90).*

Renewal leases must keep the same terms and conditions as the expiring lease unless a change is necessary to comply with a specific law or regulation. Those lawful provisions that would change the expiring lease should be attached to the Renewal Lease Form. **(See Example #2 below)**

When a tenant receives the Lease Renewal Form, a copy of either the *New York City LEASE Rider For Rent Stabilized Tenants* (for NYC apartments) or the *Emergency Tenant Protection Act (ETPA) STANDARD LEASE ADDENDA For Rent Stabilized Tenants* (outside of NYC) must be attached. These will explain how the proposed rent was computed and describe the rights and obligations of tenants and owners under the Rent Stabilization Law.

### Reasons for Not Renewing a Lease

An owner can refuse to renew a lease for several reasons, some of which are:

1. The owner or a member of the owner's immediate family needs the apartment for their personal use and primary residence. If the tenant is a senior citizen, or disabled, special rules apply [See Fact Sheets on Special Rights of Senior Citizens and Special Rights of Disabled Persons].

2. The apartment is not used as the tenant's primary residence.

3. The owner wants to take the apartment off the rental market, either to demolish the building

for reconstruction or use it for other purposes permitted by law.

However, when the owner does not offer the tenant a renewal lease for one of these reasons, the owner must give the tenant written notice of non-renewal during the lease offering time frame described in "The Lease Renewal Process" section of the Fact Sheet. Failure to serve this notice on the tenant during this time frame will entitle the tenant to a renewal lease.

## EXAMPLES

**Example #1**

1. Mr. Rivera's lease expired on July 31, 2019. He did not receive a timely renewal lease offer and has continued to pay his rent of $1800.

2. On May 15, 2020, the landlord makes him an offer of a renewal lease to commence retroactively on August 1, 2019, at a rent of $1827 for 1 year or $1845 for 2 years. The additional $27 represents a 1.50% increase for 1 year, and the additional $45 represents a 2.50% increase for 2 years.

3. In this situation, the option for the commencement date of the lease is Mr. Rivera's. He can request that the lease be dated to start on:

    a) August 1, 2019, the date it would have begun had a timely offer had been made or
    b) September 1, 2020, the first rent payment date occurring no less than 90 days after the offer is made.

4. Whether Mr. Rivera chooses option (a) or (b), the applicable guideline increase will be the lower of the two possible rates. In this case, he will be liable for the lower rates in effect on September 1, 2020; 1.50% for 1 year or 2.50% for two years. Moreover, the increase in rent to either $1827 for 1 year, or $1845 for 2 years, will not go into effect until September 1, 2020.

### Example #2

1. Two years ago, Mrs. Cooper signed a vacancy lease which contained no clauses or riders regarding lead paint, recyclable materials, late fees, or pets. Upon expiration of her lease, the landlord offers a renewal lease which includes several riders:

   a) Rider 1 (Prevention of Lead-Based Paint Hazards) requests that Mrs. Cooper advise the owner if a child under 6 years old resides in the apartment.
   b) Rider 2 specifies how certain materials such as paper, cardboard, cans, bottles, etc. must be recycled.
   c) Rider 3 states that the tenant will be liable for a $20 late fee if rent is received by the landlord after the 10th of the month.
   d) Rider 4 prohibits the harboring of pets in the apartment.

2. In this situation, Riders 1 and 2 constitute lawful provisions to the lease because they are necessary to comply with New York City lead paint and recycling laws.

3. Riders 3 and 4 are provisions that cannot be added to the renewal lease because they constitute material changes to the terms and conditions of the vacancy lease, which did not include a late fee or a pet clause. Mrs. Cooper can sign the rider without waiving any rights and may file a lease renewal complaint.

## SOURCES

New York City Rent Stabilization Code, Section 2523.5
Tenant Protection Regulations, Section 2503.5

## RELATED MATERIALS

**FACT SHEET #2**

**New York City Lease Rider and ETPA Standard Lease Addenda for Rent Stabilized Tenants**

**Rent Connect:** rent.hcr.ny.gov
**Ask a question:** portal.hcr.ny.gov/app/ask
**For translation help:** hcr.ny.gov/language-accessibility
**Our website:** hcr.ny.gov/rent

**To visit a Borough Rent Office, by appointment only, please contact:**

**QUEENS**
92-31 Union Hall Street
6th Floor
Jamaica, NY 11433
718-482-4041

**UPPER MANHATTAN**
163 W. 125th Street
5th Floor
New York, NY 10027
212-961-8930

**BRONX**
1 Fordham Plaza
4th Floor
Bronx, NY 10458
718-430-0880

**BROOKLYN**
55 Hanson Place
6th Floor
Brooklyn, NY 11217
718-722-4778

**LOWER MANHATTAN**
25 Beaver Street
New York, NY 10004
212-480-6238

**WESTCHESTER**
75 South Broadway
3rd Floor
White Plains, NY 10601
914-948-4434

NEW YORK STATE OF OPPORTUNITY.
Homes and Community Renewal
Office of Rent Administration

FACT SHEET # 7

# Sublets, Assignments and Illusory Tenancies

3 PAGES

**Sublets**

A tenant who sublets an apartment to another person is the **prime tenant.** The person to whom the apartment is sublet is the **subtenant.** In a sublet situation, the prime tenant must abide by the rent stabilization rules that govern the building owner.

An owner may not unreasonably deny a sublet if the tenant follows these procedures:

1. Inform the owner of an intent to sublease by mailing a notice of such intent by certified mail, return receipt requested, no less than 30 days prior to the proposed subletting with: (a) term of sublease; (b) name of proposed subtenant; (c) business and home address of proposed subtenant; (d) tenant's reason for subletting; (e) tenant's address for term of sublease (f) written consent of any co-tenant or guarantor of the lease; (g) a copy of the tenant's lease, where available, attached to a copy of the proposed sublease, acknowledged by the tenant and subtenant as being a true copy of the sublease;

2. Within ten days after the mailing of the request, the owner may ask the tenant for additional information. Within 30 days after the mailing of the tenant's request to sublet, or of the additional information reasonably asked for by the owner (whichever is later), the owner must send a reply to the tenant consenting to the sublet or indicating the reasons for denial. Failure of the owner to reply to the tenant's request within the required 30 days will be considered consent.

If the owner consents, or does not reply to the request within the appropriate 30 day period, the apartment may be sublet. However, the prime tenant remains liable for all obligations under the lease.

If the owner unreasonably withholds consent, the tenant may sublet the apartment and may also recover court costs and attorney's fees spent on finding that the owner acted in bad faith by withholding consent. If the owner reasonably withholds consent, the tenant may not sublet the apartment. The courts, not DHCR, adjudicate disputes over owners withholding consent to subletting.

The owner may charge the prime tenant the sublet allowance in effect at the start of the lease, if the lease is a renewal lease. The allowance is established by the New York City Rent Guidelines Board Order. The prime tenant may pass this sublet allowance along to the subtenant.

If the prime tenant sublets the apartment fully furnished, the prime tenant may charge an additional rent increase for the use of the furniture. This increase may not exceed ten percent of the lawful rent.

The prime tenant may not demand "key money" or overcharge the subtenant. If the prime tenant overcharges the subtenant, the subtenant may file a *"Tenant's Complaint of Rent and/or*

*Other Specific Overcharges in a Rent Stabilized Apartment"* (DHCR Form RA-89). If the New York State Division of Housing and Community Renewal (DHCR) finds that the prime tenant has overcharged the subtenant, the prime tenant will be required to refund to the subtenant three times the overcharge.

The sublease may extend beyond the prime tenant's lease term. The prime tenant retains the right to the renewal lease. A tenant may not sublet the apartment for more than two years out of the four-year period before the termination date of the sublease. For example, a tenant seeks to sublet the apartment for two years starting January 1, 2020. The sublet would expire December 31, 2021. If the tenant has already sublet the apartment for any period of time between January 1, 2018, and December 31, 2019, the tenant would be exceeding the maximum two year sublet rule. The owner could bring an eviction proceeding against the prime tenant.

**Assignments**

A lease assignment conveys to another person all the tenant's rights to occupy the apartment, whereas a sublet is based upon a temporary absence by the prime tenant who intends to return to the apartment at the end of the sublease.

A tenant may not assign his/her lease without the written consent of the owner, which may be unconditionally withheld without cause. However, an owner who unreasonably refuses to grant permission to assign the lease, must release the tenant from the lease upon request of the tenant upon 30 days notice. If the owner reasonably withholds consent, the lease may not be assigned and the tenant will not be released from the lease.

**Illusory Sublets**

An illusory sublet occurs when the alleged prime tenant has not actually been in physical occupancy of the apartment. This type of case is called an "illusory prime tenancy" because the alleged prime tenant does not maintain the apartment as a primary residence and the sublet is intended to evade various requirements of the Rent Stabilization Law and Code.

The subtenant of an apartment in an illusory sublet situation may file a *"Tenant's Complaint of Owner's Failure to Renew Lease and/or Failure to Furnish a Copy of a Signed Lease"* (DHCR Form RA-90) with DHCR. If DHCR finds that the complaint is justified, it will deny the illusory prime tenant the right to a renewal lease and require the owner of the building to recognize the subtenant as the actual tenant, who is entitled to a renewal lease at the lawful stabilized rent.

In addition, the illusory prime tenant will be legally responsible to refund all overcharges collected from the subtenant. If the illusory prime tenant has furniture in the apartment, DHCR may direct the subtenant to permit the furniture to be removed. If the subtenant can prove that the building owner received part or all of the overcharge, the owner will also be responsible for refunding the rent overcharge.

**Sublets in Rent Controlled Apartments**

The rules regarding sublets in rent controlled apartments are different from the rules regarding sublets in rent stabilized apartments. Generally, a rent controlled tenant who is not occupying an apartment pursuant to an existing lease cannot sublet the apartment without the owner's written consent. Many rent controlled tenants do not have existing leases.

The specific procedures set forth in this fact sheet for obtaining an owner's consent to a sublet do not apply to rent controlled apartments. In rent control, there is no specific limitation as to the amount of time that a tenant may sublet an apartment. However, the rent controlled tenant must obtain the owner's written consent to the length of the sublet, and must continue to maintain the apartment as his or her primary residence.

The Rent Regulation Reform Act of 1993 did not affect the collection of rent increases for the subletting of a rent controlled apartment, and

therefore, no sublet allowance may be charged by the owner or prime tenant for rent controlled apartments without the approval of DHCR. This approval is not required for sublets in rent stabilized apartments.

Under Section 2202.6 of the Rent Control Regulations, an owner may apply to DHCR for a sublet allowance of ten percent when a prime tenant sublets to a subtenant. If the increase is granted, the prime tenant may pass it on to a subtenant.

While the prime tenant may not apply for a sublet allowance if the owner does not apply, a prime tenant who has rented an unfurnished apartment, which he/she sublets furnished, may apply for an appropriate rent increase under Section 2202.4. The amount of the increase, if any, which the prime tenant will receive will depend on the value and condition of the furniture.

Under these regulations, it is permissible for the prime tenant to pass on to the subtenant the owner's 10 percent sublet allowance, in addition to the furniture allowance.

The following forms are to be used for these situations: (1) Owners who wish to apply for a sublet allowance (Rent Control), should file an *"Owner's Application for Increase of Maximum Rent (Increased Occupancy)"* (DHCR Form RA-33.3). (2) Prime tenants who wish to apply for a furniture allowance (Rent Control), should file an *"Owner's Application for Air Conditioner Charges or For an Increase in Maximum Rent for Painting"* (DHCR Form RN-79b). Because DHCR Form RN-79b currently does not have a section for applying for a furniture allowance, a prime tenant should attach to this form a cover letter explaining that he or she is applying for furniture allowance.

