Paying a High Rent? Preferential Doesn’t Mean Special

Your apartment is expensive, but you got a deal—you’re paying a preferential rent. That sounds good, special even—and it does have a benefit—but there’s a catch.

A landlord charges a preferential, or lower, rent when the maximum legal rent is higher than what the market will pay. Both amounts are listed on your lease. So what happens when it’s time to renew?

Because all apartments here are rent stabilized, certain rules apply. The percentage that the rent for a renewal lease can go up is set by the city’s Rent Guidelines Board. This is where the catch comes in.

The increase is figured on the legal (higher) rent, not the preferential amount that you’re paying. And on renewal, the landlord can decide to charge you any amount up to the legal rent.

How is the legal rent determined? When you moved in, your lease should have contained an accounting of what was added to the previous rent to reach the maximum legal amount. For newly renovated apartments, the accounting would show the previous rent, the vacancy bonus (the landlord can tack on a percentage just because the apartment turned over), a possible longevity bonus (if the previous tenant was in the apartment a long time), and a fraction of the renovation costs. Even if you moved into an apartment that was already renovated, the landlord may have done work that can be added to the legal rent.

Let’s do the math with this brain teaser:

- The maximum legal rent for your apartment is $6,000.
- You’re paying a preferential rent of $4,000.
- When it’s time for you to renew, the RGB increase for a two-year lease is 2%.
- How much will your rent be if you renew for two years?

Answer:
- Unlikely: $4,080—an increase of 2% on your old rent, or $80.
- Legal: $6,120—an increase of 2% on the maximum legal rent, or $120.
- Reality: Only the landlord knows for sure. Your new rent can be anywhere up to $6,120. Yes, your increase could be hundreds of dollars a month. It’s happened.

Is there a fix for this? Yes, and it’s political. The Tenants Association and other groups have been fighting to change the rent law to what it used to be: preferential rents to be renewed at the percentage fixed by the RGB. That makes it possible for people to stay in their homes and promotes stability, not just here but throughout the metro area covered by rent stabilization. To enact such a change, we need a sympathetic governor and lawmakers in Albany. The other option is for you to negotiate with the landlord when it’s time for you to renew your lease.

Note: Increases for Roberts tenants follow a different formula. The formula is complicated and determined as a result of a settlement of Roberts v. Tishman Speyer Properties, L.P., and does not follow the general overview presented above.
From the President

Our community has become diverse in terms of tenancy. We have long-term stabilized tenants, Roberts (or “J-51”) tenants, post-Roberts tenants, and in the foreseeable future, lottery winners.

The needs of these categories of tenants may be different, but we all have one thing in common: a unique place to live. No other community in Manhattan boasts 80 acres, a parklike setting, fountains, and amenities for almost every taste. Similarly, no matter what category of tenant you are, there are issues that resonate—issues that the Tenants Association takes up on your behalf.

Day-to-day living: The Tenants Association is working with our new owner, Blackstone, to undo a decade of neglect and reset the quality-of-life button, freeing us as a community to focus on bigger tenant issues.

Working to keep rent increases low: Every year, the Tenants Association pushes the city’s Rent Guidelines Board for a zero percent or a reasonable increase for lease renewals. We join forces with other tenant groups and affordable housing advocates in letting the RGB know that landlords don’t deserve another bonanza in a housing crisis.

Keeping rents regulated: Long-term tenants understand the criticality of renewing rent regulations, but the renewal of rent regulations affects all of us. Tenant organizations across the city are banding together to push for the elimination of preferential rents—that pernicious mechanism by which RGB increases can be bypassed to close the gap between the lower (preferential) rent and the legal rent. Roberts and post-Roberts tenants stand to gain from this fight.

Legal issues: The Tenants Association is on the front line for advocacy for all classes of tenants, whether it be for unauthorized access, illegal short-term leases, major capital improvement increases, or building safety.

