

LANDLORD/TENANT ANSWER IN PERSON FACT SHEET (CIV-LT-91)



#8: RENT OVERCHARGE: RENT STABILIZED

Defense # 8 says: The Petitioner owes money to the Respondent because of a rent overcharge."

The landlord or owner may only charge you the correct rent amount. If you are a rent stabilized tenant, the proper rent amount is either the "legal rent stabilized rent" or the rent in your lease, whatever is lower. If the landlord or owner is charging you a rent that is lower than the legal rent stabilized rent, this is called a "preferential rent." A landlord or owner can choose to charge a preferential rent because a tenant is a friend, or because the legal rent is too high for the market. If the landlord or owner has overcharged you and you have paid more than the legal rent stabilized rent or the rent in your lease, you have an overcharge defense and counterclaim.

The "legal rent stabilized rent" is the lawful rent that the landlord or owner can charge the tenant of a rent stabilized apartment. The landlord or owner must register the rent with the New York State Division of Housing and Community Renewal ("DHCR"). The Rent Stabilization system protects tenants from big rent increases by regulating the initial rent and rent raises that landlords can charge. Every year, the Rent Guidelines Board sets the upper (high) limit that a landlord or owner can increase on one or two year renewal lease and new leases. Special increases are also available for "landlord hardship" and certain "improvements" to the apartment or building. The landlord or owner can't increase the rent until the end of the lease term and must send the tenant a renewal lease and register the rent with the DHCR. You are being overcharged if the landlord or owner has raised the rent more than allowed by law.

The landlord or owner is supposed to attach to your lease, and any renewal leases, the Rent Stabilization "Lease Rider." The rider shows the rental history of your apartment, that includes the past rent for the apartment, and the reasons the rent was increased. If you are not sure if the landlord or owner is charging you the correct rent, you can get the rent history and list of correct renewal increases from the DHCR by calling (212)

961-8930 or (718) 739-6400. The legal rent stabilized rent is determined by taking the rent charged for the apartment four years prior to the raising of the overcharge claim, plus all legal increases.

If the landlord or owner has charged you and you have paid more than the legal rent or the rent in your current lease, tell the Judge or Court Attorney when you go to court. The landlord or owner has to show records from the past four years and prove to the court that the rental history is correct. You should also bring any lease renewals, letters, or information from the DHCR to prove your claim. The court can only look back four years for records to prove a rent overcharge complaint. So, if the overcharge happened more than four years before you made the claim, you will not be able to get back overcharges.

In some cases, the judge can refuse to decide your rent overcharge defense and counterclaim and leave the decision to be made by the DHCR. The DHCR is the agency where you make overcharge claims. If an overcharge claim is already at the DHCR, the court may choose to "sever" (separate) the overcharge part of the case. If you have already got a ruling from the DHCR that you have been overcharged, you can subtract the overcharge from future rent, but not more than 20 percent of the overcharge for any one month's rent. If 20% of the overcharge is more than the monthly rent, you do not have to pay any rent until you have been paid back for all of the overcharge.

If the judge decides that you have been overcharged and the overcharges are more than the rent claimed in the petition, then the court will give you a judgment for the remaining overcharge award. If the court finds overcharges that are less than the rent in the petition, the court will give the owner or landlord a judgment for the rent minus the overcharge award. You may also receive "treble damages," that means three times the overcharge refund, on rents paid two years before your claim if the owner or landlord does not provide any good reason for how the overcharge happened. The treble damages are to punish an owner or landlord who has willfully and intentionally (on purpose) overcharged a tenant. You can also get interest on the overcharge. If the owner or landlord proves that the overcharge was not willful (on purpose), the court will give you the amount of the overcharge, plus interest, but no treble damages. There is no interest awarded if you have subtracted the overcharge from the rent due.

If your building was sold over the past four years and there is a new owner or landlord, you can get the overcharge from the new owner. But,

the current owner is not responsible for rent overcharges that came from an excessive first rent stabilized rent charged by the past owner. If the building was sold at a judicial sale, the new owner is not responsible for past overcharges if there was no business or relationship with the past owner and not enough rent records were given at the judicial sale.