

Report to New Yorkers on Housing

Dear Neighbor,

As your Senator, the Ranking Minority Member of the Senate Committee on Housing, Construction and Community Development, there are few issues more important to me than our community's housing problems.

With the growing shortage of affordable housing – for both renters and homeowners – there has never been a more important time to understand your rights and how current housing rules apply to you. While there is not enough space to address all pertinent facts, rights and obligations or to explain these complex matters in as much detail as they require, this newsletter covers issues which come up most often in my District Office. You should be aware, however, that there are in some instances narrow exceptions to the regulations and programs outlined here.

If you need more information, or help with individual or building-wide problems, please contact my District Office at (212) 490-9535. We will be happy to speak with you, either individually or in a group.

I hope you will find this pamphlet useful, and I want to thank Assemblymember Pete Grannis for his assistance in gathering this information. Please let me know if you would like additional copies to distribute in your building.

Sincerely,



Liz Krueger
State Senator

QUESTIONS AND ANSWERS ABOUT TENANTS' RIGHTS

What services are tenants entitled to?

The Warranty of Habitability Law, the Housing Maintenance Code, the Multiple Dwelling Law and other laws guarantee tenants certain essential services and protections. Tenants have the right to a safe, well-maintained, livable apartment, to organize and hold tenants' meetings in their building and to make complaints about lack of services without reprisals.

Owners must: identify and register with HPD the name of both the owner and agent authorized to make emergency repairs and list a phone number in the building where the owner/agent can be reached at all times; provide regular extermination services if needed; provide daily garbage disposal by compactor or in a sufficient number of covered garbage cans; keep public areas of the building and lot clean and free of vermin; provide janitorial services; and keep the building in good repair. In apartments, this means walls, ceilings, floors, windows, plumbing, heating, fixtures, doors, functioning locks on each apartment,

owner-installed and maintained appliances, adequate lighting in building public areas, peepholes on apartment entrance doors, elevator mirrors and locks on all main building doors.

What are my responsibilities as a tenant?

Tenants must remember that they have legal responsibilities both to the owners and their neighbors. Tenants must properly maintain their apartments, discipline their pets, as well as keep stairwells, fire escapes and public hallways clean and clear of obstructions. They must keep noise levels down from television sets and stereos and, if required in the lease, cover floors with rugs or carpeting. They must also comply with NYC recycling requirements. Tenants are also obligated to pay the rent on time. By fulfilling these obligations, tenants may help create a more pleasant environment for everyone in the building and a more positive owner-tenant relationship.

Leases are valid and enforceable contracts between tenants and owners and should be complied with by both sides. In cases where the lease and the law differ, however, the law prevails, and tenant cannot sign away any of their legally protected rights.

What if I don't receive proper services or repairs?

If you have a problem with building services or need repairs, first speak to the owner or the agent. If they fail to respond to your complaint, put it in writing and mail it by certified mail, return receipt requested. Keep copies of all correspondence and records of conversations. If the owner does not act in a reasonable period of time (determined by the urgency of the problem), consider these options:

Request a Code Enforcement Inspection. Call HPD's Central Complaint Bureau at 311. They will send inspectors to examine your problem and can issue orders to correct violations.

Go to Housing Court. If your problem is serious, you may want to bring an action in Housing Court. If your problem involves building-wide services, it is a good idea to undertake any legal action through a formal tenants' association, although you may pursue an individual action. To bring an owner to court, three forms, obtainable from the Housing Court at 111 Centre Street, must be completed: an Order to Show Cause, an affidavit detailing the complaint and an Affidavit of Service.

The \$35.00 filing fee per action may be recovered if you win your case. If you cannot afford the fee, you may apply to have it waived. Once the proper forms have been filled out and the papers are served, you will be notified of a hearing date. Judges can levy fines, issue orders to correct violations and appoint special administrators to run problem buildings.

Seek a rent reduction. Rent regulated tenants can file an application with DHCR for a rent reduction based on decreased service(s). DHCR has the authority to order a rent reduction until services are restored. Separate complaint forms are available for individual and building-wide issues.

What about heat and hot water?

During the heating season (October 1 through May 31), owners must provide heat as follows: During the day (6 am to 10 pm), if the temperature outside is below 55 degrees, apartments must be heated to at least 68 degrees. At night (10 pm to 6 am), if the

temperature is below 40 degrees, apartments must be heated to at least 55 degrees. Owners must supply hot water all year long at a constant minimum temperature of 120 degrees.

If your owner fails to provide heat or hot water, keep an accurate daily record of this and report it to the NYC Department of Housing Preservation and Development's (HPD) Central Complaint Bureau at 311.

Is my apartment rent-controlled or rent-stabilized?

While there are exceptions to these general rules your apartment is probably rent-controlled if your building was built before 1947, contains three or more apartments, and you or a family member moved in before July 1, 1971.

Your apartment is probably rent-stabilized if your building contains six or more apartments and 1) was built between 1947 and 1973; or 2) was built before 1947 and you moved in after June 30, 1971.

Generally, controlled tenants have one old lease or no lease; stabilized tenants renew leases every one or two years. Some apartments that meet the general criteria for rent regulation are exempt due to the rent level of the apartment and the timing of past vacancies.

