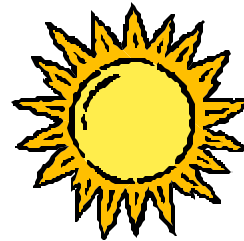


Rent Smart

A Consumer Guide to Leasing an Apartment Or House



New York State Consumer Protection Board

In cooperation with
Division of Housing and Community Renewal

George E. Pataki, Governor



INTRODUCTION

Tenants and landlords have rights and responsibilities to each other. This booklet sets out the nature of those rights and responsibilities, which are protected by a variety of laws or court decisions. The booklet also includes a plain language model lease that can be used as a rental agreement for most housing.

In certain areas of the state, which have rent control, rent stabilization, or public housing, however, this lease cannot be used because special rules apply to those dwellings. For those dwellings, we discuss in detail the ways those rights and responsibilities differ.

This booklet has four major sections:

- (1) Residential Lease: General Information
- (2) Model Lease and Explanation of Terms
- (3) Rights With No Lease or a Form Lease
- (4) Rent Control/Rent Stabilization Leasing

General Information

Many of the rights and responsibilities of tenants and landlords apply by law, whether there is a written lease or not, but to avoid disputes, it is better to have a written agreement.

A lease is a contract between the landlord and the tenant that describes the terms and conditions of the rental. It must use language that is clear and coherent. Both parties must agree to any changes made after a lease is signed.

Pre-Rental: Apartment Vendors

The New York State Department of State licenses apartment vendors, which provide people with information on the location of apartments or houses to rent. Vendors may charge a fee, but it may be no more than one month's rent. In the vendor-tenant agreement, vendors must disclose that fees are refundable minus an administrative charge if the tenant does not rent an apartment based on that information and gives written notice that s/he does not intend to rent an apartment. The same rules apply to information supplied about apartment sharing. If a vendor violates these provisions, notify the Department of State (518-474-4750; licensing@dos.state.ny.us), which may assess fines, require refunds to consumers or revoke vendor licenses.

Pre-Rental: Previous Heating Bills

If a tenant will pay the heating/cooling bill, the tenant, before signing an agreement, has a right to receive a complete set of heating/cooling bills or a summary of them for that apartment for the previous two years or the life of the structure, whichever is less. Utilities and home heating oil or propane gas dealers must provide copies of that information or a summary of them to the landlord within ten days of the landlord's request. The permission of the previous tenant is not required.

Getting It In Writing

Every lease agreement should be in writing and should contain all the agreements made by the parties. Courts almost never enforce oral agreements.

Tenants and landlords may overlook two types of agreements, which should be written in the lease to avoid later disputes. In the lease provided in this booklet, there is space left to write in:

- (1) The condition of the apartment. This might include worn carpeting, non-working appliances, or repairs agreed to.
- (2) Additional agreements, such as allowable pets, painting or redecorating the interior of the apartment, use of the yard or laundry facilities.

Any sections added to the lease or written in should be initialed and dated by both the landlord and the tenant. Most localities issue certificates of occupancy for apartments. Tenants should request that the landlord provide a certificate of occupancy from the local housing agency before the tenant moves in. This is NOT a substitute for detailing the condition of the apartment or repairs needed, but indicates that the apartment meets local housing codes.

Never sign a lease until you are satisfied with the agreement, and are sure that it contains all other miscellaneous agreements. There should be no blank spaces. Both the landlord and the tenant should keep a copy of the final agreement.

Discrimination

Without exception, it is illegal to refuse to rent any type of housing on the basis of someone's race, color or national origin. With the few exceptions listed below, it is also illegal to refuse to rent any housing accommodation because the tenant has children. Landlords may not charge arrears or change the conditions or terms (e.g. higher rent) because of one of these circumstances.

Landlords may not:

- (1) require that tenants remain childless;
- (2) refuse to rent based upon a tenant's dog/cat if the tenant is legally blind, severely handicapped, or mute, unless a public health hazard develops.
- (3) restrict occupancy to the tenant's immediate family. One additional person and the children of both are permitted, provided the total number does not exceed local building ordinances and the housing is the primary residence of the tenants.

Landlords may:

- (1) refuse to rent to persons under the age of 18 because they cannot be held liable for any contract they sign.
- (2) refuse to rent the other half of a building or a room because of children, if the landlord or family of the landlord lives in the building;
- (3) restrict the rental of all rooms to persons of the same sex; and,
- (4) restrict residency to those 55 or older. If the housing is federally subsidized, children may also be prohibited.

Tenants who believe there may be a violation may seek damages and a court order requiring the landlord to pay costs as well as obey the law. Tenants discriminated against on the basis of race, color, creed, religion, national origin, sex, disability or marital status, should file a complaint with the New York State Division of Human Rights (718-741-8400; www.nysdhr.com) or see an attorney.

MODEL RESIDENTIAL LEASE

This lease contains required terms as well as suggested terms that you and your landlord may agree to include in your lease. Suggested terms are italicized.

LANDLORD

Name _____

Address _____

TENANT

Name _____

Address _____

MANAGING AGENT

Name _____

Address _____

Telephone _____

APARTMENT

1. The apartment number or floor is _____. The building is located at

_____.

LENGTH OF LEASE

2. Landlord will rent this apartment to tenant from

_____ through _____.
(month, day, year) (month, day, year)

RENT

3. The rent for this apartment is \$_____ a month. Tenant will pay the rent on the ____ day of each month. If there are or will be any additional charges in connection with living in this apartment, they are described at the end of the lease. Rent should be paid to _____ at _____

_____.

When the rent is paid, landlord will give tenant a written receipt.

