

# Housing Stability and Tenant Protection Act of 2019

This law, which went into effect with its passage on June 14, 2019, represents decades of fierce, tireless work by tenants, tenant organizations, and tenant advocates. The Stuyvesant Town–Peter Cooper Village Tenants Association has participated in this fight by going to Albany, pressuring elected representatives (our own and others’), rallying and marching, submitting testimony to legislative committees, and joining the coalition of upstate and downstate housing groups. We also provided financial support.

The law amends the Emergency Tenant Protection Act of 1974, other state laws, and parts of the administrative code of the City of New York. It strengthens protections for tenants, closes loopholes, tightens rules for landlords, requires the state’s Division of Housing and Community Renewal (DHCR) to take certain actions, and it extends protections to certain tenants and types of housing previously not covered. It also sets up a temporary commission to study the effects of the law on landlords, tenants, and the court system, and to recommend further tenant protections.

The state legislature found that there is still a serious public emergency in rental housing and therefore rent regulation is in the public interest.

This summary focuses on the parts of the 74-page law and 21-page “clean-up” bill that most affect the Stuyvesant Town–Peter Cooper Village community. It does not discuss other parts of the law that remain, such as succession.

## What’s New that Affects Us: Fast Facts

- Rent regulation is now permanent—the law does not expire as it did in the past.
- Preferential rent—not the higher, legal rent—becomes the base rent for the life of the tenancy. That means the percentage of a renewal increase can’t be higher than what is set by the city’s Rent Guidelines Board.
- New MCIs can’t add on more than 2% of the rent.
- New MCIs are removed from the rent after 30 years.
- MCIs before DHCR at the time of passage may conform to new law (decision pending).
- No more high-income, high-rent deregulation.
- No more vacancy deregulation—regulated apartments stay regulated.
- You can check the rent history of your apartment going back six years to make sure you’re being charged the correct rent.

## Preferential Rent

A preferential rent is one where the amount charged to and paid by the tenant is less than the legal rent. The lease will state both amounts. In general, rents in Stuyvesant Town and Peter Cooper Village higher than \$2,775 are preferential. The law affects any tenant who is subject to a lease on or after June 14, 2019, or is or was entitled to receive a renewal or vacancy lease on or after such date.

- **When a tenant with a preferential rent renews the lease:** The new rent must be no more than the preferential rent under the old lease plus the Rent Guidelines Board increase and any amounts authorized by law, such as MCIs.

Under the old law, the owner could raise the rent of a renewal lease all the way up to the legal limit plus the RGB increase and any MCIs. Tenants were sometimes shocked by high increases, and many were forced to move out.

- **When an apartment is vacated:** Owner may raise the rent to the legal amount plus the Rent Guidelines Board increase and any amounts authorized by law, such as MCIs.

## Major Capital Improvements

- As under the old law, new MCIs will be added to the legal regulated rent. That means they will be included in RGB increases.
- MCIs pending before DHCR before passage of the law may be subject to the new law (decision pending).
- A smaller fraction of a new MCI will be added to the rent. MCIs will now be amortized over 12½ years in buildings with more than 35 units. Under the old law, MCIs were amortized over nine years. Instead of dividing the landlord's cost by 108 months (nine years), the cost will be divided by 150 months (12½ years).
- MCIs filed after the new law was passed are collectible prospectively (going forward) on the first day of the first month beginning 60 days from the date of mailing notice of approval to the tenant.
  - The notice will state the total monthly increase and the first month the tenant must pay it.
  - There will be no retroactive amounts.
  - The increase shall not exceed 2% of the rent in any year from the effective date of the order granting the increase. Amounts in excess of 2% will be spread forward in similar increments and added to the rent as established or set in future years.
- For any renewal lease starting on or after June 14, 2019, collection of any MCIs approved on or after June 16, 2012, and before June 16, 2019, shall not exceed 2% in any year for any tenant in occupancy on the date the MCI was approved.
- New MCIs end 30 years from the date the increase became effective. DHCR will issue a notice to the landlord and all the tenants 60 days before an MCI ends. The notice will include the initial approved increase and the total amount to be removed from the legal regulated rent. The legal regulated rent includes any RGB increases.
- DHCR (Division of Housing and Community Renewal) will:
  - Establish the criteria for MCI eligibility including the type of improvement, which should be essential for the preservation, energy efficiency, functionality, or infrastructure of the entire building, including heating, windows, plumbing, and roofing. An MCI cannot be for operating costs or unnecessary cosmetic improvements.
  - Establish a schedule of reasonable costs.
  - Set a ceiling for how much a landlord can recover.
- Allowable improvements must be depreciable according to the IRS code, not be for ordinary repairs, and directly or indirectly benefit all tenants. Costs must be actual, reasonable, and verifiable to be approved.
- Owner must resolve all outstanding hazardous or immediately hazardous code violations before an MCI can be approved.
- An application for an MCI must include an itemized list of the work performed and a description or explanation of the reason or purpose of the work.
- An MCI must be reduced by a governmental grant received by the landlord if the grant compensates the landlord for any improvements required by any government or governmental agency.