Apartments in buildings constructed after 1973 are not subject to regulation unless the owners received assistance under one of two city tax benefit programs, J-51 or 421-a, or certain other city or state loan programs. Special rules also apply to buildings owned by non-profit institutions such as hospitals or colleges. Certain units may also be deregulated because of the rent and the tenant's income; these provisions are explained in detail below.

How are rent increases determined for rent-stabilized and rent-controlled apartments?

Increases for **stabilized apartments** are established annually by the NYC Rent Guidelines Board whose 9 members are appointed by the mayor. For renewal leases taking effect on or after October 1, 2006 and on or before September 30, 2007, the guidelines are: 4.25% for a one-year lease; and 7.25% for a two-year lease.

Increases for **controlled apartments** are derived from two figures: the Maximum Base Rent (MBR), a maximum ceiling for rents, and the Maximum Collectible Rent (MCR), the amount an owner can actually collect. New MBRs are computed for each rent-controlled apartment in the city every two years. However, the annual MCR increase in most cases cannot exceed 7.5% annually and there are some conditions owners must meet in terms of removing violations and maintaining the apartment in order to qualify for the increase.

What additional increases can affect regulated apartments?

NEW APPLIANCES: Your rent can be increased if the owner provides you with a *new* appliance, equipment or services. But your written consent (and an owner's notification to DHCR, if you are a rent-controlled tenant) is necessary before such increase goes into effect. A tenant does not have to accept new appliances and pay an increase, despite any claims by the owner that only new equipment is available for replacements. In the event that an appliance breaks down, the law requires the owner to repair it or replace it with a used or reconditioned appliance in good working order. If a tenant opts for a new appliance, an owner is entitled to collect a permanent monthly rent increase equal to 1/40th of its cost,

but only with the written consent of the tenant. Owners are also entitled to a 1/40th increase for new equipment or improvements in vacant apartments.

MAJOR CAPITAL IMPROVEMENTS (MCIs): Eligible MCIs must contribute to the operation, maintenance and preservation of the building, and directly or indirectly benefit all the tenants. The most common improvements are new roofs, elevators, boilers or windows in every apartment.

Completion of the improvements may entitle the owner to increase your rent, subject to approval by DHCR. DHCR may reject MCI applications if owners have failed to maintain all required services in the building or there are current "immediately hazardous" violations in effect. DHCR may grant increases conditioned on correction of violations within a reasonable time frame. Improvements paid for out of the reserve fund of a cooperative corporation or condominium association, unless reimbursed by a special assessment on unit owners, and those paid from grants from governmental entities, are not eligible for MCIs.

These are permanent rent increases to your rent which are 1/84th of the total cost of the improvement, divided by the total number of rooms in your building, and then multiplied by the total number of rooms in your apartment. For controlled tenants, MCI increases are capped at 15% annually; for stabilized tenants, the ceiling is 6%. Because of the delay in processing MCI applications, DHCR has been allowing owners of rent-stabilized units to collect an additional temporary increase retroactive to the date that the tenants were served with the owner's MCI application.

When DHCR begins processing an MCI application, tenants receive an official notice outlining the work done and the increase sought. Tenants then have 30 days to challenge the application. Do not pay any MCI increase until you have received a copy of the order authorizing the increase from DHCR, 718-739-6400

What lease renewal options apply to rent-stabilized apartments?

Tenants have the right to renew their lease for either a one- or two-year period at the RGB's approved renewal rate then in effect, under the same terms and conditions as their original lease. Owners must use a lease renewal form promulgated by DHCR. New tenants have the same right to choose a one- or two-year lease.

Owners must offer renewal leases between 150 to 90 days prior to the expiration of the tenant's lease, or state the reason why they are not renewing the lease. If you don't receive a timely renewal notification, remind the owner of his or her obligation in a certified letter, return receipt requested. If no renewal is forthcoming, file an Owner's Failure to Renew Lease complaint with DHCR and sit tight. Until you receive a renewal lease, your current lease remains in affect.

Please keep in mind that a tenant's failure to respond within 60 days of the offering of a new lease may lead to eviction proceedings.

What is "luxury decontrol?"

As of June 15, 1997 apartments renting for more than \$2000 or more are deregulated when the occupants have an income of \$175,000 or greater for the previous two years. In order to apply to DHCR for a decontrol/destabilization order, the owner must send the tenant an "Income Certification Form," by May 1 of each year. If the tenant refuses to return the form, or if the owner disputes the information that the tenant submitted, the owner

can file a Petition for Deregulation, and DHCR will then attempt to obtain the income information from the tenant. *If the tenant either shows an income of over \$175,000 or fails to return the form within 30 days, DHCR can issue a decontrol/destabilization order.*

What about security deposits?

The owner may collect a security deposit limited to one month's rent from regulated tenants. Security deposits for free-market apartments are not limited.

Owners of buildings with six or more apartments must place your security deposit in a separate interest-bearing account and inform you of the bank's name. You may request that the landlord either pay you the interest annually, apply it towards the rent, or pay it to you in a lump sum when you move.