LATE FEES

4. *If the tenant pays more than ten days after the due date specified above, s/he will be charged a \$_____ late fee.*

SECURITY DEPOSIT

5. *Tenant has paid landlord \$_____ as a security deposit. If a deposit is required, landlord will hold the deposit until the end of the lease; the security deposit remains tenant's money. Landlord will keep the deposit separate from landlord's own money.*

6. *Landlord will put the security deposit in a bank account paying the normal rate of interest. Landlord may keep one percent of the interest a year for administrative costs; the rest of the interest will be paid to tenant each year. The security deposit is on deposit at the*

(Name of Bank)

(Street)

(City) (State) (Zip)

(Account Number)

RETURN OF SECURITY DEPOSIT

7. Landlord will return the security deposit, plus any interest due to tenant at the end of the lease if:

- (a) tenant does not owe any rent; and,
- (b) the apartment is in good condition except for normal wear and tear or damage not caused by tenant *or tenant's family and guests. If landlord deducts money from tenant's deposit, landlord will provide an itemized list of the items for which tenant is being charged.*

Landlord will return the deposit to tenant no more than 30 days after the lease ends. If ownership of the building is transferred, landlord agrees within five days of the transfer to turn over the deposit, plus any interest owed, to either (1) the tenant; or (2) the new owner who is taking control of the building. Landlord agrees that tenant will be notified by certified mail of the name and address of the new owner.

MOVING IN

8. If the apartment is not ready to move into on the day the lease is to begin (see paragraph #2 of this lease), the lease will begin with the first day tenant moves in and the last day of the lease will change so that the length of the lease will be the same as provided in paragraph #2. *If the apartment is not ready to move into when the lease begins, tenant may cancel this lease at any time before the apartment is ready and receive a full refund of money paid to landlord, including the security deposit.*

USE OF THE APARTMENT

9. Tenant agrees that the apartment will be used only to live in. Tenant may not use the apartment to conduct illegal activity. Tenant agrees not to damage the apartment, the building, the grounds or the common areas, or interfere with the rights of other tenants to live in their apartments in peace and quiet. Landlord agrees to do nothing, which would prevent or interfere with tenant’s legal use of the apartment.

WHEN THE LEASE ENDS

10. When the lease ends, tenant agrees to return the apartment to the same condition it was in at the start of the lease, other than normal wear and tear, except for those items which were noted on inspection and described at the end of this lease. *Tenant will not be asked to pay for damage not caused by tenant, tenant’s family or guests.*

SERVICES PROVIDED BY LANDLORD

11. Landlord will provide the following services: heat, hot and cold water, elevator services, air conditioning, gas and electricity (specify other services).

HABITABILITY: APARTMENT MUST BE FIT TO LIVE IN

12. Landlord promises that the apartment and building comply with applicable housing codes; are fit to live in; and not dangerous to life, health or safety of the occupants. Landlord will be held responsible if this promise is broken, even if it is not landlord’s fault, unless the apartment or building becomes unfit to live in because of tenant’s misconduct or that of tenant’s family or guests. Landlord agrees to make all necessary repairs and take all necessary action to keep the apartment and building fit to live in and to meet all housing-code requirements.

TENANT'S REMEDIES: LOSS OF SERVICE

13. (a) If the landlord does not live up to the terms of this lease or fails to provide any of the services which landlord agrees to provide, tenant may have the right not to pay part or all of the rent.

(b) State law may give the tenant the right, in addition to other rights, to withhold rent and pay the supplier directly when the landlord fails to provide water, electricity or gas to the building's common areas or to the entire building, or when the landlord fails to provide fuel, causing the loss of wintertime heat in the building. Tenant will substantially comply with the proper legal procedures before paying the rent to the utility company or oil dealer to continue utility service or heat.

**SERIOUS
DAMAGE TO
THE APARTMENT**

14. If the apartment is so damaged by fire or other event, not the fault of the tenant, that it cannot be lived in, and because of the damage, tenant moves out, tenant will not be liable for rent from the day of the damage and tenant may cancel the lease on three days notice. *If the apartment is damaged so that certain rooms cannot be and are not used, tenant will pay a proportionate amount of the rent from the day of the damage. If the lease is not cancelled or only a portion of the apartment is damaged, landlord will make all necessary repairs to make the apartment fit to live in within 30 days. Tenant will begin paying full rent when the apartment is repaired and returned to a livable condition.*

**LANDLORD
ENTRY INTO
APARTMENT**

15. Except for emergencies, landlord may enter apartment only during reasonable hours and after advance notice.

LOCKS

16. *Tenant may install an extra lock on any entrance door to tenant's apartment. Tenant agrees to provide landlord with a copy of the key to all extra locks.*

**BUILDING
RULES**

17. Once informed, tenant agrees to obey all reasonable building rules.

SUBLETTING

18. *Tenant has the right to sublet the apartment with the written permission of the landlord. Landlord agrees not to deny permission unreasonably. Unreasonable denial will be deemed consent. Tenant will inform landlord of the tenant's intention to sublet by certified mail and include the name, home and business address of proposed sublessee. Landlord will ask for any additional information needed to make a decision within ten days and provide a notice of his/her consent or the reasons for his/her denial within 40 days from tenant's notification of intention.*

NO EVICTION FOR GOOD-FAITH COMPLAINT/TENANT'S RIGHT TO JOIN A TENANTS' ORGANIZATION

19. Tenant has the right to bring a court action or to take a good faith complaint to any government agency for landlord's failure to obey any law or regulation concerning the apartment or any term of the lease, and to join or organize a tenant's association. Landlord agrees not to change the terms of the tenancy or interfere in any way, evict tenant or refuse to renew tenant's lease simply because of tenant's action under this paragraph.

TERMINATING THE LEASE

20. *If tenant does not live up to the terms of the lease, the landlord will do the following: (a) Send tenant a written notice demanding that tenant live up to the terms of the lease within ten days. (b) If tenant does not comply within that time, landlord will send tenant a second written notice that the lease will end within 30 days after the second notice is mailed to tenant. On that day, the lease term automatically ends and tenant will leave the apartment and return the keys to landlord.* Landlord has the right to bring a court action if tenant does not pay the rent, fails to cure a substantial violation of the lease, commits a continuing nuisance or does not leave the apartment at the end of the lease. Tenant will be given prior notice of the court hearing. Landlord will not force tenant out by either removing tenant's possessions or changing the lock on tenant's door, or in any other way.

FORMS OF NOTICE

21. (a) Notice to tenant. Unless otherwise required in this lease or by law, any notice from landlord to tenant will be considered delivered if it is (1) in writing; (2) signed by or in the name of landlord or landlord's agent; and (3) addressed to tenant at the apartment and delivered to tenant personally or sent by regular mail to tenant at the apartment.

