

NEW RENT LAWS: WHAT LANDLORDS NEED TO KNOW

BROUGHT TO YOU BY:

LEGAL SERVICES OF THE HUDSON VALLEY

NYS OFFICE OF THE ATTORNEY GENERAL

CITY OF POUGHKEEPSIE SECTION 8

LAW OFFICE OF VINCENT CATALANO

CATHOLIC CHARITIES

DUTCHESS COMMUNITY ACTION PARTNERSHIP

DUTCHESS COUNTY GOVERNMENT

HUDSON RIVER HOUSING

POUGHKEEPSIE PUBLIC HOUSING AUTHORITY

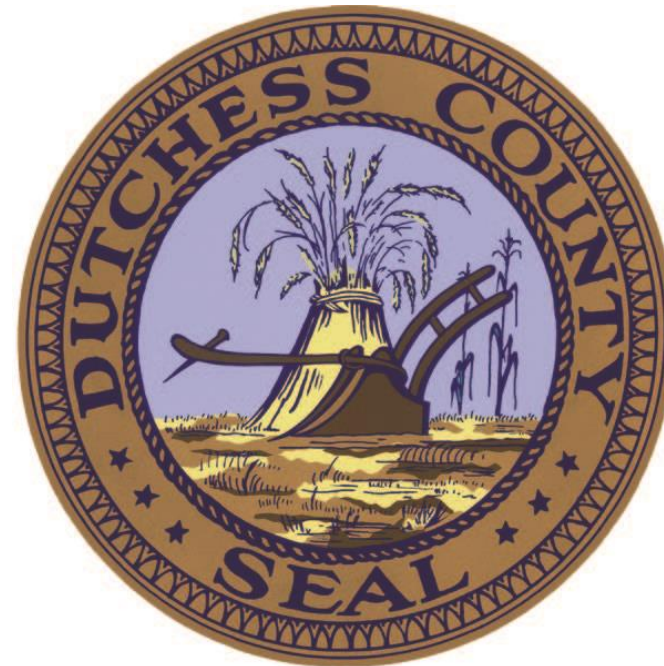
WESTCHESTER RESIDENTIAL OPPORTUNITIES

PATHSTONE CORP

EMERGENCY
TENANT
PROTECTION
ACT

Anne Saylor

Dutchess County Planning Dept.



Rent Stabilization

- Rent stabilization NOT rent control was authorized in upstate NY
- Rent stabilization is authorized under the Emergency Tenant Protection Act (ETPA)

Rent Stabilization Covers:

- Apartment buildings with:
 - 6 or more units,
 - Built before January 1, 1974, and
 - Have not been substantially rehabilitated since that date

Rent Stabilization Does NOT Cover:

- Buildings containing less than 6 units
- Non-profit units
- Housing supervised by the government
- Substantially rehabilitated housing completed after 1973
- New construction completed after 1973
- Non-residential space converted residential after 1973

Substantial Rehabilitation Definition:

- At least 75% of building-wide and individual housing accommodations have been replaced
- Rehabilitation began when the building was in a substandard or seriously deteriorated condition
 - At 80% vacancy of the housing accommodations, DHCR presumes the building meets this condition
- All systems must comply with applicable codes and must document improvements with a certificate of occupancy.

Rent Stabilization Implementation:

- Locality (not the county) must conduct a statistically valid study to document the vacancy rate is less than 5%
- Municipal board must declare an emergency after a public hearing
- Emergency declaration must end once the vacancy rate exceeds 5%
- NYS Division of Homes and Community Renewal (DHCR) will set up a 9 member county rent guideline board based on recommendations from community

Rent Guideline Board Membership:

- Two tenant representative
- Two property owner representatives
- Five public members with at least 5 years experience in finance, economics or housing
- DHCR Commissioner selects the chair from the public members
- Chair may not hold another public office

Rent Guideline Board Prohibited Members:

- A person who owns or manages property covered by the law
- Officer of any owner or tenant organization
- Member, officer, or employee to any municipal rent regulatory agency or DHCR

Rent Increases:

- Board sets annual rent increases
- Board must consider:
 - Economic conditions of real estate industry
 - Real estate and sewer/water rates
 - Gross operating maintenance costs
 - Cost and availability of financing
 - Overall supply and vacancy rate
 - Cost of living indices
 - Other data as applicable

TENANT
SCREENING &
SECURITY
DEPOSITS

Vinita Kamath &
David Lederman

NYS Office of the Attorney General



Marlene Zarfes

Westchester Residential Opportunities

TENANT BLACKLISTS

RPL § 227-F

Old law

- Public records (including court records) were used to compile “blacklists” of tenants who have court proceedings against them.
- Landlords used these records to screen rental applications.