**Rent Connect:**
rent.hcr.ny.gov

**Ask a question:**
portal.hcr.ny.gov/app/ask

**For translation help:**
hcr.ny.gov/language-accessibility

**Our website:**
hcr.ny.gov/rent

**To visit a Borough Rent Office, by appointment only, please contact:**

**QUEENS**
92-31 Union Hall Street
6th Floor
Jamaica, NY 11433
718-482-4041

**UPPER MANHATTAN**
163 W. 125th Street
5th Floor
New York, NY 10027
212-961-8930

**BRONX**
1 Fordham Plaza
4th Floor
Bronx, NY 10458
718-430-0880

**BROOKLYN**
55 Hanson Place
6th Floor
Brooklyn, NY 11217
718-722-4778

**LOWER MANHATTAN**
25 Beaver Street
New York, NY 10004
212-480-6238

**WESTCHESTER**
75 South Broadway
3rd Floor
White Plains, NY 10601
914-948-4434

NEW YORK STATE OF OPPORTUNITY.

# Homes and Community Renewal

## Office of Rent Administration

FACT SHEET # 14

# Rent Reductions For Decreased Services

4 PAGES

### AT A GLANCE

**Describes tenants' rights to a rent reduction if they experience a decrease in services in their apartment or throughout the building.**

### SUMMARY AND HIGHLIGHTS

A tenant who experiences decreased service in an individual apartment or in the building may file a complaint on the appropriate form.

| | |
|---|---|
| **Process** | • DHCR screens and dockets incoming complaints, serves a copy on the owner and may inspect the conditions described.<br>• DHCR will issue a written order that may reduce the rent and directs repairs. |
| **Terms of Rent Reduction** | • The effective date for rent stabilized tenants is retroactive back to the first day of the month following DHCR's service of the complaint on the owner. For rent controlled tenants, the effective date is the first day of the month after the order is issued.<br>• The amount of the rent reduction for rent stabilized tenants is generally the most recently charged renewal lease guideline increase. For rent controlled tenants, the amount is a dollar amount set by DHCR.<br>• For rent stabilized tenants, a rent restoration order will not be issued until all services listed in the rent reduction order are corrected. For rent controlled apartments, partial rent restoration orders can be issued. |

### DEFINITIONS

**Division of Housing and Community Renewal (DHCR)**: DHCR is the New York State agency that invests in communities, preserves and protects affordable housing and enforces the state's rent control and rent stabilization laws.

**Rent stabilization**: Rules that provide protections to tenants besides limitations on the amount of rent. Tenants are entitled to receive required services, to have their leases renewed, and may not be evicted except on grounds allowed by law. Leases may be renewed for a term of one or two years, at the tenant's choice.

# FACT SHEET #14: IN DETAIL

## Tenant rights when an owner is not maintaining services

It is recommended that a tenant who experiences a decreased service in an individual apartment or in the building should first contact the owner in writing, as detailed in the next paragraph. **However, prior written notice from the tenant to the owner is no longer a requirement. Failure to provide it to the owner and DHCR will not be grounds for the dismissal of the complaint, pursuant to the Rent Code Amendments of 2014.** If written notice does not resolve the problem, the tenant may file a complaint with the Division of Housing and Community Renewal (DHCR).

For an individual complaint a tenant may use an *"Application For A Rent Reduction Based Upon Decreased Services - Individual Apartment "*(DHCR Form RA-81) for complaints about conditions in the apartment. The complaint may also be submitted online at www.hcr.ny.gov. For complaints involving a decrease in building-wide services, a tenant or tenant representative may file an *"Application For A Rent Reduction Based Upon Decreased Building-Wide Services"* (DHCR Form RA-84). A tenant may attach a copy of their letter to the owner or agent with proof of mailing or delivery (for example: certificate of mailing, certified mail receipt or signed receipt from owner or agent acknowledging personal delivery). Complaints should be filed with DHCR not less than 10 days from the date the letter was written to the owner.

For emergency conditions, prior written notice to the owner is not required before filing a complaint with DHCR. These emergency conditions are: vacate order (5 day notification), fire (5 day notification), no water apartment wide, no operable toilet, collapsed or collapsing ceiling or walls, collapsing floor, no heat/hot water apartment wide (violation required), broken or inoperative apartment front door lock, all elevators inoperable, no electricity apartment wide, window to fire escape (does not open), water leak (cascading water, soaking electrical fixtures), window-glass broken (not cracked), broken/unusable fire escapes, air conditioner broken (summer season). Complaints to DHCR that cite any of these emergency conditions will be treated as a first priority and will be processed as quickly as possible, whether they are submitted by an online or paper application. **For paper submissions, it is recommended that tenants use a separate DHCR form for any problematic conditions that are not on this emergency condition list.**

## Procedures when a Complaint of Decrease in Services is filed

1. The DHCR screens and dockets these applications and sends the tenant(s) an acknowledgement with the complaint/docket number.

2. The owner's timeline to respond depends upon the nature of the complaint. A copy of the tenant's application/complaint is sent to the owner and the owner is given a specified amount of time in which to respond. At all times, DHCR may grant an owner a reasonable extension of time to respond.

3. If the owner's answer is relevant to the determination, DHCR may send a copy to the tenant who is given a specified amount of time to respond. DHCR may schedule an inspection during the processing of the application.

4. If the evidence indicates that the owner failed to maintain required services, the DHCR can issue a written order that directs the owner to restore services and reduces the rent for the apartment. The order will stay in effect until the owner applies to DHCR and receives a Rent Restoration Order that finds that services have been restored. DHCR may not issue an order concerning items which were not contained in the tenant's letter to the owner.

## Tenant rights when an owner does not comply with a DHCR Service Reduction Order

If an owner has failed to restore services and/or correct the conditions specified within 30 days after the issuance date of the order, the tenant may file a *"Tenant Affirmation of Non-Compliance"* (DHCR Form RA-22.1), to request that a compliance proceeding be initiated. The tenant is also authorized to reduce their rent in accordance with the order.

## Procedures if the owner cannot obtain access to the apartment to make repairs

If an owner has attempted, but been unable to obtain access to the subject housing accommodation to correct the service or equipment deficiency, the owner should state this in the response. Upon receipt, the DHCR may direct an inspector to accompany the owner or the owner's agent to the housing accommodation to determine whether such access is being provided. In order for the DHCR to coordinate the inspection, the owner should indicate that access has been denied in the response submitted to the DHCR and should include copies of two letters to the tenant attempting to arrange for access. Each of the letters must have been mailed at least eight days prior to the date proposed for access, and must have been mailed by certified mail, return receipt requested. Exceptions to such requirements for inspection may be permitted under emergency conditions, where special circumstances exist, or pursuant to court order.

The tenant's service complaint will be denied or the owner's rent restoration application will be granted, where a tenant fails to provide access at the time arranged by the DHCR for an inspection.

## Effects of the DHCR rent reduction order for rent stabilized and rent controlled tenants

1. The effective date for rent stabilized tenants is retroactive back to the first day of the month following DHCR's service of the complaint on the owner. For rent controlled tenants, the effective date is the first day of the month after the order is issued.

2. The amount of the rent reduction for rent stabilized tenants is generally the most recently charged renewal lease guideline increase **(See Example #1 below)**. For rent controlled tenants, the amount is a dollar amount set by DHCR **(See Example #2 below).**

3. The order generally bars further rent increases for rent stabilized tenants until DHCR issues a rent restoration order. The Rent Code Amendments of 2014 further prohibit the collection of vacancy lease rent increases and the collection of the portion of a major capital improvement rent increase that becomes collectible after the rent reduction order is issued. They will become collectible, prospectively only, from the effective date of the DHCR Rent Restoration Order. For rent controlled tenants, the order will generally not bar increases to the Maximum Collectible Rent (MCR) and Fuel increases. These increases may only be barred if the order found that an essential service was reduced. These are defined as heat during the part of the year when required by law, hot water, cold water, superintendent services, maintenance of front or entrance door security (including, but not limited to, lock and buzzer), garbage collection, elevator service, gas, electricity and other utility services, to both public and required private areas and "such other services when failure to provide and/or maintain such would constitute a danger to the life or safety of, or would be detrimental to the health of the tenant or tenants."

4. For rent stabilized tenants, a rent restoration order will not be issued until all services listed in the rent reduction order are corrected. For rent controlled apartments, partial rent restoration orders can be issued. Owners who want to file for a rent restoration can use form RTP-19. This form is also available online at www.hcr.ny.gov.

## EXAMPLES

### Example #1

1. Ms. Williams, a rent stabilized tenant, receives a rent reduction order for a broken window on February 15, 2020. It has an effective date of December 1, 2019.

2. She has a two year renewal lease in effect which commenced on November 1, 2019, at a rent of $1640 ($1600 + 40.00 (2.50%)). Prior to that renewal lease guideline increase, her rent had been $1600.

3. On March 1, 2020, Ms. William's rent will be reduced to $1600, effective December 1, 2019. If the owner does not file a Petition for Administrative Review (PAR), he or she will also owe Ms. Williams a $40.00 refund for each of the three months of December, January, and February: totaling $120.00. Said refund for these three months is not immediately collectible if the owner files a PAR. However, the rent remains reduced to $1600.

### Example #2

1. Ms. Cohen, a rent controlled tenant receives a rent reduction order for a broken window on March 15, 2020. Her Maximum Collectible Rent (MCR) is $845.

2. The order states the rent reduction is for $8.

3. On April 1, 2020, Ms. Cohen's rent will be reduced to $837 ($845 - $8). There is no retroactivity, and she is in not owed a refund for previous months.

**Owners or Tenants can submit affidavits by a licensed architect or engineer to support their complaint, answer or application**

See Policy Statement 96-1, Third Party Certification for a complete discussion. Essentially, an owner supplied affidavit that conditions have been corrected can be rebutted by the tenants by the submission of a statement by at least 51% of the complaining tenants that the conditions still exist or by a tenant submitted counter affidavit by a licensed architect or engineer.

## SOURCES

New York City Rent Stabilization Code, Section 2523.4
Tenant Protection Regulations, Section 2503.4
New York City Rent and Eviction Regulations, Section 2202.16
New York State Rent and Eviction Regulations, Section 2102.4

## RELATED MATERIALS

FACT SHEET #3

**Required and Essential Services**

**Rent Connect:** rent.hcr.ny.gov

**Ask a question:** portal.hcr.ny.gov/app/ask

**For translation help:** hcr.ny.gov/language-accessibility

**Our website:** hcr.ny.gov/rent

**To visit a Borough Rent Office, by appointment only, please contact:**

**QUEENS**
92-31 Union Hall Street
6th Floor
Jamaica, NY 11433
718-482-4041

**BROOKLYN**
55 Hanson Place
6th Floor
Brooklyn, NY 11217
718-722-4778

**UPPER MANHATTAN**
163 W. 125th Street
5th Floor
New York, NY 10027
212-961-8930

**LOWER MANHATTAN**
25 Beaver Street
New York, NY 10004
212-480-6238

**BRONX**
1 Fordham Plaza
4th Floor
Bronx, NY 10458
718-430-0880

**WESTCHESTER**
75 South Broadway
3rd Floor
White Plains, NY 10601
914-948-4434

NEW YORK STATE OF OPPORTUNITY.
Homes and Community Renewal
Office of Rent Administration

FACT SHEET # 18

# Appealing a Rent Administrator's Order: Petition for Administrative Review (PAR)

3 PAGES

This fact sheet contains general information on this topic and does not supersede the directions provided on the back of the Petition for Administrative Review (PAR) form, any relevant DHCR Policy Statements, Advisory Opinions, Operational Bulletins or requirements of the rent stabilization laws and codes.