(b) Notice to landlord. Unless otherwise required in this lease or by law, tenant will give all required notices to landlord in writing, delivered personally or sent by regular mail to landlord at the address noted on page one of this lease.

CONDITION OF APARTMENT AT TIME LEASE WAS SIGNED

22. Apartment defects and necessary repairs, other charges and other agreements are listed below. (Tenant and landlord must initial and date all hand-written additions.)

**WORK TO
BE DONE BY
LANDLORD**

**CONDITION OF
APARTMENT
WHICH WILL
REMAIN
UNCHANGED
BY THE
AGREEMENT**

(may not include unhealthy or unsafe conditions)

**OTHER
AGREEMENTS**

**OTHER
CHARGES**

SIGNATURES

The tenant and landlord have each received identical copies of the lease, with each copy signed and dated by both landlord and tenant.

(date)

(tenant)

(date)

(tenant)

(date)

(landlord)

EXPLANATION OF TERMS

BASICS

1. Location: Note the apartment number and/or floor to be rented here.
2. Term: List the beginning and ending dates. Describe any right to renew the lease on the last page. Remember that an oral agreement to rent for longer than one year cannot be enforced in court.
3. Monthly Charges: State the monthly rental and the date payment is due here. The landlord must give the tenant a receipt for rent paid in any form. If the landlord intends to charge additional amounts, state these separately on the last page of the lease and initial and date the agreement. For instance, the landlord may charge a proportionate amount of the heating bill to the tenant. State separately the calculation of the tenant's fair share and the date that payment is due.
4. Late Fees: The lease may include a late fee. The law does not require one but, if there is a late payment charge, it must be separately stated in the body of the lease. Late fees should be no more than a reasonable estimate of the landlord's damages caused by late payment.

SECURITY DEPOSITS

5. Payment of Security Deposits: The landlord may request that the tenant pay a security deposit before the tenant moves in. The deposit remains the tenant's money and must be kept in a separate account from the landlord's own money. The law does not limit the amount of the deposit, except for New York City rent stabilized apartments, for which only one month's rent may be requested as a deposit.

If the apartment is in a building with five or fewer units, the law does not require the landlord to keep the security deposit in a bank. If, nevertheless, the deposit is put into a bank account, the tenant must be told which bank and where it is located.

If the landlord asks the tenant to pay a month's rent in advance, the same rules apply. The law treats rent advances in the same way it treats deposits. There are no legal limits on how much advance rent landlords may require. The tenant and the landlord negotiate the amount of advance rent, if any, required.

6. Interest on Security Deposits: The lease may require that the landlord put the deposit into a bank account which pays the normal rate of interest. The word "normal" customarily means "routinely available." The landlord must tell the tenant the name and address of the bank. The lease may require that the landlord pay interest annually.

However, the tenant may agree to have the interest paid at the end of the lease term. If the apartment is in a building of six or more units, the landlord must by law, open a separate bank account, notify tenant and pay interest on the deposit. If tenant's apartment is in a building with five or fewer units and the landlord deposits the security in an interest-bearing bank account, the interest belongs to the tenant.

In all cases, the landlord may keep one percent for administrative expenses.

7. Return of Security Deposits: At the end of the lease term, identified in paragraph two, the landlord should return the deposit and any remaining interest unless the tenant owes rent or has damaged the apartment. The landlord may ask the tenant to pay for damages to the apartment caused by tenant's family or guests, but the landlord cannot ask for payment for repairs or cleaning made necessary by normal wear and tear, like routine rug cleaning or painting. If all of the money is not returned, this lease requires the landlord to provide a list of the items being charged against the tenant's deposit.

With or without a lease, the landlord must return the deposit within a reasonable time after the end of the lease term. The law does not require an itemized list of damages.

If the tenant disputes the amount of deposit the landlord is keeping or the landlord has not returned the deposit within the time given in the lease, or if no deadline is specified within a reasonable time, the tenant may sue in Small Claims court for return of the disputed amount.

By law, when the building is sold or the owner no longer controls the building, all deposits must either be returned to the tenants or given to the new owner. The landlord must notify the tenants if the deposit is turned over to a new owner or to the person who will be in control of the building.

MOVING IN AND USE OF APARTMENT

8. Moving In: The lease may allow the tenant to cancel the agreement and get his or her deposit back if the apartment is not ready on the first day of the lease term given in paragraph two. If the tenant chooses to wait until the apartment is ready, the last day of the lease changes so that the length of the lease, from the day s/he moved in, remains the same.

If there is no lease or the lease does not say anything about moving in, the law allows the tenant to cancel if the apartment is not ready to occupy on the first day of the term. However, if the lease does not allow the tenant to cancel and get the deposit back, the lease agreement controls.

9. Use of the Apartment: Many zoning ordinances prohibit the use of residential property for business purposes. If the tenant and the landlord agree to a business within the apartment, the tenant must comply with local zoning ordinances. The permissible business activity should be written on the last page of the lease. Illegal activity may void the lease and permit the landlord to retake the apartment.

END OF LEASE

10. When the Lease Ends: Unless renewed by the landlord, the lease terminates on its ending date. No notice of intent to end the lease is necessary.

However, if the lease contains an automatic renewal clause stating it will be renewed unless the tenant gives notice, the landlord must remind the tenant of the need for notice at least 15 days, but not more than 30 days, before such notice is required. The landlord does not need to provide any notice that s/he does not intend to renew the lease. Similarly, the tenant does not need to notify the landlord that s/he will be moving out at the end of the lease term.

If the tenant stays on after the lease expires and the landlord continues to accept rent, a month-to-month tenancy is established. See the discussion in the section titled, "Rights Without a Lease ..." for a discussion of how these tenancies are ended.

LANDLORD RESPONSIBILITIES - HABITABILITY - TENANT REMEDIES

11. Services Provided by Landlord: The landlord indicates here which services are offered at no extra charge. The landlord must provide heat or heating equipment in good working order and running water. Any service which carries an extra charge must be explained on the last page of this model lease.

In New York City, a landlord who has agreed to pay for heat must maintain the daytime temperature during the heating season, October 1 through May 31, at 68 degrees (F) when the outside temperature falls to 55 degrees (F) or below. The nighttime temperature cannot fall below 55 degrees (F) when the outside temperature is 40 degrees (F) or below. Landlords of dwellings with three or more units must maintain daytime temperature of 68 degrees (F) during this period. Local laws may require other landlords to maintain similar temperatures.