New law

- Landlords cannot refuse a rental application on the basis of past or present landlord-tenant action or summary proceeding under RPAPL Art. 7.
- Under Judiciary Law §212 the Court system can no longer sell eviction data
- A rebuttable presumption is created against a landlord that denies a rental after having requested information from a tenant screening bureau or otherwise inspected court records.
- The landlord has the burden to provide an alternate reason for rejection of the tenancy.

TENANT BLACKLIST LAW ENFORCEMENT

RPL § 227-F

- Enforcement: No private cause of action. Attorney General has enforcement power.
- Civil penalties between \$500 and \$1,000 for each violation
- *“Whenever the attorney general shall believe from evidence satisfactory to him or her that any person, firm, corporation or association or agent or employee thereof has violated subdivision one of this section, he or she may bring an action or special proceeding in the supreme court for a judgment enjoining the continuance of such violation and for a civil penalty of not less than five hundred dollars, but not more than one thousand dollars for each violation.”*

LIMITATIONS ON FEES FOR CREDIT & BACKGROUND CHECKS

RPL § 238-A

- Limits non-rent fees for rental applications to lesser of actual cost of background checks and credit checks OR \$20.00, whichever is less.
- To collect the fees for a credit or background check, the landlord must provide the potential tenant with a copy of the credit or background check and a receipt from the entity conducting the check.
- If the potential tenant provides the landlord with a copy of a credit or background check conducted within the past 30 days, the landlord cannot collect any fee (fee is waived).

SECURITY DEPOSITS

GEN OB § 7-108

Old law

- No limitation on the amount of deposit or advance
- Example: first month's rent, last month's rent and two month's rent for deposit
- No procedure for return of deposit to tenant. Law required return in a reasonable time, 30-60 days after vacating apartment.

New law

- Security deposit is limited to 1 month's rent.
- First and last month's rent (advance payments) cannot be accepted or required at the beginning of a tenancy.

SECURITY DEPOSITS –INSPECTIONS PRIOR TO MOVE-IN

GEN OB § 7-108

- After the lease is signed but before occupancy begins, the landlord must offer the tenant an opportunity to inspect the apartment with the landlord present.
- Following this inspection, the parties must enter into a written agreement attesting to the condition of the apartment and noting any defects or damage.
- This written agreement is admissible as evidence of the condition of the premises at the beginning of the occupancy in actions related to return of the security deposit.

SECURITY DEPOSITS –INSPECTIONS PRIOR TO MOVE-OUT

GEN OB § 7-108

- Within a reasonable time after notification by tenant or landlord of their intent to vacate:
- Landlord must conduct exit walk-through (no more than 2 weeks and no less than 1 week before the surrender). This does not apply if tenant gives less than 2 weeks notice.
- Landlord must give tenant *48 hours written notice* of walk-through.
- After inspection, landlord must provide tenant with *itemized statement specifying repairs and cleaning* that shall be basis for any security deposit deduction. Tenant *may cure* any condition before the tenancy ends.

SECURITY DEPOSITS – 14 DAY TIMELINE FOR RETURN

GEN OB § 7-108

- Landlord has 14 days from the tenant's vacatur to return security and/or an itemized statement if any portion of the deposit is retained.
- Statement must include “basis” for the amount retained. Limited to:
 - Nonpayment of rent;
 - Nonpayment of utility charges payable to landlord under the terms of the lease or tenancy;
 - Damage caused by tenant **beyond** normal wear and tear;
 - Costs of moving or storage of tenant's belongings.
- If landlord fails to provide itemization of deposit within 14 days, landlord *forfeits right to retain any portion of the deposit.*

SECURITY DEPOSITS – OTHER CONSIDERATIONS

GEN OB § 7-108

- Landlord CANNOT retain security deposit based on attorneys' fees, late fees, additional rent, or other miscellaneous charges.
- Landlord CANNOT retain security deposit based on ordinary wear and tear or damage caused by a prior tenant.
- In an action disputing the amount of any security deposit retained, the *landlord has the burden to justify retaining any portion of the deposit.*
- Willful violation of this law is subject to punitive damages up to twice the amount of the deposit.