- An MCI must be reduced by any insurance compensation for any part of the costs.
- DHCR will annually review 25% of approved MCI applications. The process will include individual inspections—including in-person confirmation—and review of documents to make sure that owners complied with all obligations and responsibilities, and that the completed improvements conform to the application.
- Tenants have 60 days from the date of mailing of a notice to answer or reply. DHCR must provide any responding tenant with reasons for the division’s approval or denial of an application.
- When an apartment is vacated, the landlord may add any remaining balance of the MCI to the legal regulated rent.

### **New MCIs at a glance**

- MCIs still become part of the legal regulated rent.
- Collectible prospectively on the first day of the first month beginning 60 days from mailing date of notice of approval to tenant.
- No more retroactive amounts that stay on the rent for years.
- A smaller fraction of the MCI is added to the rent due to a longer amortization period.
- MCIs can’t be more than 2% of the rent in any year from the effective date of the order granting the increase. Amounts in excess of 2% will be spread forward.
- For a renewal lease starting on or after June 14, 2019, collection of any MCIs approved on or after June 16, 2012, and before June 16, 2019, can’t exceed 2% in any year for any tenant in occupancy on the date the MCI was approved.
- 30 years from the date the increase became effective, the MCI will be removed from the legal regulated rent.
- DHCR must issue a list of what is eligible for an MCI with caps on costs.
- Tenants have 60 days to respond to a notice.

### **Overcharges**

- A tenant complaining of being overcharged may bring a court action for damages equal to the overcharge and a penalty, including interest from the date of the overcharge, plus reasonable costs and attorney’s fees.
- If the owner is found to have overcharged willfully, the tenant can collect three times the amount of the overcharge.
- If, after a complaint has been made, the owner voluntarily adjusts the rent or pays the tenant a refund, that isn’t evidence that the overcharge wasn’t willful.
- Recovery of penalties is limited to six years preceding the complaint.

**What’s new:** Instead of having to file a complaint with DHCR, a tenant can now choose to file a complaint in a court. Tenants can look back six years instead of only four.

This section of the law contains more detail. A tenant planning to file an overcharge complaint should consult with an attorney experienced in tenant matters.

## **Individual Apartment Improvements**

An individual apartment improvement is a substantial modification or increase of dwelling space, or installation of new equipment or improvements or new furniture or furnishings. Renovations are IAIs.

**Vacant apartment:** landlord needs no approval.

**Tenant in occupancy:** tenant must give written informed consent.

- Recoverable costs are limited to an aggregate cost of \$15,000 that may be expended on no more than three separate IAIs in a 15-year period. This begins with the first IAI on or after June 14, 2019.
- Temporary increase for buildings with more than 35 units is 1/180 of the cost.
- Increases are added to the legal rent.
- Work must be done by a licensed contractor with no common ownership with the landlord.
- Owner must resolve all outstanding hazardous or immediately hazardous code violations before an IAI can be approved.
- IAIs will be removed from the legal regulated rent 30 years from the date the increase became effective.
- DHCR must establish a notification and documentation procedure that requires an itemized list of work performed and a description or explanation of the reason or purpose of the work, including before and after photographic evidence.
- DHCR must provide for the centralized electronic retention of the documentation and any other supporting documentation so it can be made available in cases pertaining to the adjustments of legal regulated rents.
- DHCR must establish a form that landlords must use to obtain written informed consent from a tenant in occupancy for an IAI.
  - The form must be in the top six languages other than English spoken in the state, according to the latest available data from the U.S. Bureau of Census.
  - The form must state the estimated total cost of the improvement and the estimated monthly rent increase.
  - The completed form must be preserved in the centralized electronic retention system, but landlords, lessors, or agents must still retain proper documentation of all improvements performed or any rent increases resulting from the improvements.
  - The electronic retention system must be operational by June 14, 2020.

IAIs have been an important tool for landlords to renovate apartments out of regulation by dramatically increasing the rents. The new law removes the incentive for landlords to spend hundreds of thousands of dollars to renovate an apartment, or to induce or coerce regulated tenants with low rents to move out.

## **Late Fee**

If you pay your rent more than five days after it's due, you can be charged a late fee of \$50 or 5% of your rent, whichever is less, provided there's a clause in your lease about a late fee.

## **Fee for Background Check and Credit Check**

The only fee or fees that a landlord, lessor, sub-lessor, or grantor may demand before or at the beginning of a tenancy are to reimburse costs associated with a background check and a credit check. The cumulative fee or fees can't be more than the actual cost or \$20, whichever is less. The fee or fees must be waived if the potential tenant provides a copy of a background check or credit check

conducted with the past 30 days. The fee or fees can't be collected unless the landlord, lessor, sub-lessor, or grantor provides the potential tenant with a copy of the background check or credit check and the receipt or invoice from the entity conducting the background check or credit check.