Any clause in a lease which exempts the landlord from responsibility for injuries to persons or property because of his or her negligence (or that of his or her employees) is void and will not be enforced.

12. Apartment Must Be Fit to Live In: In every residential rental agreement, the house or apartment must be fit to live in and free of conditions which would make the apartment or landlord-supplied services unusable, so that tenants and their guests will not be faced with conditions which are dangerous, unhealthy or unsafe. This promise is known as the *warranty of habitability* and exists whether or not there is a lease and regardless of what the lease says on this subject.

This warranty obligates the landlord to repair conditions, which violate this promise, such as insect or rodent infestation, insufficient heat, nonworking plumbing or sanitation facilities or dangerous electrical outlets or wires. It also covers problems caused by employee work stoppages, acts of third parties or natural disasters. However, landlords who use due diligence to correct a problem will not be held liable for monetary damages caused by a strike or labor dispute. Rather, s/he will be required to pass through any net savings realized because of this dispute.

13. (a) Tenant Remedies: The lease restates the law on a tenant's right to withhold rent. A tenant should always bring problems to the landlord first. If the landlord can't remedy a problem, a tenant should not withhold rent without first consulting an attorney, as the obligation to pay rent will continue unless the condition of the apartment makes it uninhabitable. Then a court may order the rent lowered to reflect a difference between the promised condition of the apartment and its actual condition.

For dwellings with three or more units, there are laws requiring landlords to keep the building and the yard in good repair. These responsibilities are much the same as those described in the previous discussion about the warranty of habitability. Landlords must keep the electrical, plumbing and heating system in working order; maintain any appliances they install; and keep the apartment walls and ceilings clean and painted. Local municipal housing departments enforce these laws by imposing fines or possible jail terms on landlords who fail to keep up their property. Code enforcement should be contacted whenever a landlord fails to provide water, heat, lights, power or other promised service, or fails to perform needed repairs. Their official certification that a violation exists is important if the tenant ends up in court. If the landlord's failure to provide service is willful, they may institute criminal action. Other remedies are also available when landlords fail to provide a livable apartment or supply necessary services.

Certain violations have been determined as rent impairing violations, and include the failure to maintain the premises in good repair -- clean and free from vermin, rodents, filth and garbage. Tenants living in most cities or in any town or village should report these violations to the local building department which will oversee the correction of the violation or the filing of a plan to correct the violation.

If the violation has not been corrected six months after the local department has notified the landlord about it, or six months after the code enforcement department has approved plans for its correction, tenants may then be lawfully entitled to withhold all their rent and pay it to the court to hold until the end of the proceeding. As in any action to withhold rent, an attorney should be consulted. Rent voluntarily paid to the landlord during this period of time may not be recoverable.

Under the Real Property Actions and Procedures Law, tenants residing in dwellings in New York City or Nassau, Suffolk, Rockland or Westchester counties who are faced with conditions which make their apartments, or the building as a whole, unlivable, may apply for a court order under which their rent will be deposited with the court for use in remedying the situation. This procedure, known as a "Seven-A Proceeding," is available when there is a lack of heat, running water, light or electricity, sewage disposal facilities or other condition which is dangerous to life, health and safety. Grounds also include harassment by the landlord or his or her agents, or continued loss of services.

When landlords have failed to provide promised services or an apartment fit to live in, courts have compensated tenants for damages caused by the condition and allowed them to reduce the rent they pay for the period of time the condition exists. However, many lease clauses appear to preclude the tenant from pursuing relief when services which the landlord is supposed to provide are reduced or stopped altogether. For instance, a lease may state:

"... stopping or reducing of services will not be reason for Tenant to stop paying rent, to make a money claim or to claim eviction."

This lease section would not prevent the tenant from asking for and/or receiving court awarded rent reductions if the landlord breaches the lease. It should not deter a tenant from withholding rent after s/he has sought legal advice.

Similarly, a lease may seem to eliminate certain procedural rights normally available for the tenant if services become reduced or the apartment becomes unlivable. For example, a lease may require that a tenant give up any right to bring a counterclaim or other legal action against the landlord. Even if there is such a clause, a tenant has the right to raise the defense of unlivable conditions in response to a landlord's eviction action. An attorney should be contacted. The CPB model lease does not contain these clauses.

13. (b) Loss of Service: Even if not mentioned in the lease, if the landlord pays for water, power or gas service, a tenant has the legal right to pay a utility to continue service or, if the tenant's apartment is in a building with three or more apartments, to buy oil. This legal right cannot be given up. If the landlord is required to pay the utility bills and does not, the utility company must post a notice in the hallway of a building which contains two or more dwelling units explaining how tenants can pay the bill before the utility shuts off gas or electric service. Tenants should pay the utility directly and ask

for and keep a receipt. If tenants have any questions, they should call the New York State Public Service Commission (PSC) Hot Line at 1-800-342-3377, or the utility company, which posted the notice. If it is an emergency, dial 1-800-342-3355.

Tenants who find that their building is without heat because their landlord, who agreed to provide heat, has let the oil supply run out, may be able to purchase oil with their rent money. State law permits tenants who live in buildings containing three or more apartments to buy oil with the rent money if, between October 1 and May 31, the building's heat goes off because there is no oil and the outside temperature is 55 degrees (F) or less at some time between 6 a.m. and 10 p.m.

Tenants choosing to withhold rent to pay for oil will have to comply substantially with the following procedures.

1. If the landlord has posted his or her name or that of his or her agent and the phone number of the fuel supplier, tenants must make reasonable efforts to contact the owner or the owner's agent about the lack of oil and to make reasonable efforts to have the normal fuel supplier deliver the oil.
2. If the regular fuel supplier will not deliver, or there is no posting as described above, then the tenants must get oil delivery from a fuel supplier regularly engaged in that business at a price within the range of prices listed by the local housing code enforcement agency.
3. The tenants must get a receipt from the fuel supplier with the following information:
 - (a) the name of the person(s) who requested the delivery;
 - (b) the date, time and place to which delivery was made;
 - (c) the amount, grade and price of the oil delivered;
 - (d) a certification that the usable fuel supply, before delivery, was exhausted;
 - (e) the charge, if any, for refiring the burner; and,
 - (f) the names of people who paid and the amounts paid.