An owner, tenant, or other party to the proceeding who wants to appeal a DHCR Rent Administrator's order may file a Petition for Administrative Review (PAR) with DHCR.

**Filing Requirements**

- **Filed within 35 days of the Rent Administrator's order issuance date and not the date received by any party. There are no extensions to this filing date requirement.** However, PAR filings can be amended as described in the section "**Amending a PAR Filing**."

- Filed on a *Petition for Administrative Review (PAR)* form (DHCR Form RAR-2) and be completed and signed by the petitioner or a duly designated representative. Sufficient copies of the completed PAR form, supporting documentation and the DHCR order being appealed are required to be attached. Owners filing PARs of orders affecting multiple tenants should include a sufficient number of copies for DHCR to serve upon each affected tenant. Owners are also required to submit a self-sticking 4" wide and 1" high mailing label addressed to each affected tenant, if there are multiple tenants.

- Specify the alleged errors and list the issues upon which the order should be reviewed. The scope of review in the PAR proceeding is generally limited to the facts or evidence presented to the Rent Administrator, which must also be raised in the PAR. If you are seeking to submit new facts or evidence on PAR, in order to more efficiently process your PAR, such material should be identified with your reason why it should now be accepted and reviewed.

- **Must be filed in person or by mail at Gertz Plaza, 92-31 Union Hall Street, Jamaica, New York 11433.** If the PAR is hand-delivered, it must be received within the 35-day filing period. If the PAR is mailed, it must be postmarked within the required filing period. If a private postage meter is used and the envelope does not have an official U.S. Postal Service postmark, the PAR must be received by DHCR within the required time period or must be accompanied by proof that it was mailed within the required time period. PARs received after the time limit will be dismissed.

- May be filed by two or more owners or tenants (a joint PAR), where at least one ground is common to all persons so filing and needs to be verified by each person joining therein. At the Commissioner's discretion, the PAR may be treated as joint or several, and two or more PARs that have at least one ground in common may be consolidated.

## Processing a PAR

- Upon the receipt of the PAR, DHCR examines it to determine if it is going to be accepted, rejected or dismissed.

- If the PAR submission is procedurally defective, it will result in the issuance of a rejection order which gives the party filing the appeal directions on what needs to be corrected and gives a time frame to submit a corrected and completed PAR.

- Once a PAR is accepted for filing, a copy of a completed PAR is served by DHCR on the opposing party with a form allowing each party to respond to DHCR within a specified time frame.

- DHCR may also send other responses and submissions, with an opportunity to comment, to adversely affected parties, as warranted. DHCR will then review all of the submissions, request additional information if necessary, and issue a decision in the form of a written order signed by the Deputy Commissioner.

- Depending upon the situation under review, the order may be a Grant, Grant in Part, Termination, Dismissal or a Remand to the Rent Administrator.

## Judicial Review

- Once the order signed by the Deputy Commissioner is issued, it can be further appealed by either party, by filing a proceeding in court under Article 78 of the Civil Practice Law and Rules seeking judicial review of the matter. **The deadline for filing this "Article 78 proceeding" with the courts is within 60 days of the issuance date of the Deputy Commissioner's order.** A notice of petition must be served on DHCR, Counsel's Office, 641 Lexington Avenue, New York, New York 10022 and at the office of the New York State Attorney General. It is advisable to consult with an attorney in private practice before proceeding.

## Amending a PAR Filing

- In general, there are two types of amendments, an amendment as of right and an amendment for good cause shown.

- A common example of an amendment as of right is when the petitioner has filed a records access request/FOIL to review the Rent Administrator case file, while the 35-day time limit to file the PAR is running. In this situation, the PAR must be filed within the 35-day time limit and should include a statement that a records access request/FOIL is pending, and further state that once the file has been reviewed, an amended submission will be submitted to DHCR. A copy of the records access request/FOIL should be attached to the PAR.

- Common examples of good cause shown include the hiring of an attorney after the initial PAR filing, to correct mistakes or newly discovered evidence that could not have been reasonably offered earlier. This type of amendment must be made in writing to the PAR Director.

- If a party requests an extension of time to submit an answer, it must be made in writing and specify why the extension is being requested.

**- For a more detailed discussion of this topic, please refer to DHCR Advisory Opinion 92-1, Amendments, Supplements, Extensions and Refiling of PAR's.**

## Effects of a PAR Filing on Rents Adjusted/ Established in Rent Administrator Orders

- In general, a PAR filing (that is not rejected by DHCR) has the effect of placing a stay (freeze) on the retroactive (past) portion of the rent adjustment but not on the prospective (going forward) portion.

### Example 1

Ms. Smith receives a rent reduction order for decrease in services issued by a DHCR Rent Administrator on June 15, 2021, that has an earlier (retroactive) effective date of February 1, 2021. The owner appeals the decision and files a PAR. On July 1, 2021, Ms. Smith is entitled to the prospective portion of the rent reduction order and can pay a rent that is reduced by a guideline adjustment. However, she is not entitled to the related refund, retroactive back to February 1, 2021. If the owner's PAR is granted, Ms. Smith will owe the owner any rent reductions previously taken. If the owner's PAR is denied, the owner will owe Ms. Smith the retroactive rent adjustments/ refund.

### Example 2

Mr. Jones receives a rent overcharge order issued by a DHCR Rent Administrator on August 10, 2021, that lowers the legal rent from $1,800 to $1,500 and directs a refund of $10,000 for previously collected overcharges, The owner appeals the decision and files a PAR. On September 1, 2021, Mr. Jones is entitled to the prospective portion of the overcharge order and can pay the newly established legal rent of $1,500. However, he is not entitled to collect the retroactive portion of the order, which is the refund of $10,000. If the owner's PAR is granted, Mr. Jones will owe the owner any rent adjustments previously taken. If the owner's PAR is denied, the owner will owe Mr. Jones the retroactive rent adjustment/refund.

## SOURCES

New York City Rent Stabilization Code, Section 2529, Section 2530
Tenant Protection Regulations, Section 2510
DHCR Advisory Opinion 92-1
DHCR Operational Bulletin 90-1

**Rent Connect:**
rent.hcr.ny.gov

**Ask a question:**
portal.hcr.ny.gov/app/ask

**For translation help:**
hcr.ny.gov/language-accessibility

**Our website:**
hcr.ny.gov/rent

**To visit a Borough Rent Office, by appointment only, please contact:**

**QUEENS**
92-31 Union Hall Street
6th Floor
Jamaica, NY 11433
718-482-4041

**UPPER MANHATTAN**
163 W. 125th Street
5th Floor
New York, NY 10027
212-961-8930

**BRONX**
1 Fordham Plaza
4th Floor
Bronx, NY 10458
718-430-0880

**BROOKLYN**
55 Hanson Place
6th Floor
Brooklyn, NY 11217
718-722-4778

**LOWER MANHATTAN**
25 Beaver Street
New York, NY 10004
212-480-6238

**WESTCHESTER**
75 South Broadway
3rd Floor
White Plains, NY 10601
914-948-4434

NEW YORK STATE OF OPPORTUNITY.

# Homes and Community Renewal

## Office of Rent Administration

FACT SHEET # 24

# Major Capital Improvements (MCI)

9 PAGES

### AT A GLANCE

**This Fact Sheet describes owners' rights and responsibilities when raising rent after upgrading a building that's subject to rent-stabilization or rent-control laws.**

## DEFINITIONS

**Division of Housing and Community Renewal (DHCR)**: DHCR is the New York State agency that invests in communities, preserves and protects affordable housing and enforces the state's rent control and rent stabilization laws.

**Major Capital Improvements (MCIs)**: Building-wide improvements such as boilers, windows and roofs.

## SUMMARY AND HIGHLIGHTS

MCIs are building-wide improvements to systems such as boilers, windows, electrical rewiring, plumbing and roofs. Unnecessary cosmetic improvements or work done in individual apartments that is not otherwise an improvement to the entire building are not eligible for MCIs.

| | |
|---|---|
| **Requirements** | • To be eligible for a rent increase, the MCI must be a new installation and not a repair to old equipment.<br>• Any claimed MCI cost must be supported by adequate documentation. |
| **Qualifications** | • Tenants have 60 days to respond to the owner's MCI application.<br>• MCI increases are prohibited for buildings with 35% or fewer rent regulated units.<br>• MCI increases are prohibited if there are hazardous violations on file with the local municipality in addition to immediately hazardous violations.<br>• MCI increases, which were previously capped at either 6% or 15%, are now capped at 2% per year, and can only be collected once DHCR issues a written order granting a rent increase.<br>• MCI increases may be granted based upon reasonable costs.<br>• Buildings with 35 or fewer units are amortized over 12 years, buildings with more than 35 units are amortized over 12 1⁄2 years.<br>• MCI increases are effective and collectible on the first day of the first month following 60 days from the mailing date of the order.<br>• MCI increases are temporary and must be removed from the rent 30 years after the date the increase became effective inclusive of any increases granted by the local rent guidelines board. |

# FACT SHEET #24: IN DETAIL

## Definitions

When owners make improvements or installations to a building subject to the rent stabilization or rent control laws, they can apply to the Division of Housing and Community Renewal (DHCR) for approval to raise the rents of the tenants. When the improvement or installation meets certain requirements it will be considered a Major Capital Improvement (MCI). To qualify as an MCI, the improvement or installation must:

1. be depreciable pursuant to the Internal Revenue Code, other than for ordinary repairs;
2. be essential for the preservation, energy efficiency, functionality or infrastructure of the entire building;
3. directly or indirectly benefit all tenants; and,
4. meet the requirements set forth in the useful life schedule contained in the applicable Rent Regulations.

Some examples of MCI items include boilers, windows, electrical rewiring, plumbing and roofs. Unnecessary cosmetic improvements or work done in individual apartments that is not otherwise an improvement to the entire building are not eligible for MCIs. DHCR may grant a rent increase based upon the actual, verified and reasonable cost of the improvement and installation.

To be eligible for a rent increase, the MCI must be a new installation and not a repair to old equipment. Some procedures qualify as MCI's as well, such as "pointing" a building. DHCR Fact Sheet # 33 "Useful Life Schedule" includes a partial list of installations that qualify for MCI rent adjustments. All applications for MCI rent adjustments must be filed within two years of the installation.

## Application and Documentation

An owner must file an OWNER'S APPLICATION FOR RENT INCREASE BASED ON MAJOR CAPITAL IMPROVEMENTS (DHCR form RA-79) available from DHCR Borough Rent Offices or from the main office at Gertz Plaza, 92-31 Union Hall Street, Jamaica, NY 11433, or from the DHCR website.

Small building owners are encouraged to contact the DHCR's SBO Unit for technical assistance prior to filing the application. **All owners and the managing agent in cooperative/condominium corporations need to carefully review the MCI Instructions (RA-79 Instructions) while completing the application (RA-79) as they are more detailed than this Fact Sheet, which contains general information.**

The completed application must contain:

1. an itemized list of the work performed and a description or explanation of the reason or purpose of such work;
2. certifications provided by the owner and contractors regarding the cost of the work and dates the work started and ended;
3. proof of payment;
4. copies of all necessary approvals from applicable government agencies for the work done;
5. an affirmation that the building is free of any hazardous or immediately hazardous violations with the applicable local municipalities;
6. a list of tenants with their respective rent-regulated status.