We need to work together for the bigger picture. The best way to do that is become part of what the New York Times called “the strongest and best-organized tenants association in New York City” and let us advocate on your behalf. —Susan Steinberg

Rent Freeze? Yes, Please!

The city sponsors two programs that freeze the rent of eligible tenants: the Senior Citizen Rent Increase Exemption (SCRIE) and the Disability Rent Increase Exemption (DRIE).

The basics:
You must have a total combined annual household income of $50,000 or less (after deducting certain taxes) and pay more than one-third of the household’s total monthly income for rent. In addition:

SCRIE
· Be at least 62 years old
· Be the head of household as the primary tenant or have been granted succession rights

DRIE
· Be at least 18 years old
· Be named on the lease or been granted succession rights
· Receive federal Supplemental Security Income (SSI), federal Social Security Disability Insurance (SSDI), a VA disability pension or compensation, or disability-related Medicaid if you have received either SSI or SSDI in the past

If you qualify, your rent will be frozen and you will be exempt from MCI increases issued within 90 days of the date your initial application was received.

Total combined household income: This is the sum of the income of everyone living in the apartment, including all family members who lived in your apartment the year before your application. If you rent a bedroom to someone, you do not need to report that person’s income, but you must include the rent you receive in your own income.

How is my income calculated?
Both programs use taxable and nontaxable income. Gifts and inheritances are not included.

What can I deduct from my income? What can’t I deduct?
Federal, state, and local taxes, and Social Security taxes can be deducted. Medical expenses, Medicare premiums, and capital or business losses cannot be deducted.

What if I don’t file taxes?
If you don’t file taxes, you must document how you and

Continued on page 4
How We Can Represent You in Housing-Related Legal Matters

When it’s time to negotiate a settlement outside of a government agency ruling, you want the TA’s attorneys to be working for you. They may not be able to do that unless you’re a member of the Tenants Association and you’ve signed a Public Membership Pledge.

That’s right—to be certain of benefiting from a settlement negotiated with the landlord, you must sign the pledge. And to be a member of the Tenants Association, you must have paid dues.

What sort of settlements have been negotiated? Most recently, the TA’s attorneys got CWCapital to waive retroactive MCI charges that kept an estimated $30 million in the pockets of tenants. The smallest amount per apartment was more than $2,000—money that the tenant didn’t have pay.

When we’re fighting, we don’t want to be representing only some of you. And we want to be able to negotiate a good financial settlement for as many of our neighbors as possible.

New York’s Real Property Law §223-b explicitly protects the right of tenants to participate “in the activities of a tenant’s organization.” Tenants signing PMPs may not be harassed, denied renewal leases, or deprived of services because of their participation in the Tenants Association.

Even if you decide not to sign a Public Membership Pledge, you can still be a member of the TA. We’ll continue to keep you up-to-date on important tenant issues, alert you to our meetings, welcome you to our Facebook page, and field your calls to our Message Center or online.

But don’t you want to get the most out of your membership?

If you’re not already a member, please join us by filling out the coupon on page 8 or going online to stpcvta.org/donate. Then sign the PMP and return it to us by mail or by placing it in one of our convenient drop boxes.

Results of the Tenants Association Election

In May, six directors were elected to the TA’s board. Kirstin Aadahl, Soni Holman Fink, and Steven Newmark, all incumbents, were reelected, and Matt Arden, Gary Ireland, and Keith Powers joined the board. Congratulations and welcome to them all.

Kirstin Aadahl, secretary of the TA, serves on the Communications and Quality of Life/Maintenance Committees and responds to tenants who reach out to the TA electronically. An eight-year Stuyvesant Town resident with her husband and daughter, Kirstin has been a special-education teacher, recently completed a two-year term as PTA co-president at P.S. 40, and now works at the Third Street Music School Settlement.

Matt Arden and his wife have been residents of Stuyvesant Town since 2011, having moved from Atlanta, where Matt was president of the Kirkwood Neighbors Organization, representing over 11,000 residents to the City Council. He currently holds a board position with the Virginia Tech Pamplin School of Business and is senior vice president and executive creative officer at Screenvision Media, an advertising company.