If water is about to be discontinued to a building with three or more units because the landlord failed to pay the bill, and water is provided by a private company rather than a municipal one, the company must post notice of its intent to shut off the water. Tenants have the right to use their rent to pay the bill. Questions should be addressed to the PSC at 1-800-342-3377, or the water company. Municipally-owned water companies do not come under the control of the PSC and problems must be resolved either with the local official or by contacting an attorney.

14. Serious Damage to the Apartment or Building: If fire or some other damage makes the apartment unfit to live in, the lease may allow the tenant to cancel the agreement on three days notice. Tenant's liability for rent ends on the day the damage occurred. If the tenant does not cancel, the lease requires the landlord to repair the apartment within 30 days.

If the apartment is substantially damaged, but only some rooms are unusable, the lease may provide that the tenant's rent will be reduced until the apartment is again completely livable. The new rent can be determined by multiplying the full rent by this fraction: the number of usable rooms over the total number of rooms. If this paragraph in the model lease is modified, the language of the lease controls a tenant's right to cancel.

Without this protection, the law allows the tenant to cancel the lease only if the entire apartment becomes unlivable because of fire or other damage. The damage must not be the fault of the tenant and the tenant must move out completely. No rent is due after the tenant cancels the lease and leaves.

15. Landlord entry into apartment: In essence, the law requires that tenants must allow the landlord to come into the apartment, but only on reasonable notice and during reasonable hours. The landlord may enter in an emergency, but may not use entry to harass the tenant.

16. Locks: The lease may require the landlord to allow a tenant to install extra locks as long as the tenant gives the landlord keys to the locks. Tenants living in a building other than public housing with three or more apartments, in cities of over 400,000, have this right by state law. Local ordinances in towns and villages may also provide this right.

17. Building Rules: This is self-explanatory.

TENANTS' RIGHTS

18. Subletting: The lease may allow tenants to sublet their apartments or cancel their leases if landlords refuse permission to sublet. A tenant wishing to sublet must send the landlord by certified mail a notice of intent, including the terms of the sublease, the name of the proposed sublessee, the tenant's reason for subletting, the tenant's address for the term of the sublease, the written consent of any co-tenant and a copy of the proposed sublease. The landlord has ten days to request more information and 30 days more from receipt of tenant's notice to consent to the sublet or to give reasons for not consenting. If the landlord fails to respond within that time or unreasonably denies permission, the law allows the tenant to presume consent has been given. If the tenant goes to court to vindicate this right and wins, the court can award attorney's fees and costs.

A tenant who sublets his or her apartment is still responsible to the landlord for all the rent which is due under the lease and for any damage caused by the people subletting or their guests.

A tenant in a building with four or more units may be able to sublet by law even if the lease says nothing or says otherwise. However, public housing is exempt from subletting, as are apartments where tenants must meet certain eligibility conditions (i.e., they have low incomes or own stock in the building).

Assignment of Lease: A tenant may not assign his or her lease (that is, turn over all rights under the lease) without the landlord's permission. The landlord may withhold permission and need not give any reason. However, the tenant may cancel his or her lease if permission to assign it has been denied without a valid reason.

19. No Eviction For Good Faith Complaint/Tenant's Right to Join A Tenant's Organization: Even if not explicitly stated in the lease, a duplex or apartment house, except one which has fewer than four units and is owner-occupied, the landlord cannot refuse to renew a tenant's lease or evict a tenant solely because that tenant has complained or begun a court action over the landlord's violation of a health or safety law or regulation, his or her failure to provide something agreed to in the lease or because that tenant has joined or tried to form a tenants' organization.

If the landlord brings an eviction action and the tenant proves that within the last six months s/he engaged in one of these activities, the law presumes that the landlord is acting against the tenant solely because of the tenant's activity. The court will rule in favor of the tenant, unless the landlord has another credible reason for the eviction action and the tenant cannot disprove it.

LANDLORDS' RIGHTS

20. Terminating the Lease: Eviction is the landlord's right to cancel the lease, sue the tenant for unpaid rent and ask a court to have a marshal or sheriff move the tenant out of the apartment if the tenant does not pay past due rent or will not leave voluntarily.

You may ask that the landlord give the tenant a written notice of the problem and time to correct it. If the tenant does not remedy the problem, the landlord may then cancel the lease. If the tenant does not leave, the landlord may start court eviction proceedings by serving the tenant with an eviction petition.

Without this specific paragraph in the lease, the tenant should not expect advance notice unless the tenant has failed to pay rent. The law requires the landlord to make a demand for unpaid rent or serve a three-day notice requesting it before an eviction petition may be served.

If the lease term expired but the landlord continued to accept rent, and the landlord wishes to evict the tenant, s/he must give the same notice as is required for a month-to-month tenancy. Refer to section entitled "Rights Without a Lease or A Form Lease."

Eviction begins when the tenant is served with a legal petition and a notice or "order to show cause." A letter from the landlord or the landlord's attorney does not begin the court process.

The tenant should seek legal advice if s/he receives an eviction notice. The Legal Aid Society, a community action agency or tenants' organization may be able to help find an attorney. The tenant has a right to appear in court on the date given in the notice or, if no date is given, to schedule a court date and give any reasons the tenant may have for not having paid the rent. Legal advice should be sought. If the tenant does not appear in court or otherwise answer the petition, s/he automatically loses and can be evicted.

A tenant may be able to delay an eviction proceeding brought for overdue rent if the court is convinced that a serious condition exists in the apartment, not caused by the tenant or tenant's guest, which affects the tenant's life, health or safety. The tenant may be required to pay his or her rent to the court.

Only a sheriff or marshal can remove a tenant and the tenant's belongings. S/he does this by serving the tenant with a warrant signed by a judge giving three days or 72 hours to move out. The landlord may not lock out the tenant, change the lock or otherwise force the tenant out. If a landlord keeps a tenant out of an apartment illegally, the tenant may sue for three times the damages suffered.