## Case Processing

1. When an owner submits an MCI application, DHCR notifies the tenants and gives them an opportunity to submit written responses to the application. They are instructed to comment on the subject installation(s) as specifically as possible. Tenants can request

an extension of time to respond to the application.
2. The owner may keep a copy of the application with all supporting documentation on the premises so that tenants may examine it. However, a complete copy of the MCI application with all the supporting documentation will always be available at the DHCR for tenant review upon written request. DHCR will review the application, consider the tenant responses and may request additional documentation if deemed necessary.
3. When processing is complete, DHCR will issue an order either granting a rent increase for the total amount requested, a partial amount, or denying the request. The owner and the tenants will be notified by DHCR of the amount of the rent increase per room along with the total amount that is applicable to each apartment in addition to the related terms and conditions in a written order.

## Municipal Approvals and Tenant Responses

1. If the installation received the required approval from another government agency, tenant responses will be considered but may not result in a denial of the application. In such instances, the tenants may be referred to the other government agency for appropriate action. Examples: In New York City, installations of boilers, plumbing and rewiring require Department of Buildings approval.

2. If the installation did not require approval from another government agency, the owner can respond to the tenant complaints by submitting an affidavit by an independent licensed architect or engineer that the installation is free of any defects. The tenants can rebut the affidavit by submitting a statement by at least 51% of those that originally complained, that the installation is still defective or they can submit a counter affidavit by a licensed architect or engineer. The affidavit must contain the original signature and professional stamp of the architect or engineer, not a copy.

   DHCR will consider the statement by at least 51% of the original complainants or the tenants' counter affidavit in deciding to approve or deny the MCI application. DHCR may conduct an inspection to help it reach its decision.

   Example: Installation of windows, roofs and lobby doors do not require approval from other government agencies.

## Record Keeping and Proof of Payment

In order to speed processing, owners are strongly urged to pay for all MCI costs by check. If cash payments are made for allowable MCI expenses, they must be supported by adequate documentation. Any claimed MCI cost must be supported by adequate documentation which should include cancelled check(s) with related bank statement(s) showing negotiation contemporaneous with the completion of the work or proof of electronic payment, copies of negotiated bank checks and/or negotiated money orders made payable to the contractor, invoice receipt(s) marked paid in full contemporaneous with the completion of the work, signed contract agreement(s), signed change orders, and contractor's affidavit indicating that the installation was completed and paid in full.

Whenever it is found that a claimed cost warrants further inquiry, the DHCR may request that the owner provide additional documentation. Where proof is not adequately substantiated, the difference between the claimed cost and the substantiated/reasonable cost will be disallowed.

Further information may be found under DHCR Operational Bulletin 2017-1 available on our website at www.hcr.ny.gov/rent-operational-bulletins regarding proof of payment, lump sum costs, identity of interest, and cash payments.

## Violations

DHCR can deny the application in whole or in part, if the owner is not maintaining all required services, or if there are current hazardous or immediately hazardous violations outstanding pursuant to the NYC Housing Maintenance Code (HPD), NYC Building Code (DOB), NYC Fire Code (FDNY), Uniform Fire Prevention & Building Code (ETPA Counties). Certain tenant-caused violations may be excepted. An MCI rent increase will not be approved if there is a DHCR finding of harassment outstanding on the building or if there is a DHCR issued building-wide rent reduction order in effect, based upon a decrease in services. DHCR will expedite any owner filed rent restoration applications. A tenant whose apartment has an individual rent reduction order in effect, based upon a decrease in service will be exempt from the MCI rent increase until the rent is restored by DHCR.

## J-51 Tax Benefits

If the owner of apartments in New York City receives a tax abatement (J-51) for the MCI, the rent increase is reduced by a portion of the value of the tax abatement. The rent is temporarily reduced in the MCI proceeding or at a later date in a Tax Abatement Modification proceeding. The rent is restored at the end of the tax abatement period pursuant to a DHCR issued rent restoration order for rent controlled apartments and an owner filed notice for rent stabilized apartments.

## MCI Rent Increases and Vacancy and Renewal Leases

If an apartment is vacant or becomes vacant while the MCI application is pending, the owner must notify any incoming tenant that the tenant's rent will be increased if the MCI application is approved. Failure to indicate this anticipated rent increase in the vacancy lease will result in no MCI increase being allowed for this apartment until the lease is renewed. If an owner charges the rent increase without this proper notification, the owner risks overcharge penalties.

A vacancy lease clause that satisfactorily notifies an incoming tenant of a pending MCI application is one which provides as follows: "An application for a major capital improvement rent increase has been filed with DHCR based upon the following work: _____, Docket # _____. Should DHCR issue an order granting the rent increase, the rent quoted in this lease will be increased."

If the DHCR approves an application for a rent increase based on an MCI, the owner may adjust the rent during the term of an existing lease only if the lease contains a clause specifically authorizing the owner to do so. A satisfactory lease clause would provide as follows: "The rent established in this lease may be increased or decreased by an order of the DHCR or the Rent Guidelines Board."

## How did the Housing Stability & Tenant Protection Act of 2019 affect MCI case processing and rent increases?

- Tenants have 60 days to respond to the owner's MCI application.
- MCI increases are prohibited for buildings with 35% or fewer rent regulated units.
- MCI increases are prohibited if there are hazardous violations on file with the local municipality in addition to immediately hazardous violations.
- MCI increases may be granted based upon reasonable costs.
- Buildings with 35 or fewer units are amortized over 12 years, buildings with more than 35 units are amortized over 12 ½ years.
- MCI increases are effective and collectible on the first day of the first month following 60 days from the mailing date of the order.
- MCI increases are temporary and must be removed from the rent 30 years after the date the increase became effective inclusive of any increases granted by the local rent guidelines board.

- MCI increases, which were previously capped at either 6% or 15%, are now capped at 2% per year.

## #24 Major Capital Improvements (MCI) ADDENDUM: Questions and Answers

**1. What is an MCI?**

A Major Capital Improvement (MCI) is an improvement or installation that improves the overall condition of a building that is subject to the rent stabilization or rent control laws. Examples of MCIs include new roofs, boiler, windows, plumbing or electrical rewiring. A comprehensive list of other examples of MCIs can be found under DHCR Fact Sheet # 33 available at www.hcr.ny.gov/fact-sheets

The verified costs of MCIs can be passed onto rent regulated tenants through a rent increase to your monthly rent. The building owner can only charge the MCI rent increase to tenants after they receive approval from the NYS Division of Housing and Community Renewal (DHCR) by meeting various required criteria.

**2. What type of work qualifies for an MCI rent increase?**

MCIs must satisfy several requirements. The work must benefit the entire building, not just a few apartments, and it must involve the replacement of one of the building's major systems. The MCI work must be for the operation, preservation, and maintenance of the building. MCIs must be depreciable as provided by the Internal Revenue Code. In addition, the improvement must be essential for the preservation, energy efficiency, functionality or infrastructure of the entire building and not for operational costs or unnecessary cosmetic improvements or for any group work done in individual apartments that is not otherwise an improvement to the entire building.

DHCR will not grant a MCI rent increase for ordinary repairs which only maintains the building in adequate working order. In addition, the building owner also must make sure that the MCI item being replaced or work being completed has outlived the DHCR's "Useful Life Schedule" which can be found under DHCR Fact Sheet #33 available at www.hcr.ny.gov/fact-sheets. The "Useful Life Schedule" provides the number of years a utility or structure within the building should last before it is replaced and thus eligible for a MCI rent increase. For example, a package or steel boiler can only be eligible for an MCI rent increase if the owner replaces it after 25 years, the typical estimated life span found in the Useful Life Schedule, and not every 5 years.

**3. How will I know if my building owner applied for an MCI increase?**

If the building owner applied for an MCI rent increase, all rent regulated tenants in the building will be mailed a notice by DHCR that summarizes the application in detail. This notice will contain information about the improvement, including the work dates and the claimed costs. In addition, this notice will include the number of rooms in your apartment. Note that at this stage, DHCR has not yet determined if the MCI will be granted, partially granted, or denied.

**4. Do I get to respond to and challenge my building owner's MCI application?**

Yes. Tenants may individually and/or as part of a Tenant's Association challenge and oppose this application before the MCI rent increase is granted and added to a tenant's monthly rent. Tenants will get 60 days from the date on the notice to answer the building owner's MCI rent increase application.

**5. May I examine my building owner's MCI application?**

Tenants can review the copy of the owner's MCI application that is in the possession of the DHCR and can do so by filling out a Records Access (REC-1) request form, available with instructions at: www.hcr.ny.gov/tenant-owner-forms

Submit the request to:

NYS Division of Housing & Community Renewal
Office of Rent Administration
Gertz Plaza
92-31 Union Hall Street, 6th Floor
Jamaica, NY 11433
Attn.: Records Access Unit

Tenants can request to review the owner's MCI application at DHCR's Gertz Plaza office at the address listed above or request that a copy be mailed to them. In addition, if the owner placed a copy with all supporting documents at the subject building, the tenants can review it on site.

**6. Can I get a time extension to answer the MCI application?**

Tenants may request, for good cause, an additional 30 days extension to reply to the application. Tenants must list the reason why an extension is needed. Submit the request to:

NYS Division of Housing & Community Renewal
Office of Rent Administration
Gertz Plaza
92-31 Union Hall Street, 6th Floor
Jamaica, NY 11433
Attn.: MCI Unit

Be sure to include your docket number in your request.

**7. What tenant responses/challenges will DHCR consider?**

DHCR will review all tenant responses. Tenants can challenge the approval of the application for a number of reasons such as: defects in the installation of the new equipment, improper cost documentation, complaints of harassment by the owner, outstanding maintenance or building violations of record, lack of building registration, the issuance of DHCR rent reduction orders, failure to meet useful life requirements for the item being replaced, improper apartment room count. Some specific grounds for challenging an MCI may include, but are not limited to:

- The work doesn't benefit all tenants or doesn't benefit the whole building. EXAMPLE: The windows were only replaced on the third floor of a six-floor building.
- The work was not necessary and is cosmetic in nature only.
- The work was done on a system that has not out-lived its Useful Life, the owner previously received a MCI rent increase for this installation, and the building owner has not received a waiver from DHCR to replace the system.
- The work is for ordinary repairs and not for the operation, preservation, and maintenance of the building. Example, the owner patches over certain areas of the roof and does not replace the entire roofing system.
- The work is not depreciable under the Internal Revenue Code.
- The MCI item is defective, incomplete or completed in an unworkmanlike manner.
- The building owner did not properly document costs or did not properly calculate the costs.
- The building owner has harassed tenants. See DHCR Fact Sheet #17 available at www.hcr.ny.gov/fact-sheets for further information and file a report if necessary with DHCR.
- There were hazardous or immediately hazardous violations on file with the local municipality on the date the owner filed the MCI application. You may visit HPD's website or DOB's website showing these violations.

- The owner's MCI application was filed more than two years after the work was completed.
- Owner did not obtain the appropriate approvals from the local municipality as required by law.
- Owner received a government grant or insurance proceeds to pay for some of the work.
- The work claimed by the owner benefitted a commercial entity and the owner did not properly allocate the MCI costs to the commercial space.
- The building owner is not maintaining all required services in the building, such as providing gas, heat, hot water, etc.
- The owner completed the MCI work in different stages spread out over many years.
- Some or all of the work was done by the Superintendent or someone related to the owner.
- The owner's MCI application did not include a signed affidavit from all of the contractors to prove they finished the work and were fully paid.
- Some of the MCI costs were ineligible or filing fees.