Soni Holman Fink joined the board in 2001. During her tenure as chair of the Communications Committee, Soni issued scores of flyers, bulletins, informational advisories, and notices. A Peter Cooper Village resident since 1961, she was a reporter, feature writer, columnist, and editor for several magazines and *Women’s Wear Daily*. After time out for child-rearing, she worked in public relations for Macmillan, Inc., and as a freelance.

Gary Ireland has lived in Stuyvesant Town for 23 years with his wife and children. An employment attorney, he represents both workers and entrepreneurial clients. Gary’s long history of activism includes working with the NAACP and NOW, and volunteering with the Jan Hus Church Homeless Outreach Program. Gary is a leader with Boy Scout Troop 414 at Immaculate Conception Church and with Scouts Canada.

Steve Newmark, an attorney, has lived in Stuyvesant Town for 10 years with his wife and now their two young children. He currently chairs the Legal Committee and helped organize tenants around the Roberts (J-51) lawsuit and the Tishman Speyer default. Steve is Senior Health Policy Advisor and Counsel in the New York City Mayor’s Office.

Keith Powers is a third-generation resident of ST/PCV. He serves or has served in various capacities and organizations, such as Community Board 6, Democratic District Leader, board member of Kips Bay Neighborhood Association, and member of the Eleanor Roosevelt and Tilden Democratic Clubs. Currently a vice president at Constantinople & Vallone Consulting, he previously worked for Assembly Member Jonathan Bing and State Senator Liz Krueger. During the 2006 sale of ST/PCV, he assisted with the TA’s effort to organize tenants to put in a bid on the property.
household members receive income, such as Social Security statements, pension statements, IRA/annuity statements, IRS forms 1099 and/or W2. If you receive financial assistance from family or friends, you must submit a letter from the individual(s) providing support that details the amount and the situation.

What if I pay a preferential rent, which is lower than the maximum legal rent?
In general, your rent will be frozen at the maximum legal rent, not the lower preferential rent.

Can my landlord evict me for paying a lower rent?
No, but the programs do not protect you from eviction for other, unrelated reasons.

Why is my landlord OK with these programs?
Landlords get a property tax credit that covers the difference between the lower rent and the rent in the lease. There is no loss to them.

When does my benefit expire?
The benefit expires on the date of your current lease. You will then have to file to renew. The NYC Dept. of Finance should mail you a renewal about 60 days before your benefit ends.

This is just a sample of what there is to know about the SCRIE/DRIE programs and is not intended to be exhaustive. For more information, go to the city's site: http://www1.nyc.gov/site/finance/benefits/tenants-scrie.page.

You can download a guide to the program, an application, or watch a video on how to fill out the application. The guide contains much more information than presented here, including a list of the documents you will need to file with your application. The guide is available in Bengali, Chinese, Haitian Creole, Korean, Russian, and Spanish.

You can also request additional information and applications in these languages by calling 311 or by visiting the SCRIE/DRIE walk-in office at 66 John Street, 3rd floor, in lower Manhattan. The office is open Monday–Friday, 8:30 a.m.–4:30 p.m.

Help is also available from our elected representatives:
State Senator Brad Hoylman: (212) 633-8052
Assembly Member Brian Kavanagh: (212) 979-9696

What!! You Say I Don’t Live Here!!!

What’s a five-letter word that says you don’t live here? *Golub.*

That’s the name of the notice the landlord sends when it claims your apartment isn’t your primary residence—that you don’t live in it at least half the year, or 183 days. Some tenants get a shock when instead of a lease renewal, they receive a Golub notice—the first step on the path to eviction. *But you can’t be forced out of your apartment unless the owner brings a court proceeding and obtains a judgment from the court.* There are ways to keep that from happening.