21. Form of Notices: To avoid confusion, this section simply specifies how the landlord and tenant should communicate with each other. However, the law may require, or the parties may agree, that either registered or certified mail be used instead of providing special notices like a tenant's intention to sublet.

22. Condition of the Apartment: See the discussion, "Getting It in Writing" for instructions on how to complete this section.

RIGHTS WITHOUT A LEASE OR WITH A FORM LEASE

Landlords may rent apartments, other than rent-stabilized apartments, without offering a lease. An oral promise to rent for longer than one year, however, will not be enforced by a court. If a written lease is offered, it must be in plain English using words with common, everyday meanings. The print must be large enough to read easily.

If a lease other than the one which is provided in this booklet is used, the tenant and the landlord should review the clauses and determine how the lease that is offered affects his or her rights under the law. Many tenants' rights exist regardless of what the lease says and even if no lease is used.

ACCELERATION OR SURVIVAL CLAUSES

If the rental arrangement ends before the termination date specified in the lease because of eviction, the tenant's obligation to pay rent may also end. However, the lease agreement may contain a clause, which requires the tenant to pay the rent owing to the end of the term. If the rental amount in the lease agreement was written as an annual total due, to be paid in monthly installments, the landlord can sue for the full amount due to the end of the term. Any rent the landlord receives because s/he re-rents the apartment must be applied to the amount the previous tenant owed to reduce the debt. However, the landlord is under obligation to attempt to re-rent the property.

ENDING THE TENANCY IF NO LEASE IS USED OR IF IT HAS EXPIRED

If a lease term expires, the landlord does not have to offer a renewal. But, if the landlord continues to accept rent, a month-to-month tenancy is formed. Apartments may also be rented from the outset without using a written lease. If no lease is used, the arrangement is most commonly known as a month-to-month tenancy.

Neither a landlord nor a tenant may cancel the month-to-month tenancy, nor may a landlord change the terms of such a tenancy, without proper notice. In New York City, cancellation or changes may be made on 30-days notice; outside New York City, upon giving one month's notice.

To be effective, a 30-day notice must be delivered on or before the first day of the recurring monthly tenancy, usually the day the rent is due, 30 days before the tenancy is to end. For instance, if the tenant moved in on the first day of the month, with rent due on the first, a 30-day notice to cancel the lease may be delivered to the landlord, or the tenant, on or before the first of the month if the month has 31 days, but it must be delivered before the first of the month if the month has only 30 days.

To be effective, a one-month notice must always be delivered before the first day of the recurring monthly tenancy, one month before the tenancy is to end, or the terms are to be changed. Thus, if the tenant wants to move as of October 1st, the notice must be given to the landlord on or before August 31st.

RENT CONTROL - RENT STABILIZATION

In New York State, outside of New York City, both the State Rent Control Law and the Emergency Tenant Protection Act (ETPA) of 1974 protect tenants from eviction and set maximum rates and levels of service. In New York City, the Rent Stabilization Law applies to those apartments in buildings of six or more units built between February 1, 1947 and January 1, 1974. Tenants in buildings of six or more units built before February 1, 1947, who moved in after June 30, 1971 are also covered by Rent Stabilization.

A list of municipalities which have adopted rent control for housing in their area appears in Appendix A. Although listed, a municipality may have exempted some classes of housing. Call the Division of Housing and Community Renewal (DHCR) for more information or visit that agency's Web Site at www.dhcr.state.ny.us or call DHCR's toll free number 1-866-ASK-DHCR (1-866-275-3427).

RENT CONTROL

If the apartment is Rent Controlled, the rent can be increased only by authorization of the Rent Administrator. If the tenant pays his or her rent on time, s/he can be evicted **only**:

- for creating a nuisance,
- for violating a substantial obligation of the tenancy,
- for using the apartment for unlawful purposes,
- for failing to let the owner enter at reasonable hours or during an emergency,
- for failing to occupy the apartment as a primary residence, or
- if the owner needs the apartment as a residence for him or herself or family. This last reason for eviction does not apply to tenants age 62 or older, disabled persons or to those who have been occupants of their building for 20 years or more.

RENT CONTROL IN NEW YORK CITY

In New York City, several laws apply, including: the City Rent Control Law and the Rent Stabilization Law. The City Rent Control Law covers apartments in buildings containing three or more units which were constructed before February 1, 1947, and which have not been subsequently decontrolled by becoming vacant after June 30, 1971. Rent Controlled apartments (in buildings containing six units or more) which become vacant are covered by the Rent Stabilization Law. In addition, Rent Control covers one-family dwellings or apartments in two-family dwellings where the same tenant has been a continuous resident since April 1, 1953, if the building was constructed before February 1, 1947.

A tenant who moved into a Rent Controlled apartment before July 1, 1971, is protected by the Rent Control Law. Such a tenant, called a *statutory tenant*, does not need a lease. If a *statutory tenant* had a lease when s/he moved in many years ago, the terms of that lease are still in effect except for the level of the rent. Rents are governed by the City's Maximum Base Rent system, which allows rents to rise by limited amounts.

ENFORCEMENT

DHCR administers the rent control program, sets Maximum Base Rents, increases and decreases those rents, grants and denies certificates of eviction and settles disputes over the Rent Control Law.

RENT STABILIZATION

The Emergency Tenant Protection Act of 1974 authorizes New York City, and municipalities in Nassau, Rockland and Westchester counties which declare a housing emergency because the vacancy rate is five percent or less, to limit rent increases. This is known as rent stabilization. (Appendix B contains a list of those municipalities outside New York City which have adopted the ETPA.)

Under ETPA, the following dwelling units, among others, cannot be rent stabilized:

- those in government owned or some government assisted buildings;
- those in buildings where tenants are under the state's Rent Control Law;
- those in buildings completed on or after January 1, 1974 (except those whose owners have received special tax exemptions, i.e., J-51 and 421-a housing);
- those in buildings or housing developments with at all times since the municipality adopted ETPA, fewer than six apartments (or a higher number, if required by the municipality); or
- vacant rental units in cooperatives and condominiums and occupied units upon the vacancy of the non-purchasing rent regulated tenant.

Municipalities may further limit, by number of units, the application of rent stabilization.