SOURCE OF LAWFUL INCOME DISCRIMINATION

NYS EXEC LAW

- It is unlawful to:
- To refuse to sell, rent or lease or otherwise to deny to or withhold from any person or group of persons such housing accommodations because of:
 - Race, creed, color, disability, national origin, sexual orientation, gender identity or expression, military status, age, sex, marital status, **lawful source of income** or familial status of such person or persons,
- or to represent that any housing accommodation or land is not available for inspection, sale, rental or lease when in fact it is so available
- To discriminate for any of the listed bases in the terms, conditions, or privileges of any publicly-assisted housing accommodation
- To cause to be made any written or oral inquiry or record concerning protected statuses of anyone seeking to rent or lease any publicly-assisted housing accommodation
- To print or circulate or cause to be printed or circulated any statement, advertisement, or publication, or to use any form of application for the purchase, rental or lease of such housing accommodation which expresses directly or indirectly, any limitation specification or discrimination as to protected status or any intent to make any such limitation, specification or discrimination.

HOUSING
PROGRAMS,
RENTAL
SUBSIDIES AND
ARREARS FUNDS

Pat Sheldon

Dutchess County DCFS

Tara Barnhart

Pathstone Corp.

Nikole Johannesen & Javier Gomez

Hudson River Housing

Samantha Riley

Community Action Partnership

Alia Marji

Catholic Charities

PUBLIC ASSISTANCE RENT SUBSIDIES

Pat Sheldon

Director of Adult Services

Dutchess County Community & Family Services
(DCFS)

Shelter Supplement Amounts

TA Household Size	Shelter Allowance Effective 11/03	Shelter Supplement	New Shelter Max Allowance with supplement	Bedrooms	Dutchess County Market Rental 2019*
1	\$ 216	\$608	\$ 824	0	\$ 969
1	\$ 216	\$696	\$ 912	1	\$ 1073
2	\$251	\$573	\$824	0	\$969
2	\$251	\$661	\$912	1	\$1073
1	\$216	\$379	\$595	room	\$700

*HUD- established 2019 fair market rents for Dutchess County

Types of Cases Covered by Supplement/Targeted Population:

The Shelter Supplement is available to single Safety Net consumers and to childless couples who are homeless, living in motels, domestic violence shelter or temporary housing.

Terms:

- Recipients must be Safety Net eligible based on the New York State standard of need without the supplement and in compliance with all eligibility requirements.
- No member of the family unit can be on sanction
- The recipient must be tenant or co-tenant of record.
- The recipient's full share of rent must be restricted and paid directly to the landlord.

HOUSING CHOICE VOUCHERS

Tara Barnhart

Director of Section 8 Program



Relation to New Tenant Laws

- Under the Lawful Source of Income Non-Discrimination Act of 2019, housing subsidies are now a protected class.
- Refusing to lease to an individual/family based on their utilizing a housing subsidy is considered a discriminatory act.

Housing Choice Voucher Program

- Federally funded low income housing subsidy program in which participants pay 30% of their income towards the rent. The PHA subsidizes the remaining balance.
- The choice of housing is left in the hands of the family, not the PHA.
- Purpose is to expand housing opportunities for low-income families, the elderly, and the disabled outside of concentrated areas of poverty.

HCV Program Continued

- The HCV Program assists a wide array of households which consist of low income families, the elderly, and the disabled.
- Overall goal is to house families in decent, safe, and sanitary units in the private market.
- The HCV program gives qualified families three powerful assets ; affordability, quality, and choice.

Figure 1.01 Public Housing Agencies, HCV Households, and Owners in the Housing Choice Voucher Program