## **Breaking a Lease**

If a tenant vacates the apartment in violation of the terms of the lease, the landlord to the best of its ability must take reasonable and customary actions to rent the apartment at fair market value or at the rent of the vacating tenant, whichever is less. If the landlord rents the vacated apartment, the new tenant's lease terminates the vacating tenant's lease and mitigates the damages (such as the remaining rent) the landlord can recover from the vacating tenant. The burden of proof is on the party seeking to recover damages (the landlord).

Prior to this law, our management was requiring three months' rent from tenants breaking a lease. Although the new law requires management to try to find a new tenant, the tenant breaking the lease may still be responsible for some amount.

## **Security Deposit and Refund**

A security deposit can't be more than one month's rent. When the apartment is vacated, the landlord may deduct for nonpayment of rent, damage beyond normal wear and tear, nonpayment of utility charges, and moving and storage of tenant's belongings. Within 14 days, the landlord must provide an itemized statement of deductions. If a statement is not provided in 14 days, the tenant gets all the security back. The burden of proof for deductions is on the landlord.

**Inspection before occupancy:** After a lease is signed but before occupancy, the landlord must offer the tenant the opportunity to inspect the premises with the landlord or landlord's agent. If the tenant requests such an inspection, the parties will execute a written agreement before the tenant begins occupancy attesting to the condition of the apartment and specifically noting any existing defects or damages. When the tenant vacates, the landlord can't deduct anything that was noted.

**Inspection before vacating:** Unless the tenant terminates with less than two weeks, the landlord must notify the tenant in writing of the tenant's right to request an inspection before vacating. The inspection must be made no earlier than two weeks and no later than one week before the end of tenancy. The landlord must give 48 hours' notice of the date and time of inspection. After the inspection, the landlord must give the tenant an itemized statement of repairs or cleaning that might be deducted from the security. Tenant can cure the items before the end of the tenancy.

Any person who violates these provisions shall be liable for actual damages, provided a person found to have willfully violated these provisions shall be liable for punitive damages of up to twice the amount of the security deposit or advance.

## **Eviction**

Unlawful eviction is a crime, and there are new protections for retaliatory evictions. Tenants get more time to respond and to find a new home.

This section of the law contains technical language. If you are in danger of being evicted, immediately consult an attorney who is experienced in tenant matters.

## **What Else Is New**

**Entire state is covered:** The act applies to all counties in the state (previously only to New York City and Rockland, Westchester, and Nassau counties). Localities may declare a housing emergency and opt in to rent regulation.

**Vacancy bonus repealed:** Landlords can no longer add 20% to the rent when an apartment is vacated. The vacancy bonus was one way landlords were able to get rents high enough to deregulate apartments. The city's Rent Guidelines Board is prohibited from imposing its own vacancy bonus.

**Longevity bonus repealed:** When a longtime tenant vacated an apartment, landlords used to be able to add an additional percentage to the rent.

**Landlord retaliation:** Landlords can't retaliate against tenants for making good-faith complaints. A court may award attorney's fees and costs (in addition to other existing provisions) to the tenant in a civil action.

**Tenant blacklist:** A landlord can't refuse to rent to someone who was or is involved in a landlord-tenant action. Requesting information from a tenant screening bureau or inspecting court records pertaining to a potential tenant and then refusing to rent to that potential tenant is a violation. The state attorney general can bring an action or special proceeding in state supreme court for a civil penalty of \$500 to \$1,000 per violation.

**DHCR reports:** By December 31 of each year, the commissioner in a public report must describe the programs and activities of the Office of Rent Administration and the Tenant Protection Unit, and other programs or activities undertaken by the division to implement, administer, and enforce the system of rent regulation. The report must also account for the number of rent-stabilized and rent-controlled housing accommodations in each county; the number of MCI applications filed and how many were approved as submitted, how many were approved with modifications, and how many rejected; the median and mean value of applications for approved MCIs; the number of units with preferential rents; the number of rent overcharge complaints and the number of orders granting an overcharge; among other things.

**Owner use:** Landlord can take back only one unit for personal use. It must be because of immediate and compelling necessity, and it must be for his or her primary residence. Landlord cannot take a unit occupied by someone 62 or older, has been in the building for 15 years or more, or is disabled.

**Co-op and condo conversion:** All plans must be noneviction plans, and 51% of tenants must commit to buying their apartments. Seniors (age 62 and older) and the disabled may stay as renters.

**Disclaimer:** This summary is not a legal document and does not constitute legal advice. It is not intended to apply to every tenant's situation in STPCV. In certain situations, tenants may need to consult an attorney.

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