LUXURY DECONTROL

The Rent Regulation Reform Act of 1997 ("RRRA of 1997"), New York City Local Law 4 of 1994 and the Rent Regulation Reform Act of 1993 provide for the deregulation of certain apartments based on the following conditions.

- Pursuant to the RRRA of 1997, an apartment with a legal regulated or maximum rent of \$2,000 or more per month on or after June 19, 1997, and which was or becomes vacant on or after June 19, 1997, is not subject to rent regulation.

- These laws also provide for deregulation of high-rent apartments occupied by high-income tenants by order of DHCR in response to the filing of an owner's petition for luxury deregulation.
- Pursuant to the RRRRA of 1997, for deregulation petitions filed with DHCR after January 1, 1998, deregulation will occur for apartments with legal rents of \$2,000 or more per month and which are occupied by tenants with incomes in excess of \$175,000 in each of the two successive years prior to the filing of the petition.

This income-based decontrol process relies upon data furnished to DHCR by the New York State Department of Taxation and Finance as part of the income verification process.

RENTS AND LEASES

Guidelines Boards

A Rent Guidelines Board for New York City and each county annually sets rent adjustments for renewal leases of existing tenants for rent stabilization accommodations for one-and two-year leases. These Guidelines Rates, reviewed annually, are based on apartment house income and /operating expenses and other economic data. The current Guideline Rates for New York City and communities under ETPA may be obtained at DHCR's offices listed in Appendix B, or by visiting that agency's Web Site at www.dhcr.state.ny.us and accessing Fact Sheets 26 (NYC) or 31 (ETPA). Rent surcharges are not permitted unless authorized by the Guidelines Boards at the time they set new rates or authorized by DHCR. Hardship increases may be authorized by DHCR. If an owner has failed to provide services required by law, the tenant may apply to DHCR to reduce the rent and to bar further rent increases until the services have been restored.

Each County Board is composed of nine members who are recommended by the county legislative body and appointed by the state DHCR Commissioner. The New York City Board is appointed by the Mayor. Two members represent tenants, two members represent owners and five members represent the general public. The Boards are required to hold public meetings in convenient locations.

Statutory Vacancy Increases

The RRRRA of 1997 provided for statutory vacancy increases for all leases for new tenants (vacancy leases) commencing on or after June 15, 1997. For additional information on these increases, you may refer to DHCR's Fact Sheets 5 (AVacancy Leases in Rent Stabilized Apartments®), 26 (AGuide to Rent Increases for Rent Stabilized Apartments in New York City) and 31 (AGuide to Rent Increases for Rent Stabilized Apartments in the ETPA Counties®).

Leases

The owner must issue a new lease or renew an existing lease for one or two years, whichever the tenant chooses. The only exception to this requirement occurs when the owner, under conditions spelled out in ETPA or the Rent Stabilization Law has served written notice on the tenant of an intent not to renew. DHCR may also give the owner permission not to renew and, in that event, the tenant has the right to examine all relevant documents. The rent laws limit an owner's right to refuse to renew a lease because the owner wants the apartment for personal use if the tenant is over 62, disabled or a resident in the building for 20 years or more. However, the 20 year protection does not apply to rent stabilized tenants in New York City.

In New York City, tenants must receive a Notice of Lease Renewal by certified mail or personal delivery not less than 90 days, nor more than 150 days, before the lease expires. Outside New York City, tenants must receive a Notice of Lease Renewal not less than 90 days, nor more than 120 days, before the lease expires. Tenants must return a copy of the Notice to the owner by certified mail within 60 days stating whether they want a one- or two-year lease renewal. Failure to do so may result in the tenant being forced to vacate at the end of his or her current lease.

In addition, the owner must give the tenant a fully executed copy of the lease within 30 days of the date on which the tenant notifies the owner of his or her option.

Security Deposits

In New York City and the ETPA localities, a security deposit may be no more than one month's rent, except for tenants who have been continuous occupants since the date the apartment became subject to rent stabilization (NYC), where a greater deposit was collected, or unless a lease in effect on December 1, 1983, for the same tenant authorized a greater amount (ETPA). For ETPA localities, owners cannot demand, receive or retain more than one month's rent as security from any tenant who is 65 years of age or older, for any lease or lease renewal entered into after July 1, 1996.

Owners of buildings with six or more apartments must place all security deposits in interest-bearing accounts and notify the tenants of the account's location. Interest, minus a one percent service charge, must be credited to the tenant's account at least annually and paid, if requested.

Rent Registration

Under the 1983 Omnibus Housing Act, all stabilized housing must have been registered with DHCR before July 1, 1984, and annually thereafter. Owners are required to file an initial registration, within 90 days, after an apartment becomes subject to the Rent Stabilization Law or ETPA. Information about the building and units themselves, as well as the rent charged on the registration date and the services provided, must be included in the registration statement. The legal regulated rent, for purposes of determining an

overcharge, will be the rent charged four years before the complaint or, if initially registered less than four years earlier, the rent in the initial registration statement. In accordance with the Rent Regulation Reform Act of 1997, issues of rent registration concerning events that occurred more than four years before the filing of a complaint with DHCR will not be examined by that agency.

A copy of the registration statement pertaining to the tenant's apartment must be mailed to the tenant in possession at the time of registration. A copy of the building-wide services registration must be posted conspicuously in the building or, in the case of garden-type apartments, outside the manager's office.

Enforcement - Overcharges

A tenant believing his or her owner is charging more than the law allows or is otherwise violating rent regulations should file a complaint with the DHCR. Under rent stabilization, penalties can be based on overcharges which occurred no more than four years ago. Penalties of triple the amount of the overcharge can be awarded retroactively for two years, but not for overcharges occurring before April 1, 1984.

An owner proving that s/he did not act willfully shall be liable only for the amount of the overcharge, plus interest. Attorney's fees and other costs may be awarded to successful tenants.

DHCR regulations prohibit any eviction action against tenants in retaliation for making complaints to DHCR or any other government agency. In addition, acts of harassment intended to cause a tenant to vacate the building may subject an owner to fines of up to \$5,000 for each violation.