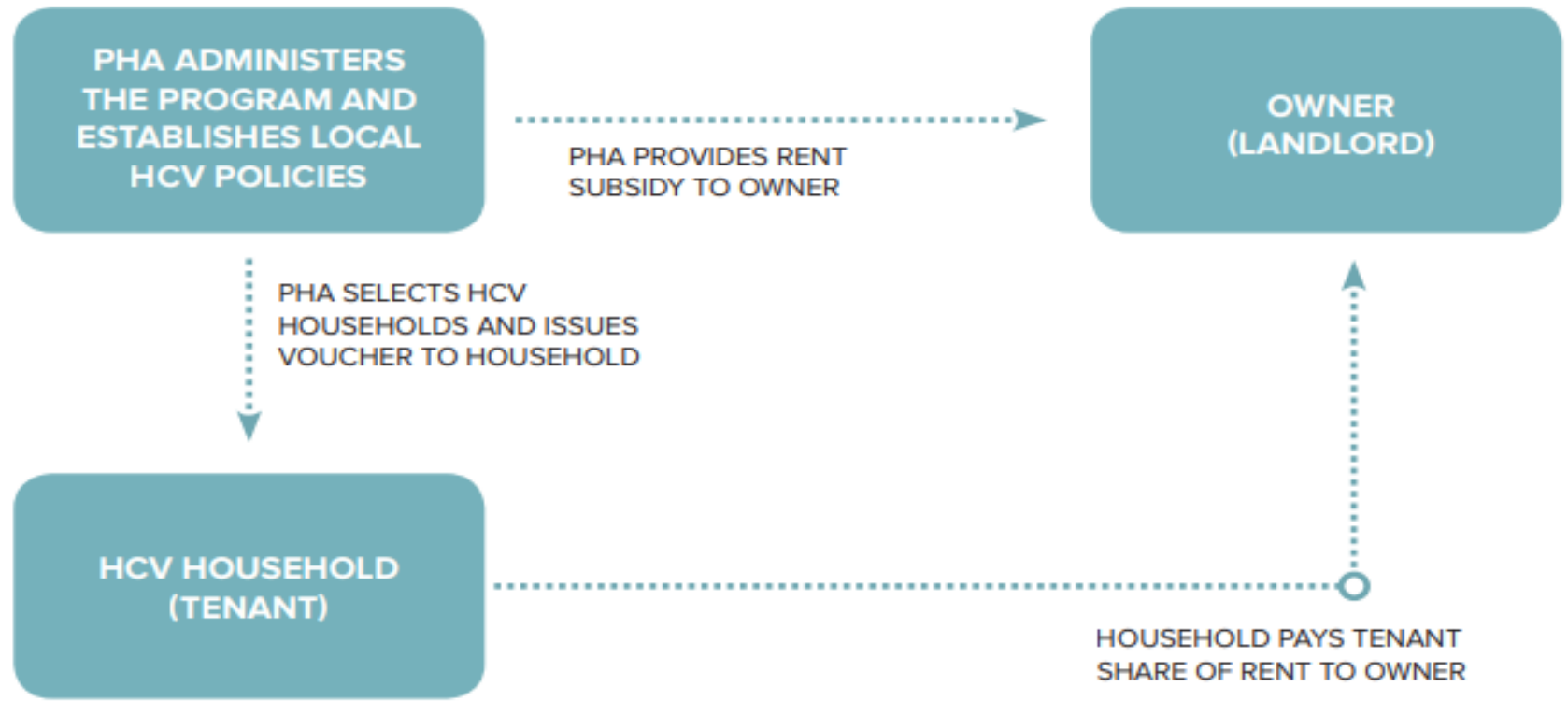


Figure 1.01- TAC Section 8 Made Simple
Retrieved from
<http://www.tacinc.org/media/58841/Chapter%201.pdf>

Renting to an HCV Participant

1. Landlord completes the Request for Tenancy Approval (RTA)
2. Housing agency determines affordability
3. Landlord contacts agency to schedule inspection
4. Once inspection passes the agency draws up contracts
5. Landlord signs lease with tenant and contracts with agency
6. If landlord is new to program, he or she completes additional packet of information for agency
7. Payment commences following agency schedule

Role of the PHA

- Ensure that assisted units meet minimum Housing Quality Standards (HQS) and inspect annually
- Enter into contracts with property owners
- Conduct reexamination of family income on annual basis and inform of changes
- Pay subsidy on behalf of program participants each month

Role of the Participant

- Comply with terms of the lease
- Pay portion of the rent, on time, each month
- Fulfill program obligations
- Keep unit within normal wear and tear conditions
- Make the choice of where and what property to rent
- Pay security deposit to landlord

Role of the Landlord

- Provide decent, safe, and sanitary housing at a reasonable price
- Enter into contract with PHA
- Provide services agreed to in the lease
- Cure HQS deficiencies within timeframe permitted
- Inform PHA of lease violation
- Screen tenants for suitability

Benefit of being an HCV Landlord

- Guaranteed income
- Lower vacancy rates
- Reliable payment from a stable program- The HCV program is the largest subsidy program in the United States
- Property Inspections- catching issues early saves from major repairs in the future
- Improved communities

What are Housing Quality Standards?

