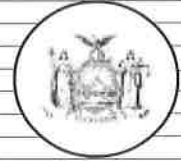


FACT SHEET



Andrew M. Cuomo, Governor

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DIVISION OF HOUSING AND COMMUNITY RENEWAL
OFFICE OF RENT ADMINISTRATION

#40 Preferential Rents

A preferential rent is a rent which an owner agrees to charge that is lower than the legal regulated rent that the owner could lawfully collect.

Owners can decide to terminate the preferential rent and charge the higher legal regulated rent upon renewal of the lease or when that tenant permanently vacates the apartment (**see Example #1**). However, the rent laws impose a condition on an owner's right to charge the claimed legal regulated rent. The legal regulated rent must have been written in the vacancy or renewal lease in which the preferential rent was first charged. In addition, DHCR recommends that the legal rent be indicated in all subsequent renewal leases. Registration with DHCR of the legal regulated rent by itself will not establish the legal regulated rent for future usage (**see Example #2**).

In addition, the terms of the lease itself, may affect the owner's right to terminate a preferential rent. If the lease agreement contains a clause that the preferential rent shall continue for the term of the tenancy, not just the specific lease term, then the preferential rent cannot be terminated for that tenancy (**see Example #3**). The preferential rent continues to be the basis for future rent increases. However, if the lease is silent and did not contain a clause that clarified whether the preferential rent was for the "term of the lease" or "the entire term of the tenancy", then the owner may terminate the preferential rent at the time of the lease renewal. (**See Example #4**)

Ordinarily, the rental history preceding the 4 year period to the filing of an overcharge complaint will not be examined. However, the Rent Code Amendments of 2014 do provide that when an owner claims that the rent being charged is "preferential", DHCR will examine the lease and rent history immediately preceding such preferential rent, even if it is before 4 years, to assure that the higher "legal" rent is correctly calculated and lawful.

Examples

Example #1

Mr. Jones signed a one year lease, effective October 1, 2006. The lease cited a legal regulated rent of \$1,200 and a preferential rent of \$1,000.

1. The lease contained a clause that stated "**the preferential rent shall be offered only for the term of this lease**".

2. On October 1, 2007, when Mr. Jones' one year lease renewal begins, the legal regulated rent increases by 3% to \$1,236 and the preferential rent increases by 3% to \$1,030. Mr. Jones will pay the \$1,236 rent.
3. In this example, the owner can terminate the collection of the preferential rent at the time of the lease renewal due to the lease clause cited above.

Example #2

Mr. Jones signed a one year lease, effective October 1, 2006. The lease cited a legal regulated rent of \$1,000.

1. The lease did not contain any clauses stating that this was a preferential rent and the **lease did not cite the legal regulated rent of \$1,200**. On April 1, 2007, the owner filed a Registration form with DHCR that listed a legal regulated rent of \$1,200 and a preferential rent of \$1,000.
2. On October 1, 2007, when Mr. Jones' one year lease renewal begins, the preferential rent increases by 3% to \$1,030. Mr. Jones will pay the \$1,030 rent.
3. In this example, the owner did not preserve the legal regulated rent of \$1,200 for future use as it was not written in the lease. The registration the owner filed did not establish the legal regulated rent for future use.

Example #3

Mr. Jones signed a one year lease, effective October 1, 2006. The lease cited a legal regulated rent of \$1,200 and a preferential rent of \$1,000.

1. The lease contained a clause that stated "**the preferential rent shall be offered for the entire term of the tenancy**".
2. On October 1, 2007, when Mr. Jones' one year lease renewal begins, the legal regulated rent increases by 3% to \$1,236 and the preferential rent increases by 3% to \$1,030. Mr. Jones will pay the \$1,030 rent.
3. In this example, the owner must continue to base lease renewal rent increases for Mr. Jones on the preferential rent, due to the lease clause cited above.

Example #4

The owner, ABC Corporation offers Ms. Santiago a lease. Ms. Santiago signed a one year lease, effective October 1, 2006. The lease cited a legal regulated rent of \$1,500 and a preferential rent of \$1,000.

1. The lease did not contain any clause that clarified whether the preferential rent was for the "term of the lease" or "the entire term of the tenancy". It was silent on this issue.
2. On October 1, 2007, when Ms. Santiago's one year lease renewal begins, the legal regulated rent increases by 3% to \$1,545 and the preferential rent increases by 3% to \$1,030. ABC Corporation can choose to require that Ms. Santiago pay the \$1,545 rent.
3. In this example, the owner can terminate the collection of the preferential rent at the time of the lease renewal as the lease did not contain a clause stating that the preferential rent was for "the entire term of the tenancy".

Preferential Rent and Deregulation

When a tenant who has been paying a preferential rent vacates and a new tenant moves into the apartment, the new tenant will not be under rent stabilization if the legal regulated rent for the prior tenant plus the rent increases that are allowed for a new tenant equals at least \$2,500 per month.

Concessions

There are two types of rent concessions. One is a concession for specific months, as for example, where the lease provides that the tenant will not have to pay rent for one or more specified months during the lease term. This type of concession is not considered a preferential rent.

The other type is a prorated concession, where the dollar value of the rent free month(s) is prorated over the entire term of the lease and not tied to a specific month or months. A prorated concession is really the same as a preferential rent and will be treated in the same manner

Other Considerations

Where the tenant is charged a preferential rent, the following will apply.

1. The sublet allowance that the owner can charge (and the tenant can pass on to the subtenant) is based on the legal rent. The additional 10% increase that the tenant can charge the subtenant for the use of furniture is based on the preferential rent.
2. The proportionate share of the rent that the tenant can charge a roommate is based on the preferential rent.
3. The amount of a security deposit that the owner can collect from a tenant is based on the legal rent.
4. The limitation on collectability of Major Capital Improvement rent increases (6% in NYC; 15% outside of NYC) is based on the legal rent.
5. Upon issuance by DHCR of an order reducing rent for decreased services, if the tenant's current and prior leases contain a legal rent and also provide for a preferential rent, the rent is reduced to the prior lease's preferential rent. If the tenant's current lease only contains a legal rent, even if the prior lease provided for a preferential rent, the rent is reduced to the prior lease's legal rent.

Sources:

Chapter 82 of the Laws of 2003
New York City Rent Stabilization Code, Section 2521.2
Tenant Protection Regulations, Section 2501.2

*For more information or assistance, call the DHCR
Rent Infoline, or visit your Borough or County Rent
Office.*

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