

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 Housing Stability and Tenant Protection Act (HSTPA) of 2019 effective June 14, 2019 eliminated the statutory vacancy rate and does not permit Rent Guidelines Boards to establish a separate vacancy rate. However, if authorized by the board, a one or two-year lease guideline may be applied and added to the previous tenant's legal rent. This guideline is subject to the limitation that no more than one guideline adjustment can be added in one guideline year. Lawful temporary increases for Major Capital Improvements (MCI) and Individual Apartment Improvements (IAI) may also be added to the rent. Recent lease guidelines rates can be found in DHCR Fact Sheet # 26.

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. 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.

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

1. If an apartment was vacant or temporarily exempt on the base date 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 and any Individual Apartment Improvements that were made prior to the subject tenant taking occupancy.
2. 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.

When an owner installs a new appliance or makes an improvement to an apartment the owner may be entitled to an Individual Apartment Improvement (IAI) rent increase. Written consent for the improvement and rent increase is not required for a vacant apartment, but HSTPA does require that DHCR be notified on a DHCR-promulgated form.

Pursuant to HSTPA, 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.

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.

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, you may visit your Borough Rent Office.

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