- Housing Quality Standards (HQS) are the minimum standards that a unit must meet for it to be rented to a HCV recipient.
- Standards are determined by HUD and are general and straightforward. The PHAs administrative plan may add additional requirements that are in accordance with state/local building codes.
- Most common HQS fail is lack of a functioning smoke detector.

How Do I get My Unit Rented?

- Post your property information on www.nyhousingsearch.gov

State operated service that is free of charge. HCV holders are encouraged to utilize this source when searching for housing

- Inform local PHAs of available properties

For more information on the Housing Choice Voucher Program please see the PathStone table located in the back of the room or visit www.nyshcr.org/housingchoicevoucher

For information on the governing rules surrounding the HCV Program please utilize www.ecfr.gov

Title 24 Part 982-Section 8 Tenant Based Assistance



PROGRAMS AND SERVICES

Nikole Johannesen

Javier Gomez

Hudson River Housing

What is Supportive Housing?

Supportive housing links decent, safe, affordable, housing with flexible, voluntary support services designed to help the individual or family stay housed and live a more productive life in the community. There is no time limitation, and tenants may live in their homes as long as they meet the basic obligations of tenancy.

The goal of supportive housing is to **increase independent living skills and overall stability of residents**. Each resident receives an advocate known as a Care Manager. The Care Manager helps to establish a service plan or set of goals that is reflective of the services and supports the resident feels is needed to live successfully in the community. In many cases, the Care Manager will serve as liaison between the tenant and the landlord.

Often supportive housing includes a **rental subsidy** to ensure affordability.

Residents will also be linked with various services in the community such as mental health, substance abuse counseling, skill/vocational development, financial management, medical care, transportation, and obtaining entitlements.



Rental Assistance & Subsidy Programs

Solutions to End Homelessness Program (STEHP)

Designed to assist homeless individuals obtain housing or prevent homelessness by avoiding eviction.

Rapid Rehousing:

Individuals receive assistance with first month's rent and/or security.

Eviction Prevention: Individuals that are already housed receive assistance with rental arrears.

Eligibility:

- Must meet HUD definition of homeless
- 30% of the area median income (AMI) or lower.

Other services:

Budgeting/financial fitness

Care management for minimum of 6 months, max two years.

Referrals to other service providers

Shelter Plus Care Grant Program (HUD)

- Funding provides rental subsidy up to **fair market value of rental amount** to homeless individuals and their families living with a severe & persistent mental illness or chemical dependency.
- Tenants receive subsidized rent (they pay only 30% of income), care management and supportive services through Hudson River Housing.
- Landlords receive rental & security deposit subsidy and support from Hudson River Housing (HRH serves as liaison.)

Empire State Supportive Housing Initiative (ESSHI)

- With grant funds from NYS, HRH partners with landlords to set aside a portion of units for homeless individuals and families with special needs such as frail elderly, young adults, mental illness, disabled veteran, among others.
- Funding up to \$25,000/unit/year provides rental subsidy up to **fair market value of rental amount** as well as intensive supportive services and on site staff for the units being served.
- Tenants receive subsidized rent (they pay only 30% of income), care management and supportive services through Hudson River Housing.
- Landlords receive rental & security deposit subsidy and support from Hudson River Housing (HRH serves as liaison.)

Veteran Services

- Hudson River Housing is very committed to serving all people facing homelessness, most especially our veterans of military service.
- Hudson River Housing recently partnered with VETZERO and Tommy Zurhellen to assist veterans in need.
- Contact our Veteran Specialist, Ed Reid at ereid@hudsonriverhousing.org or 845-452-0019 for more information on how HRH can assist a veteran in need.



Renovation & Capital Improvement Programs for Landlords

Small Building Participation Loan Program (SBPLP)

- Gap financing for the rehabilitation of multifamily rental properties consisting of 5 to 40 units.
- Applicants must secure a loan commitment from a participating lender and agree to enter into a regulatory agreement ensuring compliance with the program's affordability guidelines.
- Applicants may be eligible for up to \$50,000 per housing unit.

Small Rental Development Initiative (SRDI)

- Funding toward acquisition, rehabilitation, or new construction of residential rental housing from 2 to 25 units, including single site or multiple site projects.
- Awardees must enter into a regulatory agreement ensuring compliance with the program's affordability guidelines.
- Funding award amounts to be determined.

HOME Investment Partnership Program (HOME)

- Financing for the rehabilitation or new construction of affordable housing.
- Awardees must enter into a regulatory agreement ensuring compliance with the program's affordability guidelines.
- Funding award amounts to be determined.

