

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, it is required 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**)

Since the agency has found that an owner may only demand a late fee of up to 5% of the rent being charged and paid and since preferential rents may not be terminated during a lease term, the agency will not permit an owner to enforce a clause in a rent-stabilized lease that provides that the owner may end a preferential or a discounted rent where the tenant fails to pay the preferential or discounted rent by a certain day of the month. The agency also prohibits the use of any other lease clause that conditions the payment of a discounted rent based upon the performance of an act by the tenant, such as the tenant's payment of the rent electronically. The owner's collection of higher rents based upon these clauses could be challenged by the tenant in a rent overcharge complaint with DHCR or can be reviewed by a court of competent jurisdiction. DHCR can also direct the removal of this type of clause from a lease, if the tenant files a lease complaint.

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.

The Rent Act of 2015 modified the vacancy allowance that an owner can add to the legal regulated rent when the vacating tenant was paying a preferential rent. If a vacating tenant was paying a preferential rent, the vacancy lease rent increase that can be applied to the vacating tenant's legal rent will be limited to 5% if the last vacancy lease commenced less than two years ago, 10% if less than three years ago, 15% if less than four years ago and 20% if four or more years ago.

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 the legal rent lawfully reaches the Deregulation Rent Threshold, the apartment is exempt from regulation.

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.

Queens

92-31 Union Hall Street
6th Floor
Jamaica, NY 11433
(718) 739-6400

Westchester County

75 South Broadway
White Plains, NY 10601

Lower Manhattan

25 Beaver Street
5th Floor
New York, NY 10004
South side of 110th St. and below

Bronx

1 Fordham Plaza
4th Floor
Bronx, NY 10458

Upper Manhattan

163 W. 125th Street
5th Floor
New York, NY 10027

Brooklyn

55 Hanson Place
7th Floor
Brooklyn, NY 11217