Why might the landlord think your apartment isn’t your primary residence? Perhaps you own property elsewhere. You might have voted at another address or registered your car there or had your bills sent there. And maybe your key card hasn’t been used too often. Or, you ignore the Golub notice and don’t provide copies of the legal documents requested.

How does the process begin?
The owner has a “window period”—90 to 150 days (3 to 5 months) before the end of your current lease—to send the tenant a “notice of non-renewal” of the lease. *If the landlord misses this period, even by a day, the case is subject to dismissal.* Sometimes the Golub is followed by a termination of lease notice. Neither the Golub notice nor the termination notice constitutes the commencement of an eviction proceeding, and the landlord cannot start a court case until the lease expires.

OK, so what is the landlord looking for?
Physical connection to the apartment is the single most important factor. Key card use, bank statements, credit card bills, phone records, filing of NYC resident income tax returns, voting records, bank account records, driver’s license, automobile registration, and the number of days spent in the apartment during the preceding year. Any of these records showing non-NYC addresses are suspect; on the other hand, showing NYC addresses for these records gives the tenant a strong case.

About those 183 days: a tenant is not required to spend 183 days in the apartment under certain circumstances. Exceptions include work-related travel, education out of the city, military service, extended hospitalization, or taking care of a sick relative, but there must be some evidence to support such claims.

Once the landlord files a case, what happens?
Typically, soon after the case is filed, the landlord will serve a motion asking the court to permit it to conduct discovery, the process by which each party obtains information from the other side before trial. In addition, landlords will typically ask the court to order the tenant to pay use and occupancy...
Rent stabilization protects your family’s right to keep occupying your apartment after you’ve moved or died. That’s called succession. Even a nontraditional family member may succeed to the apartment if that person can show "emotional and financial commitment."

But you must plan ahead—that means right now. Don’t put this off—the owner will be looking to deny even a legitimate claim.

Here’s what to do.

Simplest option first: List a family member besides your spouse as an occupant when you sign or renew a lease (only your spouse can be listed as “co-tenant”).

What else do you have to do? It’s as easy as 1-2-3.

1. **Live together.** Your family member (“successor”) who wants to remain in your apartment must have lived with you (“tenant of record”) for two years in a row before you vacate it. That is reduced to one year if the successor is over 62 years old or permanently disabled. The family member may also have the right to a renewal lease if he or she resided with you from the inception of the tenancy or from the commencement of the relationship.

2. **Use the same address.** Make sure you and your successor use only your apartment’s address for key activities such as paying taxes, voting, credit card and telephone billing, registering cars—the same list you would use to prove residency.

   Monitor your consumer credit report annually, and have your successor do the same. Look for any reports of a secondary address. If present, this is sure to be used against you. Unscrupulous landlords use that trick to put your succession claim in jeopardy.

3. **Vacate the apartment.** For your successor to claim the apartment, you (tenant of record) must vacate it. It doesn’t matter why: you may move—that includes going to a nursing home or an assisted living facility—or, as we all will, die.

**The apartment has been vacated. Now what?**

1. **Notify the landlord.** The first step in claiming your rights is to notify the landlord right away via certified, return-receipt mail that the primary tenant has moved away or died. Keep a copy of the letter and proof of mailing. Your letter should ask for the renewal lease to be sent in your name at renewal time.

2. **Immediately start paying the rent under your name.** If the landlord refuses to accept the rent, or change the name on the renewal lease to yours, or threatens to evict you—stand fast. Don’t be tricked into sending in rent or signing a renewal lease in the name of the former tenant of record. Unscrupulous landlords use that trick to put your succession claim in jeopardy.

3. **Prove your eligibility.** You will need to provide sufficient documentation that you meet the eligibility requirements listed above. Again, if you are rejected and threatened with eviction and you believe your case is solid, don’t be afraid to hire an attorney and go to court. A rent-regulated apartment is worth fighting for.

