

FACT SHEET



Andrew M. Cuomo, Governor

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DIVISION OF HOUSING AND COMMUNITY RENEWAL
OFFICE OF RENT ADMINISTRATION

#5 Vacancy Leases in Rent Stabilized Apartments

When a person rents a rent stabilized apartment for the first time, the owner and the tenant sign a VACANCY LEASE. This written lease is a contract between the owner and the tenant which states the terms and conditions of the lease, including the length of the lease, and the rights and responsibilities of the tenant and the owner.

The Rent Stabilization Law gives the new tenant (also called the vacancy lease tenant) the choice of a one- or two-year lease term. The rent the owner may charge for a vacancy lease cannot exceed the last legal regulated rent and the applicable vacancy increases authorized by law. With the lease, a tenant should receive a Rent Stabilization Lease Rider/Addenda that states how the rent was computed and asserts that any increases comply with the Rent Stabilization Law and Code.

Based on the Rent Code Amendments of 2014, vacancy lease rent increases cannot be collected if a DHCR Order reducing rent for decreased services is in effect. (See Example - Vacancy Increase Barred) In addition, the Vacancy Lease Rider/Addenda completed by the owner must contain details about Individual Apartment Improvement (IAI) rent increase calculations. The Rider/Addenda must also contain a notice informing vacancy lease tenants of their right to request from the owner documentation that clarifies and supports the IAI increase, either at the time the lease is executed or within 60 days of its execution. See DHCR Operational Bulletin 2014-3 and DHCR Fact Sheet # 2 for additional information regarding penalties for failure to provide the Rider/Addenda.

Pursuant to the Rent Act of 2011, effective June 24, 2011, owners can charge and collect no more than one (1) vacancy lease rent increase in a calendar year (January 1st through December 31st).

The following vacancy increases are added to one another, and are computed above the prior legal rent, to establish the legal regulated rent for the vacancy lease:

1. A 20 percent vacancy increase for a two-year vacancy lease; or a vacancy increase for a one-year vacancy lease equal to 20 percent minus the difference between the guidelines percentages applicable to two- and one-year renewal leases; or the Preferential Rent Vacancy Limitation. The Rent Act of 2015 modified the vacancy allowance that an owner can add to the legal regulated rent when the vacating tenant was paying a preferential rent. If a vacating tenant was paying a preferential rent, the vacancy lease rent increase that can be applied to the vacating tenant's legal rent will be limited to 5% if the last vacancy lease commenced less than two years ago, 10% if less than three years ago, 15% if less than four years ago and if four or more years ago, 20% for a two-year lease or the one-year lease vacancy rate in effect.
2. If the owner did not collect a permanent vacancy increase within eight years of the new vacancy lease, in addition to the vacancy increase described in item 1, the owner is entitled to collect a vacancy increase equal to 0.6 percent multiplied by the number of years since the collection of the last permanent increase.
3. If the previous legal rent was less than \$300.00 per month, in addition to the vacancy increases described in items 1 and 2, the owner is entitled to collect \$100.00 per month.
4. If the previous legal rent was between \$300.00 per month and \$500.00 per month, the owner is entitled to collect a vacancy increase equal to the greater of: a) the combined vacancy increases described in items 1 and 2; or b) \$100.00 per month.
5. The owner is entitled to add to the vacancy increases described in items 1, 2, 3 and 4 the vacancy increase authorized by the Rent Guidelines Board ("RGB").

There are other situations in which different methods are used to establish vacancy lease rents.

1. If an apartment was vacant or temporarily exempt on the base date (4 years prior to the signing of the new lease) and for one or more years prior to that, the Owner may be entitled to the following rent increases: successive two year rent guideline increases for each additional two years that the apartment was vacant from the time the last rent stabilized tenant vacated until the signing of the subject lease, any other lawful increases such as Major Capital Improvements, the statutory vacancy increase, and any Individual Apartment Improvements that were made prior to the subject tenant taking occupancy. See RSC2526.1(a)(3)(iii) and TPR2506.1(a)(3)(iii). (See Example -- Vacant or Temporarily Exempt for more than 4 years.)
2. If an apartment was vacant or temporarily exempt on the base date (4 years prior to the signing of the new lease) and for one or more years prior to that, and had no legal rent history previously established, the initial legal rent can be established by computing the average of the rent stabilized comparable apartments' rents in the building in effect on the date the initial rent stabilized tenant began occupancy and adding on the statutory vacancy adjustment and lawful individual apartment improvement rent increases. Apartments with the same number of rooms should be used when identifying comparable apartments.
3. If an apartment is a newly constructed unit or a new apartment because its previous outer dimensions were substantially altered, the owner may be entitled to set a first (negotiated) rent.

If the owner makes improvements to the apartment while the apartment is vacant, the owner is also entitled to collect a rent increase equal to either 1/40th or 1/60th of the cost of the improvement. This increase, known as an Individual Apartment Improvement Increase (IAI) is added to the rent, after the vacancy increases described above, are applied.