What are my rights to sublet my apartment?

Unless greater rights are allowed in their lease, rent-stabilized tenants have the right to sublet their apartments for two years out of any four-year period subject to the owner's consent, which cannot be unreasonably withheld. Rent-controlled tenants have no legal right to sublet their apartments.

A tenant may sublet an apartment if the owner unreasonably withholds consent or fails to respond to a sublet request. A tenant cannot sublet if the owner reasonably withholds consent. A "reasonable" objection may, for example, be based on the past rental history of the prospective subtenant.

If the apartment is furnished, rent charged to a subtenant cannot exceed the legal rent plus up to a 10% surcharge, payable to the tenant. The owner is also entitled to collect an additional 10% under this year's guidelines for a sublet apartment. If the tenant overcharges a subtenant, the tenant may be liable to the subtenant for treble damages. The sublet term may exceed the term of the lease, provided the prime tenant renews the lease. Tenants must continue to maintain their apartments as their primary residences, and must intend to re-occupy them as such.

Am I allowed to move out of my apartment before the lease is up?

Only senior citizens over age 62 who have been accepted for residency in certain adult care facilities or designated senior housing can terminate a lease without penalty upon 30 days' notice to the owner in the manner outlined in the statute. For all other renters, a lease is a legally binding contract and tenants may be held liable for the rent for the balance of the lease term if an owner brings an action in court. However, many owners are pleased about a tenant leaving before the lease is up since it may mean additional rent increases through a vacancy lease or apartment improvements. The best bet is to discuss the situation with the owner well in advance of the time you want to move out.

What right does the owner have to enter my apartment?

Owners must have access to your apartment in an emergency which might result in damage to the building or other apartments, such as a broken water pipe or gas leak. Owners are also permitted to enter apartments with reasonable notice to inspect and make needed repairs. If your lease requires you to give your owner a key to a lock you installed, you must do so. Failure to grant reasonable access is grounds for eviction.

May I have a roommate?

Provided a tenant continues to occupy the apartment as their primary residence, each tenant named on a lease has the right to have one unrelated roommate and that roommate's dependent children reside with them. Immediate family members of the named tenant do not count as roommates. Tenants who take in a roommate are required to notify the owner or respond to a request from the owner about who is living in the apartment within 30 days of a formal request for such information.

Under the new regulations an owner can begin eviction proceedings against a tenant for charging their roommate more than a proportionate share of the rent and the subtenant can collect treble damages from the prime tenant. *If the tenant named in the lease moves out, the remaining occupant has no right to the apartment without the owner's consent.*

May I keep pets in my apartment?

If your lease specifically permits pets or is silent on the issue, then you may have pets. Lease clauses banning pets are binding. However, "no-pet" clauses are void if owners don't act to enforce them within three months of the time the tenant began openly keeping a pet.

Who is eligible for the Senior Citizen Rent Increase Exemption (SCRIE) program?

The SCRIE program freezes rents for eligible tenants and provides a tax abatement for the owner in return. To be eligible for a SCRIE, you must be 62 years of age or older, live in a rent-regulated apartment, have a household income (after taxes) of \$26,000 or less and be paying more than one-third of your income for rent. The income limit is expected to be increased by \$1,000 each July through 2009. You must apply for a SCRIE and recertify your eligibility every two years. Tenants who experience a permanent decrease in income of more than 20% can apply to have their benefits recalculated. Applications for SCRIE are available from my district office.

Figures show that only a fraction of eligible recipients are receiving the SCRIE benefits to which they are entitled. If you or someone you know may be eligible for SCRIE, please call or pick up an application in my office or call 311.

A New Benefit: The Disabled Rent Increase Exemption Program (DRIE)

As a result of years of efforts by the disabled tenant community and housing advocates, a new program extends the benefits of the city's SCRIE program to the disabled. The households that are eligible include those receiving Social Security Disability, Supplemental Security Income, Veteran's pensions or compensation, and those enrolled in the Medicaid Buy-In Program. DRIE is designed to work in the same way as SCRIE except for the lower income limits. The eligibility limit for DRIE varies by household size and source of income but in general the income limit for single individuals is \$17,580 and \$25,212 for couples. However, there are certain deductions that will be allowed. While we fought very hard for the income limits to be the same as the SCRIE limits, due to opposition from the Mayor's office, we lost that fight this year. Correcting this inequity will be a top legislative priority next year. To obtain applications, you can either call 311 and get one from the Department of Finance or contact my office.

What about "free market" apartments?

Rental apartments not subject to the rent stabilization or rent control laws are known as "free market" apartments. Rents for free market apartments are negotiated. The lease the parties sign dictates the terms of the tenancy. Tenants should carefully review such leases before signing, particularly with regard to the tenant's obligations, security deposits, use of parking spaces or other building facilities, improvements to be made to the apartment prior to the tenant taking occupancy, ongoing maintenance and late charges. Despite the exemption from rent regulation, there are a number of laws which apply to all owner/tenant relationships, such as the Warranty of Habitability, the NYC Housing and Maintenance Code, the Multiple Dwelling Law and the Roommate Law.