The surest, if more expensive, way to nail all this down is to consult an attorney. But you can put the owner/managing agent on notice by completing and filing Division of Housing and Community Renewal (DHCR) form RA-23.5, aka—take a deep breath—“Notice To Owner Of Family Members Residing With The Named Tenant In The Apartment Who May Be Entitled To Succession Rights/ Protection From Eviction.” It’s available online at nyshcr.org/Forms/Rent/ra235.pdf. Read the “Instructions for Tenant” section very carefully. You may refile the form every time you renew your lease to keep it current.

Also check DHCR fact sheet #30, “Succession Rights.” It provides a complete definition of “family member” and other useful info. You can download it at nyshcr.org/Rent/FactSheets/orafac30.pdf. The city’s Rent Guidelines Board has information at www.nycrgb.org/html/resources/faq/succession.html#rules.

Don’t have access to a computer? Call the Division of Housing and Community Renewal (DHCR) at 1-866-ASK-DHCR (1-866-275-3427) to have them mail RA-23.5 and the fact sheet to you.

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Disclaimer: The Tenants Association does not provide legal advice. The information presented in this article is based on DHCR and Metropolitan Council on Housing fact sheets and the NYC Rent Guidelines Board. You may contact those agencies for more specific information.
(U&O)—often the amount of the rent—during the pendency of the proceeding. That is because a landlord is legally not allowed to collect rent from a tenant after termination.

How long will the case take to resolve?
Impossible to say. It could take anywhere from a few weeks (if the landlord is convinced not to bring the case in the first place) to one or more years (if there is extensive legal jockeying).

How much does it cost?
Tenant lawyers typically handle these cases on an hourly basis. The total depends on the length of the case and the hourly rate of the lawyer. A range of $2,000 or less up to substantial five figures is possible. A typical case will average at least $10,000, spread out over the length of the case. If a lease is produced that contains an attorney’s fee clause, the prevailing party in the case can seek to recover its legal fees from the other side.

What happens after discovery is completed?
If a tenant’s case is solid, the landlord’s lawyer may initiate settlement discussions. These may or may not involve buyouts.

What is Housing Court litigation like?
Cases are heard by Housing Court judges who hear only eviction proceedings. To save attorney fees, many tenants represent themselves but are often taken advantage of by landlord attorneys. Being represented by an attorney not experienced in Housing Court is also a road map for disaster. The most effective way for tenants to succeed in Housing Court is with an experienced tenant attorney who can fully explain all options and procedures along the way.

How can I ensure I have a competent lawyer?
Question prospective lawyers about their background and experience, ask for references, ask what percentage of their practice involves landlord/tenant eviction cases and whether they also represent landlords. Also, if the landlord knows the tenant has a good tenant lawyer, they may be less likely to seek that tenant’s eviction in the future. Search for “Tenant Lawyer” on the Internet, or use a site such as www.findlaw.com or Metropolitan Council on Housing, http://metcouncilonhousing.org/tenants_rights_telephone_hotline.

In conclusion: Things happen in life. Often in dealing with personal crises, tenants need to be out of state or away from home to deal with sick ones, or some other situation that causes them not to use their key cards for periods of time. Or a tenant may become housebound and not use the key card. Keeping track of and organizing tax returns, bank account statements, insurance documents, credit card statements, automobile registrations, driver’s license, employment records, medical records, school records, E-ZPass statements, etc., will make it easier to demonstrate you do indeed live in your apartment. Beware and take care.

The information presented in this article is based on an Internet article issued by Fishman Rozen, tenant and consumer attorneys. The full article may be viewed at http://www.nyc_tenants_law.com/nyc-tenant-consumer-lawyers-new-york-city-practice-areas/non-primary-residence-proceedings/
Have a nagging question about your rent or rent stabilization? The state's Homes and Community Renewal agency has a web page with fact sheets that may have what you need. The fact sheets discuss the major elements of rent stabilization, and you can get more details by calling, writing, or visiting one of the district offices.