Hudson River Housing, Inc. (HRH) has experience working with various public and private affordable housing financing resources, and will work with and assist property owners interested in learning about and applying to these resources for funding.

To find out more about affordable housing financing resources, please contact Javier Gomez by email at jgomez@hudsonriverhousing.org or by phone at **845-454-5176 ext.504**.

RENTAL ARREARS

Samantha Riley

Community Action Partnership

Alia Marji

Catholic Charities

NEW LAWS
AFFECTING ALL
TENANCIES

Justin Haines



Vincent Catalano

Law Office of Vincent Catalano

NOTICE PRIOR TO LEASE EXPIRATION/RENT INCREASE OF 5%+ RPL§ 226-C (EFFECTIVE OCTOBER 12, 2019)

Old Law:

Month-to-month tenancies could be terminated by either party after one-month's notice.

No notice required at the end of a normal lease with a defined term i.e. a year lease

No notice required for rent increases

New Law:

Landlords must notify a tenant in writing if they intend to not renew a lease or if the landlord plans to increase rent by more than 5%.

The amount of notice depends on the cumulative time tenant has lived in the apartment or the length of the lease, whichever is longer:

If the tenant has occupied the unit for less than one year and does not have a lease term of at least one year = 30-days' notice

If the tenant has occupied the unit for more than one year but less than two years, or has a lease term of at least one year but less than two years, = 60-days' notice

If the tenant has occupied the unit for more than two years or has a lease term of at least two years, the landlord = 90-days' notice

MONTH-TO-MONTH TENANCY TERMINATION BY TENANT

RPL § 232-B

Only tenants can end a month-to-month tenancy on a month's notice to the landlord.

Landlord's must give 30, 60, or 90 days as discuss in the prior slide.

DUTY TO MITIGATE DAMAGES FROM EARLY LEASE TERMINATION

RPL § 227-E

Old law

Landlords did not have an obligation to try and re-rent a vacant apartment as a result of an early lease termination and/or vacating tenant.

Landlords could sue a tenant for any months not paid under the lease

New law

- Landlord must mitigate damages by taking reasonable and customary steps to rent the vacant apartment at the tenant's last rent or market rent, whichever is less
- Landlord is required to try to re-rent according to its resources and abilities
- Once a new lease is entered the prior lease terminates
- Lease provisions to the contrary are void as contrary to public policy
- Person seeking damages has burden of proof

RENT RECEIPTS

RPL § 235-E

Old law

- If a tenant pays in any form other than a personal check, you must provide a written receipt with
 - the date,
 - amount,
 - the identity of premises,
 - the period for which was paid, and
 - the signature and title of the person receiving the rent
- If a tenant pays with a personal check and requests a receipt, you must provide one each time it is requested

New law

- The receipt content requirements still apply from the old law (first bullet), but in addition
- If a tenant pays with a personal check and requests a receipt, that request stands for duration of tenancy.
- LL must keep cash receipt records at least three years
- If rent is paid in person, then receipt must be given immediately.
- If rent is paid indirectly, then receipt must be given within 15 days of LL receipt.

PAYMENT RECEIPT

TENANT: _____

PROPERTY ADDRESS: _____

DATE OF PAYMENT: _____

AMOUNT OF PAYMENT: _____

ALLOCATION OF PAYMENT:

SIGNATURE: _____

Recipient of payment: _____

Title of recipient of payment: _____

LATE RENT AND LATE FEES

RPL § 235-E & RPL § 238-A

If rent is not received by 5 days from date specified in lease (usually the first day of the month)

- The landlord must send a notice by certified mail to tenant that the rent payment was not received.
- Failure to send the notice may be used as an affirmative defense in eviction based on non-payment.

Late Fees RPL § 238-a(2)

- A landlord cannot charge a late fee unless the payment of rent has not been made within 5 days of it being due
- Late fees are capped, regardless of what lease states, to the lesser of \$50 or 5% of the monthly rent
- If a late fee is stated in the lease to be less than \$50 or 5% of the rent, then that is the maximum late fee that can be charged

NOTICE PURSUANT TO RPL 235-e-(d)

DATE:

TENANT:

PROPERTY ADDRESS:

RE: **Rental Account**

Please take notice that as of this date the undersigned has failed to receive payment for rent for the following period and in the following amounts:

**

The above referenced amount does not include other sums besides rent which you may owe under your lease including but not limited to late fees, legal fees, court costs, etc.