Pursuant to the Rent Act of 2011, effective September 24, 2011, in buildings that contain more than 35 apartments, the owner can collect a permanent rent increase equal to 1/60th of the cost of the Individual Apartment Improvement (IAI). In buildings that contain 35 apartments or less, the owner can collect a permanent rent increase equal to 1/40th of the cost of the IAI, as had previously been allowed. (See Example - IAI Calculation)

Example - IAI Calculation

Ms. Sanchez lives in a building with 50 apartments and vacates Apartment # 10 in September, 2011. She had lived in the apartment for ten years and when she vacated, her legal rent was \$800.

Ms. Lupino moves into the apartment and signs a two year vacancy lease that starts on October 1, 2011. The owner installed a new refrigerator that cost \$600, including installation costs, when the apartment was vacant. Ms. Lupino's vacancy lease legal rent of \$1,018, is calculated as follows:

\$800 - previous legal rent
+ \$160 - 20% for a two year vacancy lease
+ \$ 48 - 6% (.6% x 10 years since the last vacancy)
+ \$10 - 1/60th of \$600 for the new refrigerator
<u>\$1,018</u>

Example - Vacancy Increase Barred

Ms. Jones lives in a rent stabilized apartment and pays a legal rent of \$1,000. She receives a DHCR rent reduction order for defective electric wiring and her rent is reduced by a guideline adjustment, making her collectible rent \$975. She vacates the apartment a few months later on February 15, 2014.

Ms. Wilson moves in on March 1, 2014, pursuant to a 2 year vacancy lease and is charged a legal rent of \$1,200 based on the statutory 20% vacancy increase. She visits a DHCR Borough Rent Office and learns that DHCR did not issue a Rent Restoration Order for the defective electric wiring and that the rent reduction order is still in effect.

Ms. Wilson has the right to contact the owner and request that the owner reduce her collectible rent to \$975 and that she be refunded any rent that she has paid in excess of that amount. She has the right to file a DHCR Rent Overcharge complaint if the rent adjustment and refund are not made.

Example - Vacant or Temporarily Exempt For More Than Four (4) Years

Mrs. Smith moves into her apartment on August 1, 2014 with a two year lease. The apartment was previously occupied by the owner of the building for 5 years and 6 months (since February 1, 2009), and was registered as Temporarily Exempt.

Prior to the owner taking occupancy, the legal rent was \$1,000. Mrs. Smith's vacancy lease legal rent of \$1,415.02 will include the two-year rent guideline increases that were in effect while the owner lived in the apartment, and will be calculated as follows:

\$1,000 = Previous legal rent

+ \$85 = 8.5% x \$1,000 for the two-year increase in effect on 2-1-09 (1,000+85=**1,085**)
+ \$48.83 = 4.5% x \$1,085 for the two-year increase in effect on 2-1-11 (1,085+48.83=**1,133.83**)
+ \$45.35 = 4% x \$1,133.83 for the two-year increase in effect on 2-1-13 (1,133.83+45.35=**1,179.18**)
+ \$235.84 = 20% x \$1,179.18 for the two-year increase in effect on 8-1-14 (the start date of the lease)
\$ 1,415.02

Effective August 30, 2010, in New York City, pursuant to NYC Housing Maintenance Code Section 27-2018.1 an owner shall furnish to each tenant signing a vacancy lease a notice promulgated by DHCR that sets forth the property's bedbug infestation history for the previous year. DHCR has promulgated a notice - "Notice To Tenant Disclosure Of Bedbug Infestation History" (DBB-N). For vacancy lease tenants in apartments not subject to rent stabilization, this notice (DBB-N) is to be served on the tenant. For vacancy lease tenants in rent stabilized apartments, DHCR will require that this notice (DBB-N) is attached to the Rent Stabilization Lease Rider, by owners, and served along with the rider and a copy of the vacancy lease on the new tenant. A tenant who does not receive a completed Bedbug Infestation History may file a "Tenant's Complaint of Owner's Failure to Disclose Bedbug Infestation History (Form DBB-NO).

If an apartment is vacant or becomes vacant while an application to DHCR for a Major Capital Improvement (MCI) rent increase is pending, the owner must notify any incoming tenant of the basis for the previously filed application, and that the rent will be increased if the MCI application is approved. Failure to include this notice of anticipated rent increase in vacancy leases will result in no MCI increase being approved for this apartment during the term of the vacancy lease. An owner who charges such increases without this notification will be subject to overcharge penalties.

A satisfactory MCI notification clause in a vacancy lease is one which provides, "An application for a major capital improvement rent increase has been filed under Docket No. _____ with DHCR based upon the following work: _____. Should DHCR issue an order granting the rent increase, the rent provided for in this lease will be increased accordingly."

*For more information or assistance, call the DHCR
Rent InfoLine, or visit your Borough or County Rent Office.*

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