**8. Can I add challenges to an MCI application after I have submitted my initial answer?**

Yes. Tenants can continue to submit evidence to DHCR on grounds to reject the MCI application even after they have filed their initial answer, until a DHCR order is issued. Be sure to include the Docket Number so that the DHCR office is aware of which MCI application you are referring to.

**9. Can my building owner raise my rent prior to DHCR approval?**

No. The owner must submit an application to DHCR and it must be thoroughly reviewed. DHCR must issue a written order to the tenants and the owner granting or denying the application and the order states the amount of the MCI rent increase.

**10. How is the MCI rent increase calculated?**

The MCI rent increase is calculated as follows:

The cost claimed by an owner (Claimed Cost) is audited and verified by DHCR and is reduced by: any items that do not qualify as MCIs, costs that the owner cannot prove, and insurance payments and/or government grants that paid for part of the MCI.

This arrives at the Approved Cost, which is either the amount of the Claimed Cost minus the deductions made by DHCR or the reasonable cost of the installation. The Approved Cost is then adjusted if the MCI benefitted any commercial space at the building by the square feet of the commercial space in relation to the whole building. The net approved cost is then amortized (spread out) over the time period specified by law (144 months for buildings of 35 or fewer units and 150 months for a building larger than 35 units). This amount is further divided by the total number of rooms in the building. This gives us the per room, per month rent increase. The apartment rent increase is found by multiplying this amount by the number of rooms in the apartment.

## MCI CALCULATION CHART

| | Description | Calculation |
|---|---|---|
| 1. | Owner claims $227,000 of capital work | $227,000 |
| | Subtotal (claimed cost) | $227,000 |
| 2. | Audit shows $35K of ineligible costs (i.e. not substantiated, paid for by insurance, paid for by gov't grants, etc.); claim reduced by $35K | −$35,000 |
| | Subtotal (approved cost) | $192,000 |
| 3. | Commercial space accounts for 10 % of area of building; claim further reduced by 10% | −$19,200 |
| | Subtotal (net approved cost) | $172,800 |
| 4. | Building has 30 units so, as specified in law, net approved cost amortized over 144 months | ÷144 |
| | Subtotal (total building per month increase) | $1,200 |
| 5. | Building has 120 rooms (40 apartments with 3 rooms each) so total increase divided by 120 | ÷120 |
| | Total (per room per month increase) | $10 |

### 11. DHCR granted the MCI rent increase and I don't agree with DHCR's decision. What can I do?

Tenants can file an appeal within 35 days of the date on the DHCR order that granted the MCI rent increase. Specify any errors or mistakes that DHCR may have made in issuing this order. The review in the appeal proceeding is generally limited to the facts or evidence presented to DHCR during the MCI case processing. If you are seeking to submit new facts or evidence on appeal such material should be identified with your reason why it should now be accepted and reviewed. The application to file the appeal, DHCR's Petition for Administrative Review form RAR-2, is available at www.hcr.ny.gov/tenant-owner-forms

### 12. Does the filing of the appeal stop the owner from collecting the rent increase?

No. The owner is entitled by law to collect the rent increase.

### 13. How does this increase apply to my rent?

DHCR's MCI order will specify the rent increase for your apartment and when such increase is collectible. The MCI rent increase is limited to 2% of your rent that was in effect when the owner filed the application (in the MCI order, DHCR refers to this as the rent roll date) during any 12-month period from the collectible date on the order. Any amount that is more than 2% of the rent may only be collected in future 12-month periods.

## 14. Why do I have to pay the MCI increase when my rent is already set in my lease?

Even if your rent is set by your lease, the owner may still increase the rent based on an MCI rent increase ordered by DHCR. The DHCR issued standard lease renewal form contains language that states "The rent, separate charges and total payment provided for in this renewal lease may be increased or decreased by order or annual updates of the DHCR or Rent Guidelines Board."

## 15. Do I have to pay a rent increase if I receive SCRIE/DRIE?

No. Tenants in New York City who receive Senior Citizen Rent Increase Exemption (SCRIE) or Disability Rent Increase Exemption (DRIE) should call 311 to receive information about their rent exemption after an MCI order. Tenants outside of New York City should contact their local SCRIE/DRIE office to receive information about their rent exemption after an MCI order. Tenants should make a copy of the MCI order and send it to their SCRIE/DRIE office so that their exemption can be updated.

**Rent Connect:**
rent.hcr.ny.gov

**Ask a question:**
portal.hcr.ny.gov/app/ask

**For translation help:**
hcr.ny.gov/language-accessibility

**Our website:**
hcr.ny.gov/rent

**To visit a Borough Rent Office, by appointment only, please contact:**

**QUEENS**
92-31 Union Hall Street
6th Floor
Jamaica, NY 11433
718-482-4041

**UPPER MANHATTAN**
163 W. 125th Street
5th Floor
New York, NY 10027
212-961-8930

**BRONX**
1 Fordham Plaza
4th Floor
Bronx, NY 10458
718-430-0880

**BROOKLYN**
55 Hanson Place
6th Floor
Brooklyn, NY 11217
718-722-4778

**LOWER MANHATTAN**
25 Beaver Street
New York, NY 10004
212-480-6238

**WESTCHESTER**
75 South Broadway
3rd Floor
White Plains, NY 10601
914-948-4434

NEW YORK STATE OF OPPORTUNITY.

# Homes and Community Renewal

## Office of Rent Administration

FACT SHEET # 26

# Guide to Rent Increases for Rent Stabilized Apartments

5 PAGES

### AT A GLANCE

**This Fact Sheet can be used along with a rent registration history of an apartment to assist in determining if the apartment's registration status and rent are lawful.**

### DEFINITIONS

**Housing Stability and Tenant Protection Act (HSTPA) of 2019**: The act, which went into effect on June 14, 2019, made changes to how rents can be raised and changed formulas for vacancy leases, Major Capital Improvements (MCI) and Individual Apartment Improvements (IAI).

**Individual Apartment Improvements (IAIs)**: When an owner installs a new appliance or makes an improvement to an apartment, the owner may be entitled to an IAI rent increase.

**Major Capital Improvements (MCIs)**: Building-wide improvements such as boilers, windows and roofs.

**Vacancy lease**: When a person rents a rent stabilized apartment for the first time, the owner and the tenant sign a vacancy lease.

### SUMMARY AND HIGHLIGHTS

The Housing Stability and Tenant Protection Act (HSTPA) of 2019 made changes to how rents can be raised and changed formulas for vacancy leases, MCIs, and IAIs. MCI and IAI rent increases are now temporary, and the amount that can be collected for IAIs is limited.

| | |
|---|---|
| **Options** | • **Vacancy leases:** HSTPA eliminated the statutory vacancy rate and does not permit Rent Guidelines Boards to establish a separate vacancy rate. However, if authorized by the Rent Guidelines Board, the owner may add a one or two-year guideline to all leases. The owner cannot add more than one guideline adjustment within the same guideline year.<br>• **Renewal leases:** When a tenant signs a renewal lease, they can choose between a one or two-year option and the allowable increase is set by the local rent guidelines board.<br>• **Improvements:** Lawful rent increases for IAIs and/or MCIs may be factored into rent increases. |
| **Limitations** | • Under HSTPA, there are limitations on future MCI increases, such as: an annual 2% rent increase cap, only reasonable costs are recoverable, and MCI rent increases are prohibited in buildings that contain 35% or fewer rent-regulated apartments.<br>• In buildings with 35 units or less, owners can increase the rent for an IAI up to 1/168th of the cost of the improvement.<br>• In buildings with more than 35 units, owners can increase the rent for an IAI up to 1/180th of the cost of the improvement.<br>• Owners may collect no more than three IAI increases within a 15-year period, and the total cost of the improvements eligible for a rent increase calculation cannot exceed $15,000.<br>• The written consent provided by the tenant in occupancy for an IAI rent increase must be on a DHCR form. |

## FACT SHEET #26: IN DETAIL

### Introduction

This fact sheet will be updated annually to reflect the new lease guideline rates. It can be reviewed along with a rent registration history of an apartment to assist in determining if the apartment's registration status and the rent being charged are lawful. The apartment rent registration history and a rent overcharge complaint form can be requested online at www.hcr.ny.gov or at a Borough Rent Office.

The Housing Stability and Tenant Protection Act (HSTPA) of 2019, which went into effect on June 14, 2019, made changes to how rents can be raised and changed formulas for vacancy leases, Major Capital Improvements (MCI) and Individual Apartment Improvements (IAI). MCI and IAI rent increases are now temporary and the amount that can be collected for IAIs is limited. HSTPA eliminates High Rent Vacancy and High Rent High Income Deregulation and makes preferential rents the basis for collection for the duration of the tenancy. It also extends the rent overcharge review time period from four to up to six years for complaints filed on or after the passage of HSTPA.

Prior to HSTPA, apartments could be deregulated if rents reached certain annually adjusted deregulation levels (based upon a vacancy occurring or household income levels). Once an apartment was deregulated owners could charge market rents and the tenant would no longer be protected by rent stabilization. In addition, an owner could, upon lease renewal, raise a tenant's preferential rent to the legal regulated rent. In general, when processing a complaint of rent overcharge, DHCR was previously limited to examining the prior four years of rent history and penalties could only be assessed for up to four years.

### Vacancy Lease

HSTPA eliminated the statutory vacancy rate and does not permit Rent Guidelines Boards to establish a separate vacancy rate.

However, if authorized by the Rent Guidelines Board, the owner may add a one or two-year guideline to all leases. The owner cannot add more than one guideline adjustment within the same guideline year. Lawful temporary increases for Major Capital Improvements (MCI) and Individual Apartment Improvements (IAI) may also be added to the rent.

A DHCR Rent Stabilization Lease Rider/Addenda is to be attached to the lease and it should contain information on how the rent was calculated and on any related Individual Apartment Improvements.

### Renewal Lease

When a tenant signs a renewal lease, they can choose between a one or two-year option and the allowable increase is set by the local rent guidelines board. (See the Recent Lease Guideline Rates chart.)

Effective June 14, 2019 owners who are collecting a preferential rent, upon renewal of the lease, can increase the legal and preferential rents by the lawful rate increases but only collect an increase based on the preferential rent. The higher legal regulated rent and related increases can only be collected when the apartment is vacated and rented to a subsequent tenant. See Fact Sheet #40 for more details.

### Individual Apartment Improvements (IAI)

When an owner installs a new appliance or makes an improvement to an apartment the owner may be entitled to an IAI rent increase. Tenant written consent for the improvement and rent increase is only required if the apartment is occupied by a tenant at the time of the improvement. Written consent is not required for a vacant apartment.

In buildings with 35 units or less, the amount the rent can be increased for an IAI is limited to 1/168th of the cost of the improvement. In buildings with more than 35 units, the amount the rent can be

increased for an IAI is limited to 1/180th of the cost of the improvement.