Thank you for your courtesy and cooperation in this matter.

By: _____

RENT DEMANDS

RPAPL § 711(2)

Old law

- 3-day rent demand
- Could be written or oral
- When a tenant died, if no representative of an estate was named within 3 months, then a landlord could serve next of kin in their capacity as distributees, but not personally. You could only get possession but not the arrears

New law

- 14-day rent demand
- Must be in writing (oral no longer permitted)
- Must be served like court papers (personal service, substitute service or conspicuous service)
- If a tenant dies, the law has now eliminated the ability to sue next of kin. Now you would have to sue occupants of the apartment as licensees with 10-day notices to quit.
- Law explicitly states that a tenant or lawful occupant can only be evicted in a special proceeding

PROHIBITED
LANDLORD
BEHAVIOR

Marcie Kobak



RETALIATORY EVICTION

RPL § 223-B

Old Law

- Complaints made only to governmental body
- Made within last six months

New Law

- Complaints expanded to landlords, landlord agents, as well as government about breach of warranty of habitability
- Applies to complaints made within one year
- Presumption against the landlord
- Retaliation now includes raising rent “unreasonably”
- If proven by tenant, can prevent eviction for a year
- Does not apply in owner-occupied 1-3 unit buildings

UNLAWFUL EVICTION

RPAPL § 768

- Applies to any occupant, who has lived there for 30 consecutive days or longer, OR who has entered into a lease with respect to the unit
- Use or threatening use of force to induce a tenant to vacate
- Course of conduct meant to interfere with comfort, repose, peace or quiet enjoyment to induce a tenant to vacate
- Bans: Interruption/discontinuance of essential services, removing possessions, door breaking, changing of locks to induce a tenant to vacate
- Failure to take reasonable measures to restore a tenant also unlawful
- Subject to civil and criminal penalties
 - Class A misdemeanor
 - Civil penalty \$1k-10k per violation plus up to \$100/day up to six months

HOUSING
COURT
CHANGES

Justin Haines



Vincent Catalano

Law Office of Vincent Catalano

RENT DEFINED - NO ADDED RENT

RPAPL § 702

Old law

- If lease contained an “added rent” clause that made fees, attorney fees and court costs into rent, then “added rent” could be sought in non-payment actions.

New law

- Rent is now defined as the monthly or weekly amount charged for use and occupancy.
- No fees, charges or penalties other than rent may be sought in a summary proceeding, notwithstanding any language to the contrary in any lease or rental agreement.
- Therefore landlords should incorporate fees like pet fees and trash fees into rent rather than list them as separate fees. (note: can't charge a pet fee for a support or service animal)

ATTORNEY'S FEES

RPL § 234

Old law

- If a residential lease provided for a landlord's right to recover attorney's fees, a reciprocal right was implied in law for tenants
- If a lease had "added rent" clause, a landlord could recover attorney's fees in the petition and as part of a possessory judgment in housing court, meaning if the fees weren't paid in addition to the rent owed, a tenant could be evicted for not paying the attorney's fees along with rent.
- Note: you never could recover attorney's fees as a possessory judgment from a Section 8 tenant

New law

- Attorney's fees cannot be sought in a non-payment petition, regardless of an "added rent" clause.
- A court can award attorney's fee if the lease had an attorney fee clause, but not as a possessory judgment and not on a tenant's default in appearing in court
- Can result in a money judgment of attorney's fees that is separate from a possessory judgment of unpaid rent.

HOT TOPIC: DISAGREEMENT BETWEEN LANDLORD AND TENANT ATTORNEYS ON ALLOCATION CLAUSES IN LEASES

Landlord attorney view

- Since RPAPL § 702, the law defining rent does not also say that lease provisions to the contrary are void as against public policy, the parties can contract around this law
- The lease could say that any payments made could first be applied to late and attorney fees before being applied to outstanding or current rent

Tenant attorney view

- The statute contemplates landlords trying to contract around this prohibition and bans it in all forms
- This type of lease clause defeats the very purpose of the legislature enacting the law which eliminated the concept of “added rent” and meant to have people evicted for not paying their rent, not added fees
- Other new provisions including RPAPL §§ 731 & 749 specifically reference the ability to pay rent either before a case is brought or up until the moment of eviction which should be straight rent, not added rent.
- Longstanding case law on “earmarking” a rent payment for a specific time period would still trump an allocation provision in a lease.