The fact sheets are also available in Spanish, Chinese (traditional), Russian, Italian, Haitian-Creole, and Korean.

http://www.nyshcr.org/rent/factsheets/
Rent InfoLine: (718) 739-6400
Email: rentinfo@nyshcr.org
Lower Manhattan office: 25 Beaver Street, 5th Floor, NYC 10004

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Not Your Parents’ Tenants Association

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promptly. If they can’t answer your question, they’ll refer you to someone who can.

We update those on our email list with news of issues that concern all of us, as well as any action we’re taking.

Want to know what other residents are talking about and sharing? Check our Facebook page, www.facebook.com/groups/stpcvta/.

Follow us on Twitter: @ST_PCV_Tenants.

Keeping it legal: Rent stabilization and rent law in general can be complicated. We have an attorney to advise us (the Tenants Association, not individual tenants) and guide us.

Action and Advocacy

- To pressure the state legislature to renew and strengthen rent laws, last year we participated in rallies, provided letters for tenants to send, and filled three buses to Albany.
- We stay on top of issues affecting rent-stabilized tenants and coordinate with other tenant advocates all year long.
- When the tent first opened in Playground 11, we identified a number of safety issues and pressed management to fix them so children and others would be safe.
- We filed for rent reductions for the 17 buildings hardest hit by Hurricane Sandy and achieved a refund for tenants who signed on to the complaint. We also filed to have free storage continued.
- We protested MCIs filed in 2009 and negotiated a settlement. Estimated retroactive charges of $30 million were waived.
- Our building-by-building survey revealed that the fire doors to the stairwells were not automatically shutting as required. As a result, the NYC Fire Department issued a violation for the entire complex. Management was forced to repair and even replace some doors in each of our 110 addresses.
- We stay in touch with our elected representatives so they know what’s important to us.
- We contact management directly to bring important issues to their attention.
- We held a forum for mayoral and public advocate candidates just for our residents.
- We organized a postcard campaign and online petition to remind Mayor Bill de Blasio that he requested the Rent Guidelines Board (which sets the percentage legal rents can go up) to issue a 0% increase.

Still not convinced?

Let us know what you’d like us to do for you. We’re one community.

And did we mention it’s only $50 per apartment per year as of July 1 ($25 for SCRIE/DRIE)?

You can join online at stpcvta.org/donate. Couldn’t be easier. Or mail us at ST/PCV-TA, Box 1202, New York, NY 10009-1202. Make your check payable to ST/PCV-TA.

We welcome your support. You may join or renew your membership securely at: http://stpcvta.org/donate

Member Name: __________________________________________ E-mail: __________________________________________

Additional Member Name: __________________________________________ E-mail: __________________________________________

Additional Member Name: __________________________________________ E-mail: __________________________________________

Address: ___________________________________ Apt: ______ Phone: ________________________(H) (W) (C)

Move-in year: __________________________________________

By submitting my email address, I authorize you to add my email address to the Tenant Update List.

Dues are $50 ($25 for SCRIE/DRIE) per apartment per year. Such dues paid from July 1, 2016, through December 31, 2016, will include membership through December 31, 2017.

If you are able to add to that, it will be a big help:

☐ $50 ☐ $75 ☐ $100 ☐ Other $_________ ☐ SCRIE/DRIE ___$25

Make checks payable to: ST/PCV-TA

Mail to: P.O. Box 1202, New York, NY 10009-1202

(Dues and contributions are NOT tax deductible)

CONVENIENT TA DROP BOX LOCATIONS

Zeichner’s Wines & Liquors, 279 First Ave., near 16th St., 10AM – 9 PM. shorter Sun. hours

Oval Services, 17A Stuyvesant Oval (First Ave. Loop), M–Sat 8AM–8PM

Community Center, 449 E. 14th St. (First Ave. Loop), MWF, Sat & Sun 8AM–5PM, Tu, Th 8AM–8PM

16-152-NB