No more than three IAI increases can be collected in a 15-year period and the total cost of the improvements eligible for a rent increase calculation cannot exceed $15,000. Work must be done by a licensed contractor and there is a prohibition on common ownership between the contractor and the owner. The apartment must be free and clear of any outstanding hazardous and immediately hazardous violations. The written consent provided by the tenant in occupancy must be on a DHCR form. A translated version in the top 6 languages spoken other than English will be made available for review on DHCR's website. Owners are required to maintain supporting documentation and photographs for all IAI installations, which commencing June 14, 2020 will be submitted to and stored by DHCR in an electronic format. The IAI rent increase for improvements collected after June 14, 2019 is temporary and must be removed from the rent in 30 years, and the legal rent must be adjusted at that time for guideline increases that were previously compounded on a rent that included the IAI.

The DHCR Lease Rider included with a vacancy lease must notify the tenant of the right to request from the owner by certified mail Individual Apartment Improvements (IAIs) supporting documentation at the time the lease is offered or within 60 days of the execution of the lease. The owner shall provide such documentation within 30 days of that request in person or by certified mail. A tenant who is not provided with that documentation upon demand may file form RA-90 "Tenant's Complaint of Owner's Failure to Renew Lease and/or Failure to Furnish a copy of a Signed Lease" to receive a DHCR Order that directs the furnishing of the IAI supporting documentation. IAI rent increases cannot be collected if a DHCR order reducing rent for decreased services is in effect and has an earlier effective date. It can be collected prospectively on the effective date of a DHCR order restoring the rent.

**Major Capital Improvements (MCI)**

An owner is permitted rent increases to recover the costs of building-wide major capital improvements, such as the replacement of a boiler or new plumbing. The owner must file an application with DHCR and DHCR may issue an order denying the increase or granting an increase in part or in whole. After review of an MCI application DHCR will issue an order and serve it on the owner and all tenants in the building.

Under HSTPA, there are limitations on future MCI increases, such as: only reasonable costs are recoverable, and MCI rent increases are prohibited in buildings that contain 35% or fewer rent regulated apartments. The rent increase approved by the DHCR order is collectible prospectively, on the first day of the first month 60 days after issuance. There are no retroactive rent increases. The collection of the increase is limited to a 2% cap/yearly phase-in. The 2% cap also applies to MCI rent increases not yet collected that were approved on or after June 14, 2012. The first renewal lease effective after June 14, 2019 must reflect no more than a 2% increase. Upon vacancy, the remaining balance of the increase can be added to the legal rent. In buildings with 35 or fewer units, the cost of the MCI is amortized over a 12-year period. In buildings with more than 35 units, the cost of the MCI is amortized over 12 ½ years. The building must be free and clear of any outstanding hazardous and immediately hazardous violations. The MCI rent increase is temporary and it must be removed from the rent in 30 years and the legal rent must be adjusted at that time for guideline increases that were previously compounded on a rent that included the MCI rent increase. Vacancy lease tenants are to be notified in their lease about pending MCI applications.

## RECENT LEASE GUIDELINE RATES

- Prior to the effective date of the Housing Stability and Tenant Protection Act (HSTPA) of 2019, June 14, 2019, these guidelines applied only to lease renewals.
- After June 14, 2019, if authorized by the Rent Guidelines Board, the guideline rates may apply to all leases.

| EFFECTIVE DATE OF RENEWAL LEASE | *NYC* | | *Nassau* | | *Rockland* | | *Westchester* | | *Westchester (tenant pays either heat or hot water)* | |
|---|---|---|---|---|---|---|---|---|---|---|
| | ***1 year*** | ***2 year*** | ***1 year*** | ***2 year*** | ***1 year*** | ***2 year*** | ***1 year*** | ***2 year*** | ***1 year*** | ***2 year*** |
| **10/1/15-9/30/16** | **0.00%** | **2.00%** | **1.25%** | **1.75%** | **1.25% + $25.00 for rents $950.00 or less** | **1.50% + $25.00 for rents $950.00 or less** | **1.75%** | **2.75%** | **1.40%** | **2.20%** |
| **10/1/16-9/30/17** | **0.00%** | **2.00%** | **0.50%** | **1.00%** | **0.00%** | **0.00%** | **0.00%** | **0.50%** | **0.00%** | **0.40%** |
| **10/1/17-9/30/18** | **1.25%** | **2.00%** | **0.00%** | **0.00%** | **0.00%** | **0.50%** | **1.00%** | **1.50%** | **0.80%** | **1.20%** |
| **10/1/18-6/13/19** | **1.50%** | **2.50%** | **1.00%** | **2.00%** | **0.00%** | **0.00%** | **2.00%** | **3.00%** | **1.60%** | **2.40%** |
| | | | | | | | **0.00%[1]** | **1.00%[1]** | **0.00%[1]** | **0.80%[1]** |
| **6/14/19-9/30/19** | **1.50%** | **2.50%** | **1.00%** | **2.00%** | **0.00%** | **0.00%** | **2.00%** | **3.00%** | **1.60%** | **2.40%** |
| | | | | | | | **0.00%[1]** | **1.00%[1]** | **0.00%[1]** | **0.80%[1]** |
| **10/1/19-9/30/20** | **1.50%** | **2.50%** | **1.50%[G]** | **2.50%[G]** | **0.00%** | **0.00%** | **1.75%** | **2.75%** | **1.75%** | **2.75%** |
| **10/1/20-9/30/21** | **0.00%[G]** | **0.00%[G, 2]**<br>**1.00%[G, 2]** | **0.00%[G]** | **0.00%[G]** | **0.00%[G]** | **0.00%[G]** | **0.00%[G]** | **0.00%[G]** | **0.00%[G]** | **0.00%[G]** |
| **10/1/21-9/30/22** | **1.50%[G, 3]** | **2.50%[G]** | **1.00%[G]** | **2.00%[G]** | **0.50%[G]** | **0.75%[G]** | **0.50%[G]** | **1.00%[G]** | **0.50%[G]** | **1.00%[G]** |
| **10/1/22-9/30/23** | **3.25%[G]** | **5.00%[G]** | **2.00%[G]** | **3.50%[G]** | **0.50%[G]** | **0.75%[G]** | **2.00%[G]** | **3.00%[G]** | **2.00%[G]** | **3.00%[G]** |

**[G] The guideline increase is authorized for all leases.**

**[1] These increases apply only to the Village of Ossining within Westchester County.**

**[2] 0% for the first year of the lease and 1% for the second year of the lease.**

**[3] 0% for the first six (6) months of the lease and 1.5% for the final six (6) months of the lease.**

## HISTORICAL VACANCY LEASE RATES

- Pursuant to the Housing Stability and Tenant Protection Act of 2019, effective June 14, 2019, there is no longer a separate statutory vacancy rate or a separate Rent Guidelines Board vacancy rate.

| EFFECTIVE DATE OF VACANCY LEASE | *NYC* | | *Nassau* | | *Rockland* | | *Westchester* | | *Westchester (tenant pays either heat or hot water)* | |
|---|---|---|---|---|---|---|---|---|---|---|
| | *1 year* | *2 year* | *1 year* | *2 year* | *1 year* | *2 year* | *1 year* | *2 year* | *1 year* | *2 year* |
| 10/1/12 - 9/30/13[1] | 18.00% | 20.00% | 19.00% | 20.00% | 20.00% | 20.00% | 19.00% | 20.00% | 19.00% | 20.00% |
| 10/1/13 - 9/30/14[1] | 16.25% | 20.00% | 19.50% | 20.00% | 18.50% | 20.00% | 19.00% | 20.00% | 19.00% | 20.00% |
| 10/1/14 - 9/30/15[1] | 18.25% | 20.00% | 19.50% | 20.00% | 17.50% | 20.00% | 19.00% | 20.00% | 19.00% | 20.00% |
| 10/1/15 - 9/30/16[1] | 18.00% | 20.00% | 19.50% | 20.00% | 19.75% | 20.00% | 19.00% | 20.00% | 19.00% | 20.00% |
| 10/1/16 - 9/30/17[1] | 18.00% | 20.00% | 19.50% | 20.00% | 20.00% | 20.00% | 19.00% | 20.00% | 19.00% | 20.00% |
| 10/1/17 - 9/30/18[1] | 19.25% | 20.00% | 20.00% | 20.00% | 19.50% | 20.00% | 19.50% | 20.00% | 19.50% | 20.00% |
| 10/1/18 - 6/13/19[1] | 19.00% | 20.00% | 19.00% | 20.00% | 20.00% | 20.00% | 19.00% | 20.00% | 19.00% | 20.00% |

**[1] Prior to June 14, 2019, the Rent Act of 2015 provides that if a preferential rent was charged and paid by the prior tenant, then the owner is entitled to increase the legal regulated rent by no more than one of the following vacancy increases:**

| Last Vacancy Lease Commenced: | Vacancy Increase: |
|---|---|
| **Less than 2 years ago** | 5% |
| **Less than 3 years ago** | 10% |
| **Less than 4 years ago** | 15% |
| **4 or more years ago** | 20% (for a two-year lease)<br>**OR**<br>the % listed for the effective date and county in the table above (for a one-year lease) |

**Rent Connect:**
rent.hcr.ny.gov

**Ask a question:**
portal.hcr.ny.gov/app/ask

**For translation help:**
hcr.ny.gov/language-accessibility

**Our website:**
hcr.ny.gov/rent

**To visit a Borough Rent Office, by appointment only, please contact:**

**QUEENS**
92-31 Union Hall Street
6th Floor
Jamaica, NY 11433
718-482-4041

**BROOKLYN**
55 Hanson Place
6th Floor
Brooklyn, NY 11217
718-722-4778

**UPPER MANHATTAN**
163 W. 125th Street
5th Floor
New York, NY 10027
212-961-8930

**LOWER MANHATTAN**
25 Beaver Street
New York, NY 10004
212-480-6238

**BRONX**
1 Fordham Plaza
4th Floor
Bronx, NY 10458
718-430-0880

**WESTCHESTER**
75 South Broadway
3rd Floor
White Plains, NY 10601
914-948-4434

NEW YORK STATE OF OPPORTUNITY.
Homes and Community Renewal
Office of Rent Administration

FACT SHEET # 27

# Air Conditioners

2 PAGES

## SURCHARGES

### Electrical Exclusion Buildings (Tenant Pays For Electricity)

When the tenant in a rent controlled or rent stabilized apartment in an electrical exclusion building, which is a building in which the tenant pays a public utility for electricity, purchases and installs an air conditioner unit that protrudes beyond the window line, the owner may collect a five dollar ($5.00) per-month surcharge for each unit installed. The window line is the outer edge of the window sill. Once installed and after the $5.00 surcharge has been collected, the tenant may not remove the air conditioner without the owner's permission and demand that the surcharge be dropped. The surcharge does not apply to air conditioners installed in sleeves.

### Electrical Inclusion Buildings (Owner Pays For Electricity)

For rent controlled and rent stabilized apartments, where the rent includes the use of electricity, an owner may charge a tenant a surcharge for the use of electricity for each air conditioner that has been installed.

On October 1st of each year after the air conditioner has been installed the surcharge will be adjusted upward or downward for rent stabilized and rent controlled apartments with electricity included in the rent. Each annual adjustment of this electrical surcharge will be based on the increase or decrease in electrical cost stated in the Price Index of Operating Costs for Rent Stabilized Apartment Houses in New York City. The Price Index is prepared by the New York City Rent Guidelines Board, or an independent company chosen by the Board. This annual adjustment applies to air conditioners installed after October 1, 1985. If an owner collected a rent increase for the electricity consumed by an air conditioner installed in a rent stabilized apartment before October 1, 1985, that rent increase remains in effect and is not affected by this annual adjustment, because that rent increase is already part of the rent and subject to guidelines increases applicable to rent stabilized leases. For more information, please see applicable Annual Update of Section B of Supplement No. 1 to Operational Bulletin 84-4.