PAYMENT OF ARREARS PRIOR TO THE FIRST COURT DATE

RPAPL § 731

Old law

- In case law, “tender and refusal” of rent was recognized as a defense to non-payment and could result in dismissal of an action for non-payment.
- The tenant was still obligated to pay rent with a “tender and refusal” defense, but the landlord might have to bring an action in small claims to get the money
- Courts also recognized that if payment of all outstanding rent was made prior to entry of a judgment, then a judgment and warrant could not be granted.

New law

- In non-payment cases, a tenant’s payment to the landlord of the full amount of rent due, made at any time prior to the hearing on the petition, shall be accepted by landlord and renders moot the grounds for the non-payment action.
- Non-payment case would need to be discontinued

FILING NOTICE OF PETITION & PETITION

RPAPL § 733

Old law

- Notice of Petition & Petition shall be served at least 5 and not more than 12 days before time to be heard

New Law

- Notice of Petition & Petition shall be served at least 10 and not more than 17 days before time to be heard
- It essentially added five days to the old rule on each end of the window.

TENANT'S ANSWER

RPAPL § 743

- Tenants no longer have specified timeframes in which to answer.
- Tenants now may answer at any time prior to the time when the petition is noticed to be heard
- Answers may be oral or in writing
- If it is an oral answer, the presiding judge should record it and maintain it in the case record
- An answer may contain any legal or equitable defense or counterclaim

TRIAL & ADJOURNMENT

RPAPL § 745

Old law

- No right to an adjournment
- An adjournment could be granted on request of a party to procure witnesses or on consent, however adjournments should not be longer than 10 days unless on consent of all parties
- Courts usually would adjourn a week if the tenant said they wanted to seek counsel

New law

- At the time when issue is joined (when a tenant answers)
- the court, at the request of either party shall adjourn the trial of the issue,
- not less than fourteen days, except by consent of all parties.
- A party's second or subsequent request for adjournment shall be granted in the court's sole discretion.

WARRANTS

RPAPL § 749

Old law

- Execution of warrant was at least 72 hours (3 days) after service of the Notice of Eviction, not including weekends and holidays.
- Issuance of the warrant used to terminate the landlord-tenant relationship
- This meant that the landlord did NOT have to accept payment of arrears after the warrant issued and acceptance of rent after judgement and warrant could “revive” the landlord-tenant relationship.
- Warrant commanded the Sheriff to remove “all persons”
- Court could vacate for “good cause shown” prior to execution of the warrant

New law

- Execution of warrant is now at least 14 calendar days after the service of the Notice of Eviction. Warrant can only be executed on a business day between the hours of sunrise and sunset.
- Issuance of warrant no longer terminates the landlord/tenant relationship.
- In non-pay, court shall vacate upon tender or deposit with court the full rent due prior to execution of the warrant unless landlord can establish the tenant withheld rent in bad faith
- Sheriff may remove only persons named in the proceeding
- The warrant must now state the earliest date for execution.
- Court can stay or vacate upon good cause shown prior to execution. Court can explicitly restore tenant to possession even after an eviction has occurred and stay reletting or renovation for a reasonable time.

STAYS OF THE EVICTION

RPAPL § 753 & 756

Old law

- The relocation stay only existed in NYC but now applies statewide.
- This stay used to only apply to holdovers and not to non-payment actions, but now applies to both
- This type of stay does not apply in holdovers for objectionable behavior

New law

- Court can stay the warrant for up to a year based on a tenant after making due and reasonable efforts, in good faith, cannot locate new housing in the neighborhood similar to what they currently occupy
- Can be conditioned on the tenant paying use and occupancy equivalent to rent and all prior arrears
- Court to consider factors in a tenant's life: extreme hardship, serious ill health, significant exacerbation of an ongoing condition, a child's enrollment in a local school, and any other extenuating life circumstances
- If the landlord is responsible for utilities, and they are cutoff, non-payment actions are stayed until utilities are restored
- In holdovers for lease violations, the court shall after entering a judgment of possession against a tenant, stay the eviction for 30 days for the tenant to cure,.

OLD NONPAYMENT TIMELINE RANGE: 18 DAYS-25 DAYS



NEW NONPAYMENT TIMELINE

RANGE: 52 DAYS-59 DAYS



OLD HOLDOVER TIMELINE RANGE: 25 DAYS-52 DAYS



NEW HOLDOVER TIMELINE RANGE: 48 DAYS-135 DAYS

