



# Vacancy Leases in Rent Stabilized Apartments

3 PAGES

## AT A GLANCE

This Fact Sheet explains what to expect when someone first rents a rent-stabilized apartment.

## 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.

### Individual Apartment

**Improvements (IAIs):** When an owner installs a new appliance or makes an improvement to an apartment, the owner may be entitled to an IAI rent increase.

### Major Capital Improvements

**(MCIs):** Building-wide improvements such as boilers, windows and roofs.

**Rent stabilization:** Rules that provide protections to tenants besides limitations on the amount of rent. Tenants are entitled to receive required services, to have their leases renewed, and may not be evicted except on grounds allowed by law. The tenant can choose a term of one or two years for the lease.

## SUMMARY AND HIGHLIGHTS

When someone 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 that states the terms and conditions of the rental. Those include the length of the lease, and the rights and responsibilities of the tenant and the owner.

<b>Process</b>	<ul style="list-style-type: none"> <li>• The Rent Stabilization Law lets the new tenant (also called the “vacancy lease tenant”) choose between a one or two-year lease.</li> <li>• The Housing Stability and Tenant Protection Act (HSTPA) of 2019, effective June 14, 2019, prevents owners from deregulating rent-stabilized apartments when tenants move out.</li> <li>• HSTPA eliminated the statutory vacancy rate and does not permit Rent Guidelines Boards to establish a separate vacancy rate.</li> </ul>
<b>Reasons for rent increases</b>	<ul style="list-style-type: none"> <li>• The owner may be entitled to rent increases for lawful IAIs and MCIs on apartments that were vacant.</li> </ul>
<b>Other rules</b>	<ul style="list-style-type: none"> <li>• Vacancy lease rent increases cannot be collected if a DHCR Order reducing rent for decreased services is in effect.</li> <li>• If an apartment is vacant or becomes vacant while the owner is waiting for approval of an application for an MCI, the owner must notify any incoming tenant about the planned improvements.</li> </ul>

## FACT SHEET #5: IN DETAIL

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. Changes to the rent regulations effective November 8, 2023 further clarify that the Rent Guidelines Board one or two year lease guidelines adjustments shall be applicable to both vacancy and renewal leases. No more than one guideline adjustment can be added to the rent in a calendar year for a vacancy lease. Renewal lease guideline adjustments are subject to the limitation of one guideline adjustment in the same guideline year. A guideline year commences on October 1 and ends the following September 30. 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.

Effective December 15, 2022, Private Housing Finance Law (PHFL) Section 610 allows owners

of affordable housing properties to collect actual rents that are higher than legal rents, if the following two conditions are met: a state or municipal agency or other statutorily designated party must issue specific approval in a regulatory agreement, either new or amended, and a government program provides rental assistance to the apartment. See DHCR Notice RA-LR3 for more details. Often rental assistance may be provided to owners without an overarching state or municipal regulatory agreement for the development. In addition, a regulatory agreement may not specifically authorize these higher rents with respect to all or certain types of rental assistance. Neither of these circumstances establish that an actual rent higher than the legal stabilized rent can be charged. Owners should be aware that for example, FHEPS or individual section 8 housing choice vouchers may not always qualify for an actual higher rent.

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. Where an owner creates a housing accommodation in space previously used for non-residential purposes, the DHCR may find that the resultant housing accommodation was not in existence on the applicable base date. Such a finding may entitle the owner to charge a market or "first rent," subject to guidelines limitations for future rent adjustments.

3. When two apartments, at least one of which is rent stabilized, are combined to create a new apartment the resulting new apartment is rent stabilized and the legal rent for such apartment is the combined rents of the two original apartments. When an apartment dimensions are increased or decreased the first rent thereafter is to be increased or decreased by the same percentage as the percentage change in the dimensions.

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.”



➤ **Rent Connect:**  
rent.hcr.ny.gov

✉ **Ask a question:**  
portal.hcr.ny.gov/app/ask

🗣️ **For translation help:**  
hcr.ny.gov/language-accessibility

➤ **Our website:**  
hcr.ny.gov/rent

**To visit a Borough Rent Office, by appointment only, please contact:**

**QUEENS**  
92-31 Union Hall Street  
6th Floor  
Jamaica, NY 11433  
718-482-4041

**UPPER MANHATTAN**  
163 W. 125th Street  
5th Floor  
New York, NY 10027  
212-961-8930

**BRONX**  
1 Fordham Plaza  
4th Floor  
Bronx, NY 10458  
718-430-0880

**BROOKLYN**  
55 Hanson Place  
6th Floor  
Brooklyn, NY 11217  
718-722-4778

**LOWER MANHATTAN**  
25 Beaver Street  
New York, NY 10004  
212-480-6238

**WESTCHESTER**  
75 South Broadway  
3rd Floor  
White Plains, NY 10601  
914-948-4434