### Collection of Surcharges

For rent stabilized apartments, where the air conditioner was installed on or after October 1, 1985, the five dollar ($5.00) per-month surcharge and the monthly surcharge for electrical inclusion buildings do not become part of the legal regulated rent for the purpose of computing other rent stabilized increases. An owner may collect from a rent stabilized tenant the surcharge for an air conditioner without obtaining a DHCR order.

For rent controlled apartments, the five dollar ($5.00) per-month surcharge and the monthly electrical inclusion surcharge become part of the Maximum Collectible Rent (MCR), but they do not affect the compounding of the Maximum Base Rent (MBR). However, before collecting either the

five dollar ($5.00) per-month surcharge or the monthly electrical inclusion surcharge from rent controlled tenants, the owner must apply to DHCR for permission to collect the surcharge by filing the DHCR Form RN-79b. Either surcharge may not be collected until DHCR issues an order authorizing the surcharge.

An owner must collect the surcharge from a tenant for an air conditioner at the time the unit is initially installed, or within a reasonable period of time after its installation. If the owner fails to charge the tenant within a reasonable period of time after the installation, the owner waives the right to collect the surcharge. It remains permanently non-collectible whether there is a transfer of ownership or the tenant replaces the air conditioner in the same location.

For both rent controlled and rent stabilized apartments, the five dollar ($5.00) per-month surcharge and the electrical inclusion surcharge are payable by the tenant each month of the year.

The permissible surcharges for air conditioners that were installed before October 1, 1985 will be determined by the rules in effect before October 1, 1985.

## RENT INCREASES

When the owner purchases and installs a new air conditioner in a rent controlled or rent stabilized apartment, the owner may be allowed to collect an Individual Apartment Improvement (IAI) rent increase. The rent increase due to an IAI is equal to 1/180th of the cost in buildings containing more than 35 apartments or 1/168th of the cost in buildings containing 35 apartments or less, including the installation cost, but excluding the finance charges. This rent increase becomes part of the MCR and the MBR of a rent controlled apartment or the legal regulated rent of a rent stabilized apartment. For more information about IAI, please see DHCR Operational Bulletin 2016-1.

When the owner purchases and installs a new air conditioner in a vacant apartment, the Housing Stability and Tenant Protection Act (HSTPA) of 2019 requires that the owner file the IAI Notification Form and the related before and after photographs with DHCR. Tenant consent is not required for the owner to collect the rent increase from the next tenant and a DHCR order of approval is not needed.

When the owner purchases and installs a new air conditioner in an occupied rent controlled or rent stabilized apartment, the owner is required by the HSTPA to file the IAI Notification Form, the related before and after photographs and the Tenant's Informed Consent Form with DHCR. For rent stabilized apartments, the owner is then lawfully allowed to collect the IAI rent increase from the tenant without a DHCR Order. For rent controlled apartments, the owner may not collect the IAI rent increase from the tenant until DHCR issues an order authorizing the rent increase.

**Rent Connect:**
rent.hcr.ny.gov

**Ask a question:**
portal.hcr.ny.gov/app/ask

**For translation help:**
hcr.ny.gov/language-accessibility

**Our website:**
hcr.ny.gov/rent

**To visit a Borough Rent Office, by appointment only, please contact:**

**QUEENS**
92-31 Union Hall Street
6th Floor
Jamaica, NY 11433
718-482-4041

**BROOKLYN**
55 Hanson Place
6th Floor
Brooklyn, NY 11217
718-722-4778

**UPPER MANHATTAN**
163 W. 125th Street
5th Floor
New York, NY 10027
212-961-8930

**LOWER MANHATTAN**
25 Beaver Street
New York, NY 10004
212-480-6238

**BRONX**
1 Fordham Plaza
4th Floor
Bronx, NY 10458
718-430-0880

**WESTCHESTER**
75 South Broadway
3rd Floor
White Plains, NY 10601
914-948-4434

NEW YORK STATE OF OPPORTUNITY.
Homes and Community Renewal
Office of Rent Administration

FACT SHEET # 30

# Succession Rights

3 PAGES

For rent stabilized and rent controlled apartments throughout New York State, a "family member" of the tenant may have the right to a rent stabilized renewal lease or protection from eviction in an apartment under rent control when the tenant dies or permanently leaves the apartment. For a detailed explanation of "family member," refer the "Family Member-Definition" portion of this Fact Sheet.

A family member has the right to a renewal lease or protection from eviction if he or she resided with the tenant as a primary resident in the apartment for two (2) years immediately prior to the death of, or permanent departure from the apartment by the tenant. The family member may also have the right to a renewal lease or protection from eviction if he/she resided with the tenant from the inception of the tenancy or from the commencement of the relationship. If the family member trying to establish succession rights is a senior citizen or disabled person, then the minimum period of co-occupancy is reduced to one (1) year.

**Family Member - Definition**

"Family member" is defined as either a spouse, son, daughter, stepson, stepdaughter, father, mother, stepfather, stepmother, brother, sister, grandfather, grandmother, grandson, granddaughter, father-in-law, mother-in-law, son-in-law or daughter-in-law of the tenant or permanent tenant.

The definition of "family member" also includes any other person(s) residing with the tenant or permanent tenant in the housing accommodation as a primary resident, who can prove emotional and financial commitment and interdependence between such person(s) and the tenant.

The following are to be considered in determining whether emotional and financial commitment and interdependence between the tenant and such other occupants existed:

a) longevity of the relationship;

b) sharing of or relying upon each other for payment of household or family expenses, and/or other common necessities of life;

c) intermingling of finances as evidenced by, among other things, joint ownership of bank accounts, personal and real property, credit cards, and loan obligations, sharing a household budget for purposes of receiving government benefits, etc.;

d) engaging in family-type activities by jointly attending family functions, holidays and celebrations, social and recreational activities, etc.;

e) formalizing of legal obligations, intentions, and responsibilities to each other by such means as executing wills, naming each other as executor and/or beneficiary, granting each other a power of attorney and/or conferring upon each other authority to make health care decisions each for the other, entering into a personal relationship contract, making a domestic partnership declaration, or serving as representative payee for purposes of public benefits, etc.;

f) holding themselves out as family members to other family members, friends, members of the community or religious institutions, or society in general, through their words or actions;

g) regularly performing family functions, such as caring for each other's extended family member and/or relying upon each other daily for family services;

h) engaging in any other pattern of behavior, agreement, or other action which evidences the intention of creating a long-term, emotionally committed relationship.

The determination is not limited to any one factor, and in no event would evidence of a sexual relationship between such persons be required or considered.

"Tenant" relates to any person or persons named on a lease or rental agreement who is or are obligated to pay rent for the use of the housing accommodation.

"Permanent tenant" relates to individuals, who have continuously resided in housing accommodations located in hotels as a primary residence for a period of at least six months, or a hotel tenant in occupancy pursuant to or entitled to a lease.

## Disabled Person

"Disabled Person" is defined as a person who has an impairment which results from anatomical, physiological or psychological conditions, other than addiction to alcohol, gambling, or any controlled substance, which are demonstrable by medically acceptable clinical and laboratory diagnostic techniques, and which substantially limit one or more of such person's major life activities.

## Senior Citizen

"Senior citizen" is defined as a person who is sixty-two years of age or older.

## Minimum Residency Requirements

The minimum periods of required residency will not be considered interrupted by any period during which the "family member" temporarily relocates because he or she:

a) is engaged in active military duty;

b) is enrolled as a full-time student;

c) is not in residence at the housing accommodation in accordance with a court order not involving any term or provision of the lease and not involving any grounds specified in the Real Property Actions and Proceedings Law;

d) is engaged in employment requiring temporary relocation from the housing accommodation;

e) is hospitalized for medical treatment; or

f) has such other reasonable grounds that shall be determined by the DHCR upon application by such person.

On the Notice To Owner Of Family Members Residing With The Named Tenant In The Apartment Who May Be Entitled To Succession Rights/Protection From Eviction (DHCR Form RA-23.5), the tenant may at any time, inform the owner of the names of all persons (other than the tenant), who are residing in the apartment. Or, the owner may at any time, but no more than once in any twelve months, request from the tenant the names of all such persons.

The following information pertaining to such persons should accompany the names;

a) if the person is a family member as defined above;

b) if the person may become entitled to be named as a tenant on a renewal lease or

become entitled to protection from eviction upon the passage of the applicable minimum period of required residency;

c) the date of the commencement of such person's primary residence with the tenant; and

d) if the person is a senior citizen or disabled person as defined above.

## SOURCES

New York City Rent Stabilization Code, Section 2523.5
Tenant Protection Regulations, Section 2503.5
New York City Rent and Eviction Regulations, Section 2202.25
New York State Rent and Eviction Regulations, Section 2102.8

**Rent Connect:**
rent.hcr.ny.gov

**Ask a question:**
portal.hcr.ny.gov/app/ask

**For translation help:**
hcr.ny.gov/language-accessibility

**Our website:**
hcr.ny.gov/rent

**To visit a Borough Rent Office, by appointment only, please contact:**

**QUEENS**
92-31 Union Hall Street
6th Floor
Jamaica, NY 11433
718-482-4041

**UPPER MANHATTAN**
163 W. 125th Street
5th Floor
New York, NY 10027
212-961-8930

**BRONX**
1 Fordham Plaza
4th Floor
Bronx, NY 10458
718-430-0880

**BROOKLYN**
55 Hanson Place
6th Floor
Brooklyn, NY 11217
718-722-4778

**LOWER MANHATTAN**
25 Beaver Street
New York, NY 10004
212-480-6238

**WESTCHESTER**
75 South Broadway
3rd Floor
White Plains, NY 10601
914-948-4434

NEW YORK STATE OF OPPORTUNITY.

# Homes and Community Renewal

## Office of Rent Administration

FACT SHEET # 40

# Preferential Rents

3 PAGES

### AT A GLANCE

**This Fact Sheet explains the circumstances under which rent-subsidized tenants may pay less than regulated rents.**

## DEFINITIONS

**Emergency Tenant Protection Act (ETPA)**: Outside New York City, rent stabilization is also known as ETPA, short for the Emergency Tenant Protection Act, and is applicable in some localities in Nassau, Westchester and Rockland counties.

**Housing Stability and Tenant Protection Act (HSTPA) of 2019**: The act, which went into effect on June 14, 2019, made changes to how rents can be raised and changed formulas for vacancy leases, Major Capital Improvements (MCI) and Individual Apartment Improvements (IAI).

## SUMMARY AND HIGHLIGHTS

A preferential rent is a rent an owner agrees to charge that is lower than the legal regulated rent they could lawfully collect. The Housing Stability & Tenant Protection Act (HSTPA) of 2019 established that tenants paying a preferential rent on or after June 14, 2019, will retain it as long as they continue to rent the property.

| | |
|---|---|
| **Owner Responsibilities & Tenant Rights** | • Owners may charge the higher legal regulated rent only when the tenant permanently vacates the apartment.<br>• An owner cannot use or enforce any clause in a lease to end a preferential or discounted rent if the tenant fails to pay the preferential or discounted rent on time.<br>• An owner cannot use or enforce any lease clause that requires a discounted rent to be paid by a certain method, such as electronic payment. |

## FACT SHEET #40: IN DETAIL

A preferential rent is a rent which an owner agrees to charge that is lower than the legal regulated rent that the owner could lawfully collect.

