



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.

Process	<ul style="list-style-type: none"> • The Rent Stabilization Law lets the new tenant (also called the “vacancy lease tenant”) choose between a one or two-year lease. • 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. • HSTPA eliminated the statutory vacancy rate and does not permit Rent Guidelines Boards to establish a separate vacancy rate. However, the owner may add a one or two-year lease guideline that has been approved by a Rent Guidelines Board. The owner can’t add more than one of these guideline adjustments within the same year.
Reasons for rent increases	<ul style="list-style-type: none"> • The owner may be entitled to rent increases for lawful IAIs and MCIs on apartments that were vacant.
Other rules	<ul style="list-style-type: none"> • Vacancy lease rent increases cannot be collected if a DHCR Order reducing rent for decreased services is in effect. • 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.

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. 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.

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. 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.”



➤ **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