

# FACT SHEET



Andrew M. Cuomo, Governor

A PUBLICATION OF NEW YORK STATE  
DIVISION OF HOUSING AND COMMUNITY RENEWAL  
OFFICE OF RENT ADMINISTRATION

## #7 Sublets, Assignments and Illusory Tenancies

### 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 Overcharge and/or Excess Security Deposit"* (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, 2017. The sublet would expire December 31, 2018. If the tenant has already sublet the apartment for any period of time between January 1, 2015 and December 31, 2016, 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, Part B). Because DHCR Form RN-79b, Part B, 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.

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

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