Tenants or owners who wish to have DHCR's determination reviewed must file with the Commissioner of DHCR a Petition for Administrative Review within 35 days of the order. An appeal of the Commissioner's decision must be brought as an action in Supreme Court within 60 days of the imposition of the decision. Tenants or owners wishing to have the Guidelines Rates reviewed must bring an action in Supreme Court within four months of the imposition of the rates. Cities, towns or villages can authorize rent increase exemptions for certain tenants 62 years or older. New York City has done so. A list of municipalities which also have done so is included in Appendix B. To qualify, a tenant must file an annual application with DHCR (for tenants outside New York City) or the Department For The Aging (for tenants within New York City), giving age and income information. Eligibility is based on income as determined by each locality, not to exceed the statutory amount, and a rental amount which exceeds one-third of that income.

More Information

Complaints or Inquiries about the operation of the Rent Control Laws, Emergency Tenant Protection Act and/or the Rent Stabilization Law should be directed to DHCR which administers rent regulation. Appropriate offices are listed in Appendix B.

RENT CONTROL

With the exception of Nassau County, in the communities listed below, apartments are subject to rent control unless they became vacant on or after June 30, 1971.

Albany County: the cities of Albany and Watervliet; the towns of Bethlehem, Green Island and New Scotland; and the villages of Green Island and Voorheesville.

Rensselaer County: the city of Rensselaer, the towns of Hoosick and North Greenbush and the village of Hoosick Falls.

Schenectady County: the towns of Niskayuna and Princeton.

Erie County: the city of Buffalo, town of Cheektowaga and villages of Depew and Sloan.

Nassau County: the cities of Glen Cove and Long Beach; the towns of Hempstead and North Hempstead; and the villages of Hempstead, Oyster Bay, Bellerose, Cedarhurst, Floral Park, Freeport, Mineola, New Hyde Park, Sea Cliff, Valley Stream, Westbury, Williston Park, Flower Hill and Lynbrook. Housing is decontrolled in Nassau County if it became vacant on or after July 1, 1957, except for the city of Long Beach, where housing which became vacant June 30, 1971, or later is decontrolled.

Westchester County: the cities of Mount Vernon, New Rochelle, White Plains and Yonkers; the towns of Eastchester, Greenburgh, Harrison and Mamaroneck; and the villages of Ardsley, Dobbs Ferry, Hasting-on-Hudson, Larchmont, Mamaroneck, North Tarrytown, Tarrytown and Tuckahoe.

New York City and Counties Other Than Nassau and Westchester

DHCR/ORA
92-31 Union Hall Street
4th Floor
Jamaica, NY 11433
Tel: 718-739-6400

Nassau County

DHCR
50 Clinton Street
6th Floor
Hempstead, NY 11550
Tel: 516-481-9494

Westchester County

DHCR
75 South Broadway
White Plains, NY 10601
Tel: 914-948-4434

For information about Senior Citizens Exemption in New York City, contact:

NYC Department for the Aging
2 Lafayette Street, 7th Floor
New York, NY 10007
Tel: 212-442-1322

MUNICIPALITIES WHICH HAVE ADOPTED
THE EMERGENCY TENANT PROTECTION ACT OF 1974
(For buildings containing six or more units except where indicated)

MUNICIPALITY**SENIOR CITIZEN EXEMPTION****NASSAU COUNTY**

Baxter Estates, Village	
Cedarhurst, Village	
Floral Park, Village	
Freeport, Village	
Glen Cove, City (100 or more units)	Yes
Great Neck, Village	Yes
Great Neck Plaza, Village	Yes
Hempstead Village	Yes
Long Beach, City (60 or more units)	
Lynbrook, Village	
Mineola, Village	
North Hempstead, Town	Yes
Rockville Center, Village	
Russell Gardens, Village	
Thomaston, Village	Yes

WESTCHESTER COUNTY

Dobbs Ferry, Village	
Eastchester, Town	
Greenburgh, Town	Yes
Harrison, Town	
Hastings-on-Hudson, Village	
Irvington-on-Hudson, Village (20 or more units)	
Larchmont, Village	Yes
Mamaroneck, Town	Yes
Mamaroneck, Village	Yes
Mt. Kisco, Village	
Mount Vernon, City	Yes
New Rochelle, City	Yes
Sleepy Hollow, Village	Yes
Pleasantville, Village (20 or more units)	
Port Chester, Village (12 or more units)	
Tarrytown, Village	Yes
White Plains, City	Yes
Yonkers, City	Yes

ROCKLAND COUNTY

Spring Valley, Village	Yes
Haverstraw, Town (100 or more units)	

RENT INFORMATION**Lower Manhattan:**

(Southside of 110th
Street & below)
25 Beaver Street
5th Floor
Tel: 212-480-6238

Upper Manhattan:

(Northside of 110th
Street & above)
163 West 125th Street
5th Floor
Tel: 212-961-8930

Bronx:

One Fordham Plaza
2nd Floor
Tel: 718- 563-5678

Brooklyn:

55 Hanson Place
Room 702
Tel: 718-722-4778
(Please call ahead
for office hours)

Queens:

92-31 Union Hall Street
4th Floor
Tel: 718-739-6400

Staten Island:

60 Bay Street
7th Floor
Tel: 718-816-0278

Nassau:

50 Clinton Street
6th Floor
Hempstead, NY 11550
Tel: 516-481-9494

Westchester:

75 South Broadway
Suite 200
White Plains, NY 10601
Tel: 914-948-4434

Rockland:

9-9A Pearlman Drive
Spring Valley, NY 10977
Tel: 914-425-6575

WHERE TO GO FOR MORE INFORMATION:

DHCR/ORA
92-31 Union Hall Street, 4th Floor
Jamaica, NY 11433
Tel: 718-739-6400 or 1-866-ASK-DHCR (1-866-275-3427)
Website: www.dhcr.state.ny.us

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You should not take legal action based on this document without consulting an attorney.

The CPB is Governor Pataki's Consumer Watchdog agency. Recognizing that the citizens of New York State are all consumers, it is the mission of the CPB to protect, educate, and represent consumers in a challenging and ever changing economy. You can contact the CPB by writing: New York State Consumer Protection Board, Five Empire State Plaza, Suite 2101, Albany, New York, 12223-1556, or visit the CPB's website at: <http://www.consumer.state.ny.us> or phone 1-800-697-1220.

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APPENDIX A

APPENDIX B