Pursuant to the Housing Stability & Tenant Protection Act (HSTPA) of 2019, tenants that were paying a preferential rent as of June 14, 2019, retain the preferential rent for the life of the tenancy. Rent Guidelines Board increases and other increases allowed by the Rent Stabilization Law or Emergency Tenant Protection Act are to be applied to the preferential rent. A tenant who believes that they are entitled to a renewal lease with a preferential rent but is being charged more than that amount may file a rent overcharge or lease violation complaint with DHCR or a court of competent jurisdiction. (**See Examples below.**) Please note that certain government regulatory agreement/financed affordable housing programs may not be bound by this limitation; please contact the supervising government agency for more information.

Owners may terminate the preferential rent and charge the higher legal regulated rent (with applicable increases) only when the tenant permanently vacates the apartment. In addition, the legal regulated rent upon which these increases are based must be written in the vacancy or renewal lease in which the preferential rent was first charged and in all subsequent renewal leases in order for the owner to charge the prior legal rent upon a vacancy. Registration with DHCR of the legal regulated rent by itself will not establish the legal rent for future usage.

An owner cannot use or enforce a clause in a rent-stabilized lease that provides that the owner may end a preferential or a discounted rent where the tenant fails to pay the preferential or discounted rent on time or by a certain day of the month.

An owner cannot use or enforce any other lease clause that conditions the payment of a discounted rent on the performance of an act by the tenant, such as the tenant's payment of the rent electronically. Such lease clauses may be challenged by the tenant in a rent overcharge or lease violation complaint with DHCR or can be reviewed by a court of competent jurisdiction.

**Example 1:**

Mr. Jones signed a one year lease, effective October 1, 2018. The lease cited a legal regulated rent of $1,200 and a preferential rent of $1,000.

1. On October 1, 2019, when Mr. Jones' one year lease renewal begins, the legal regulated rent increases by 1.5% to $1,218 due to the annual rent guidelines board increase, and the preferential rent increases by 1.5% to $1,015. Mr. Jones will pay the $1,015 rent.

2. Owners can no longer terminate the collection of the preferential rent at the time of lease renewal pursuant to the HSTPA of 2019 since the tenant's lease in effect on or after June 14, 2019 has a preferential rent.

**Example 2:**

Ms. Sanchez has a lease with a preferential rent of $1,000, set to expire on 6/30/19. Ms. Sanchez signed a one year renewal lease on 4/30/2019 and returned it the same day. The renewal lease was effective 7/1/19. The renewal lease cited a legal regulated rent of $1,218 but ended the preferential rent which was $1,000.

1. On July 1, 2019, when Ms. Sanchez's one year renewal lease begins, the legal regulated rent will increase by 1.5% From $1,200 to $1,218 due to the annual rent guidelines board increase. However, the preferential rent will also increase by 1.5% to $1,015. **Ms. Sanchez will pay the $1,015 preferential rent.**

2. Although the renewal lease was signed before the effective date of the HSTPA, it did not become effective until July 1, 2019. As the prior lease in effect on June 14, 2019 had a preferential rent, pursuant to the HSTPA of 2019, the tenant's renewal lease must be based on that preferential rent.

## SOURCES

Housing Stability & Tenant Protection Act (HSTPA) of 2019

**Rent Connect:**
rent.hcr.ny.gov

**Ask a question:**
portal.hcr.ny.gov/app/ask

**For translation help:**
hcr.ny.gov/language-accessibility

**Our website:**
hcr.ny.gov/rent

**To visit a Borough Rent Office, by appointment only, please contact:**

**QUEENS**
92-31 Union Hall Street
6th Floor
Jamaica, NY 11433
718-482-4041

**BROOKLYN**
55 Hanson Place
6th Floor
Brooklyn, NY 11217
718-722-4778

**UPPER MANHATTAN**
163 W. 125th Street
5th Floor
New York, NY 10027
212-961-8930

**LOWER MANHATTAN**
25 Beaver Street
New York, NY 10004
212-480-6238

**BRONX**
1 Fordham Plaza
4th Floor
Bronx, NY 10458
718-430-0880

**WESTCHESTER**
75 South Broadway
3rd Floor
White Plains, NY 10601
914-948-4434

NEW YORK STATE OF OPPORTUNITY.
Homes and Community Renewal
Office of Rent Administration

FACT SHEET # 42

# Hotels, SROs and Rooming Houses

3 PAGES

## Jurisdiction

Generally, in New York City, for a hotel, Single Room Occupancy Hotel (SRO) or rooming house to be subject to the Rent Stabilization Code (RSC), it must have been constructed on or before July, 1969, and contain six or more housing accommodations. This universe contains Class A and Class B Multiple Dwellings.

Generally, Class A Multiple Dwellings are used for permanent residence purposes and consist of units that contain kitchens and bathrooms. Generally, Class B Multiple Dwellings, which include SRO Hotels and rooming houses and which became subject to rent regulations on June 4, 1981, contain units occupied by transient residents and are not required to have a kitchen or bathroom in each unit.

The occupant of a hotel, SRO or rooming house may only be protected by rent stabilization if he or she becomes a "permanent tenant". A permanent tenant is an individual or his or her family member residing with such individual, who: (1) has continuously resided in the same building as a principal residence for a period of at least six months; or (2) who requests a lease of six months or more, which the owner must provide within 15 days; or (3) who is in occupancy pursuant to a lease of six months or more even if actual occupancy is less than six months.

## Leases and Rent Increases

Unlike owners of rent stabilized apartment buildings, who are required to offer rent stabilized tenants renewal leases for one or two years at the tenants' option, hotel, SRO or rooming house owners are not required to provide renewal leases to permanent tenants. A permanent tenant has the right to remain in occupancy, whether or not the lease is renewed by the owner. Permanent tenants are subject to annual guidelines increases set by the New York City Rent Guidelines Board, whether or not they have leases. As a permanent tenant, an owner may not charge you more than the most recent rent charged the prior permanent tenant (provided it was in the last 4 years), plus any lawful guidelines increase in effect at the time of your renting, as set for your hotel room/apartment by the NYC Rent Guidelines Board. Such rent is required to be registered with the DHCR. You may obtain a rental history of the unit by contacting DHCR or by filing a Request for Records Access (REC-1). Contact information for DHCR can be found at the end of this Fact Sheet.

These increases take place on the "anniversary date". For tenants with a lease, it is at least one year from the commencement date of the lease. For tenants without a lease, it is the latest of these three choices: 1) one year from the date the tenant's occupancy began, 2) one year from the date of the last rent increase charged to the tenant or 3) as of October 1st of the guideline period in effect.

To access a list of current and prior rent guidelines, go to the website of the NYC Rent Guidelines Board at www.nyc.gov/rgb.

Owners may be lawfully entitled to other rent increases, such as Individual Apartment Improvements, building wide major capital improvements (MCIs) and hardship increases.

## Services

The customary hotel services required to be provided include, but are not limited to, maid service and the provision and laundering of linen at least once a week, use and upkeep of furniture, and a lobby staffed 24 hours a day, seven days a week by at least one employee.

It should be noted that this full range of hotel services may not necessarily be required to be provided in Class B Multiple Dwellings such as rooming houses and some SRO hotels. The services required to be provided in SRO hotels and rooming houses would be those services provided when such buildings first became subject to the Rent Stabilization Law in June, 1981.

Services required to be provided to a permanent tenant may include appliance repair, painting once every three years, heat, hot water, janitorial service, maintenance of locks and security devices, repairs and maintenance and any ancillary services provided by the owner, such as laundry room facilities or switchboard service, etc.

Upon a finding by the DHCR on written complaint by a permanent tenant that services are not being maintained, a rent reduction may be imposed, and future rent increases barred until the rent is restored pursuant to an order of the DHCR.

## Evictions

Generally, so long as a hotel occupant or permanent tenant pays the legal rent, they can remain in the housing accommodation. An owner may not harass an occupant or permanent tenant by engaging in an intentional course of conduct intended to make such occupant or permanent tenant vacate the housing accommodation.

Under the Real Property Actions and Proceedings Law, a hotel occupant residing at the hotel for thirty days or more even though he has not requested a lease and is not a permanent tenant, may only be evicted pursuant to an action or proceeding instituted in the Civil Court. If such an action is brought, the “occupant” will receive notice of the action and of the right to answer and appear in court. Lockouts of such hotel occupants, or of permanent tenants, are strictly illegal.

## Example - Rent Increases

- On February 20, 2020, a permanent/rent stabilized tenant paying $200 a week vacates a hotel unit.
- On March 1, 2020, Mr. Ortiz moves in and does not request a lease. He is a transient tenant and is charged a rent of $250 a week.
- On September 1, 2020, Mr. Ortiz becomes a permanent/rent stabilized tenant as he has been in occupancy for 6 months. His rent needs to be adjusted. The previous legal rent of $200 can be increased by the guideline in effect (Hotel Order #49 - 0% increase), which is a $0 increase and the legal rent remains $200.
- On September 1, 2021, the anniversary date, Mr. Ortiz is still in occupancy, and the legal rent may be increased by the guideline in effect (Hotel Order #50 - 0% increase), which is $0 and the legal rent remains $200.
- Annual apartment registration filings for this apartment are as follows:
  - On April 1, 2020, the unit's status was Temporarily Exempt/Transient Occupancy in Hotel/SRO.
  - On April 1, 2021, the unit's status was Rent Stabilized.

## Example - Decrease in Service Rent Adjustments

- On February 1, 2020, Ms. Chan moves into an SRO Unit, requests a lease, acquires permanent/rent stabilized status, and her rent is legally set at $300 a week.
- On February 1, 2021, the anniversary date, Ms. Chan's rent of $300 can be raised by the guideline in effect (Hotel Order #50 - 0% increase), which is a $0 increase and legal rent remains $300.
- On August 10, 2021, Ms. Chan, pursuant to filing a written application, receives a DHCR Order finding a decrease in services. It has a June 1, 2021 effective date.
- On September 1, 2021, the $300 rent paid by Ms. Chan cannot be reduced by the most recent guideline adjustment rent increase, since it was 0%. However, the $300 rent cannot be raised and is "frozen" until DHCR issues a rent restoration order finding services were restored.

This fact sheet is only a summary of relevant sections of the Rent Stabilization Code. For comprehensive and detailed information on this topic, please refer to the Rent Stabilization Code.

**Rent Connect:**
rent.hcr.ny.gov

**Ask a question:**
portal.hcr.ny.gov/app/ask

**For translation help:**
hcr.ny.gov/language-accessibility

**Our website:**
hcr.ny.gov/rent

**To visit a Borough Rent Office, by appointment only, please contact:**

**QUEENS**
92-31 Union Hall Street
6th Floor
Jamaica, NY 11433
718-482-4041

**BROOKLYN**
55 Hanson Place
6th Floor
Brooklyn, NY 11217
718-722-4778

**UPPER MANHATTAN**
163 W. 125th Street
5th Floor
New York, NY 10027
212-961-8930

**LOWER MANHATTAN**
25 Beaver Street
New York, NY 10004
212-480-6238

**BRONX**
1 Fordham Plaza
4th Floor
Bronx, NY 10458
718-430-0880

**WESTCHESTER**
75 South Broadway
3rd Floor
White Plains, NY 10601
914-948-4434

P.A.'L.A.N.T.E.

People Against Landlord Abuse & Tenant Exploitation

# CONTACT US

***Phone:*** (212) 491-2541

***Email:*** palante@palanteharlem.org

***Address:*** 1411 Amsterdam Avenue, New York, NY 10027

**www.palanteharlem.org**

@palanteharlem