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AMENDED – DECEMBER 2022

THIRTY SEVENTH (37th) ANNUAL UPDATE OF SECTION B OF SUPPLEMENT NO. 1 TO OPERATIONAL BULLETIN 84-4:

B. Permissible Charges for the Use and/or Initial Installation of an Air Conditioner for Both Rent Controlled and Rent Stabilized Housing Accommodations in New York City.

This Annual Update reflects the amendments enacted by the Rent Regulation Reform Act of 1993, and is issued pursuant to Section 2527.11 of the Rent Stabilization Code, and Section 2209.8 of the New York City Rent and Eviction Regulations, and Chapter 619 of the Laws of 2022.

ELECTRICAL EXCLUSION BUILDINGS

Prior to the rent laws being updated by Chapter 619 of the Laws of 2022, a five dollar (\$5.00) per air conditioner per month surcharge was lawful. Effective November 21, 2022, in rent stabilized and rent controlled apartments, owners are prohibited from the continued collection and from the prospective imposition of a surcharge on a tenant for the use of a tenant-installed air conditioning unit if the tenant pays for the electric utility service. For rent controlled apartments, the five dollar (\$5.00) per month surcharge previously collected can no longer be included in the Maximum Collectible Rent (MCR).

ELECTRICAL INCLUSION BUILDINGS

An owner may charge a tenant \$381.93* per annum per air conditioner (\$31.83 per month) for the use of air conditioners in rent stabilized and rent controlled accommodations which were initially installed between October 1, 2022 and September 30, 2023 if electricity costs are **included** in the rent.

* The 2021 charge (estimated average operating cost) per air conditioner of \$325.96 per annum (\$27.16 per month) increased to reflect a 17.17% increase in the price of electricity for electrical inclusion buildings. See Rent Guidelines Board 2022 Price Index of Operating Costs, Report to the Board, New York City Rent Guidelines Board, Page 20, April 14, 2022.

For **RENT STABILIZED APARTMENTS**, this electrical inclusion charge shall take effect on October 1, 2022 and will thereafter be annually adjusted upward or downward depending upon whether the "Price Index of Operating Costs for Rent Stabilized Apartment Houses in New York City", prepared by the New York City Rent Guidelines Board (or such research company as the Rent Guidelines Board may choose), shows an increase or decrease in the cost of electricity for electrical inclusion buildings.

For air conditioners in rent stabilized accommodations in electrical inclusion buildings previously installed between October 1, 1985 and September 30, 2022, the allowable charge per annum is hereby increased to \$381.93 per air conditioner (\$31.83 per month), effective October 1, 2022.

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.

BUILDING OWNER PROVIDED NEW AIR CONDITIONER

Where a brand new air conditioner is purchased and installed by the owner in a rent controlled or rent stabilized apartment, one-one hundred and sixty eighth (1/168th) of the cost of the new air conditioner in buildings that contain 35 or fewer housing accommodations or one-one hundred and eightieth (1/180th) of the cost in buildings that contain more than 35 housing accommodations, including any cost of installation, but excluding finance charges, if any, may be included in the base rent. However, the recoverable costs incurred by the owner are subject to the limits imposed by the Housing Stability and Tenant Protection Act (HSTPA) of 2019 on rent increases for Individual Apartment Improvements (IAI). In the case of a rent controlled apartment, the owner must notify DHCR of the rent increase and the increase shall be effective as of the first rent payment date following such notification. While an owner may collect from a rent stabilized tenant any of the charges for an air conditioner without obtaining a DHCR order, HSTPA requires that the owner file the Supplemental Rent Registration IAI Notification form with DHCR whether the apartment is occupied or vacant. Where the subject apartment is occupied, the owner must also obtain and file the tenant's written informed consent on the Supplemental Rent Registration IAI Informed Consent form. In the case of a rent stabilized apartment, the information should also be included in the next annual rent registration statement, and the increase is effective on the first rent payment date following installation.

For additional details on individual apartment improvement requirements under HSTPA, please review Operational Bulletin 2016-1.

TERMS AND CONDITIONS

For **RENT STABILIZED APARTMENTS**, these surcharges, do not become part of the legal rent for the purpose of computing any guidelines or other increases under the Rent Stabilization Law or Code. Owners can collect the charges from rent stabilized tenants without an order from DHCR. These monthly charges remain collectible throughout the year even if the air conditioner is removed, i.e., during the winter months.

For **RENT CONTROLLED APARTMENTS**, these surcharges become part of the Maximum Collectible Rent (MCR), but do not become part of the Maximum Base Rent (MBR). Before collecting 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. The surcharge may not be collected until DHCR issues an order authorizing the surcharge. These monthly charges remain collectible throughout the year even if the air conditioner is removed, i.e., during the winter months. Where prior to October 1, 2022, collection of an air conditioner charge was ordered and approved in a specified dollar amount, that charge remains in effect for the current year.

For both **RENT STABILIZED and RENT CONTROLLED APARTMENTS**, for air conditioners initially installed prior to October 1, 1985, the permissible charge is dependent upon the lawful practice then in effect.

Woody Pascal
Deputy Commissioner
for Rent Administration

Dated: December 2, 2022