Collecting Overcharges in Rent Stabilized Apartments in New York City

3 PAGES

AT A GLANCE

This Fact Sheet explains how tenants can use the Rent Stabilization Law to collect penalties for rent they've been overcharged.

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.

Petition for Administrative Review (PAR): An administrative challenge to an order from the rent administrator.

SUMMARY AND HIGHLIGHTS

The Rent Stabilization Law provides two alternate methods for a tenant to collect rent overcharge penalties from an owner. Both require a final order from the New York State DHCR that establishes the legal regulated rent and determines a penalty.

Terms	• The penalty for a rent overcharge is the amount an owner collected above the legal regulated rent, plus either interest or treble damages.
Process	• Owners or tenants who disagree with the decision can challenge the Rent Administrator's order by filing a Petition for Administrative Review (PAR) with DHCR or with the Commissioner who rules on the PAR. • A PAR filing that challenges the overcharge determination does not affect that part of the order adjusting the tenant's legal regulated rent. The tenant may begin to pay the lower rent effective on the first rent payment date following the issuance of the order.
Methods	• Offset Method: The tenant may deduct up to 20% of the penalty from the monthly rent until the penalty is completely offset. • Judgment Method: The filing of a judgment may result in a lien being placed against the owner's real property. If the owner does not satisfy the judgment, the lien may be enforced against the owner's property by a county sheriff or the city sheriff.

FACT SHEET #16: IN DETAIL

The Rent Stabilization Law provides two alternate methods for a tenant to collect rent overcharge penalties from an owner awarded by the New York State Division of Housing and Community Renewal (DHCR). A tenant may begin to use either one of these methods only after the DHCR issues a final order establishing the legal regulated rent and determining a penalty.

The penalty for a rent overcharge is the amount an owner collected above the legal regulated rent, plus either accrued interest or treble damages, as appropriate. For complaints filed on or after the passage of the Housing Stability and Tenant Protection Act (HSTPA) on June 14, 2019, in the event of a willful overcharge, the penalty equals three times the amount of the overcharge beginning up to six years prior to the filing of the complaint. For Pre-HSTPA filed complaints the penalty equals three times the amount of the overcharge (if willful) beginning two years prior to the filing of the complaint.

A final order is a Rent Administrator's order which is not challenged administratively by the filing of a timely Petition for Administrative Review (PAR) with DHCR, or, if challenged, the order issued by the Commissioner determining the PAR.

The filing of a PAR within 35 days of the Rent Administrator's order by the owner or tenant will prevent the tenant from collecting the penalty awarded until the Commissioner rules on the PAR. Following the issuance of the PAR order, an aggrieved party may commence an Article 78 (Civil Practice Law and Rules) court proceeding which will similarly delay the tenant's ability to file the order as a judgment (see Method #2 below) until a final determination is reached by the court.

The timely filing of a PAR against the Rent Administrator's overcharge determination does not affect that part of the order adjusting the tenant's legal regulated rent. Therefore, unless the Commissioner specifically issues a "stay order" delaying the adjustment to the rent, the tenant may begin to pay the lower rent effective on the first rent payment date following the issuance of the order even if the owner files a PAR.

After the 35 days for filing of the PAR have expired, and if neither the owner nor the tenant has filed a PAR, the tenant can collect the rent overcharge penalty. The tenant must choose only **one** of the two alternate methods described below:

1. **Offset Method**
   The tenant may deduct up to 20% of the penalty from the monthly rent until the penalty is completely offset. If 20% of the penalty exceeds the tenant's monthly rent, the tenant need not pay any rent until the full amount of the refund due is recovered. Before exercising this option, the overcharged tenant must wait 35 days from the issuance of the Rent Administrator's order. As noted above, during this period, any party aggrieved by the order may file a *PAR* (DHCR Form RAR-2) challenging the correctness of the order. If a PAR is filed, the overcharge penalty cannot be offset until the PAR order affirms that an overcharge occurred and determines the final amount of the penalty.

2. **Judgment Method**
   The filing of a judgment may result in a lien being placed against the owner's real property. If the owner does not satisfy the judgment, the lien may be enforced against the owner's property by a county sheriff or the city sheriff. **To use this option, the penalty must exceed $1,000, or if less, the tenant must have moved from the apartment. Under this option, the tenant must also wait 35 days for the PAR filing period to expire.**

After the 35 day PAR filing period expires without the filing of a PAR or 60 days after the determination of the PAR affirming an overcharge award and if no court challenge is commenced

within those 60 days, the tenant will be required to file with the County Clerk a *"Notice of Certification of Overcharge Penalties" (*DHCR Form RN-14) and the *Judgment Form* (DHCR Form RN-14.1). Before the tenant may file these forms with the County Clerk, the tenant must first send the Notice (Form RN-14) to DHCR's Overcharge Case Intake Section at Gertz Plaza, 92-31 Union Hall Street, Jamaica, New York, 11433. The tenant should **not** send to DHCR the Judgment Form (Form RN-14.1). DHCR will certify that the owner has not filed a PAR or a proceeding for judicial review, or, if filed, that those proceedings have concluded. DHCR will return to the tenant the completed Notice (Form RN-14) with a certified copy of the Rent Administrator's order, and if applicable, a certified copy of the PAR order. The tenant must then complete the affidavit contained in the Notice (Form RN-14) stating that no portion of the overcharge penalty has been **OFFSET** against the monthly rent (Method #1 above).

The tenant then files the Notice, the Judgment Form and a certified copy of the overcharge order with the County Clerk's office in the county in which the property is located. The County Clerk's office will then docket the judgment.

While prior owners who collected overcharges are jointly and severally liable for the overcharges they collected, the refund of any overcharge, including penalties collected on or after April 1, 1984 is the obligation of the current owner except in certain limited cases, primarily involving judicial sales. In those limited cases, prior owners are solely liable for overcharges actually collected by them.

For complaints filed and overcharges collected before April 1, 1984, refunds and penalties are the obligation of the owner who collected the overcharge.