



New Jersey Department of Community Affairs Division of Codes and Standards Landlord-Tenant Information Service



RENT INCREASE BULLETIN

February 2008

This bulletin explains the process that a landlord must follow in order to increase a tenant's rent. This process may be based on rent control ordinances in specific municipalities; for rental units that are not governed by rent control ordinances the process is based on common law, which is set by common practice and case law. This bulletin is for informational purposes only and should not be used for legal interpretations or legal advice. Please consult an attorney for legal services and advice when necessary.

Applicability

The information in this bulletin applies to all residential rental properties including mobile homes, and land in a mobile home park. However, it does not apply to hotels and motels, and other guesthouses rented to transient or seasonal tenants.

Notice Required

Before the landlord can increase the rent he must provide the tenant with a written Notice to Quit and notice of the rent increase. (See Attachment A, Sample notice.) The Notice to Quit ends the existing tenancy. However, being served with a Notice to Quit does not require the tenant to vacate the rental premises.

The landlord must give notice within the timeframe stipulated within the lease (at least 30 days) or as stipulated within the local rent control ordinance, if any. If the tenancy is month-to-month the landlord must give a 30-day notice to Quit (given on the first day the rent is due).

Note: The Security deposit can be increased when the rent is increased but cannot exceed 1 1/2 times the monthly rent.

When the Landlord May Increase the Rent

The landlord may only increase the rent at the beginning of the term of the lease. The landlord cannot increase the rent while a lease exists. The landlord must offer the tenant the option of entering into a new lease, at the increased rental rate, after the old lease expires. If the tenant does not sign the new lease and does not move at the expiration of the old lease and has been given a valid notice to quit and notice of rent increase, a new tenancy is automatically created at the increased rental rate.

Refusal to Pay Rent Increase

If a tenant refuses to pay the rent increase and remains at the rental unit after the old lease expires (establishing new tenancy), the landlord may file a legal action in Superior Court to have the tenant evicted for failure to pay the rent increase. The landlord is not required to give the tenant notice before filing an eviction action for non-payment of the rent increase.

Unconscionable Rent Increase

If the tenant refuses to pay the rent because the tenant believes the rent increase is unconscionable or unreasonable, the tenant may withhold a portion of the rent. The tenant may withhold the difference between the old rent rate and the new increased rate. However, the landlord may take the tenant to court based on non-payment of rent increase, if this happens, the tenant may argue to the judge that the increase is unconscionable. The landlord has the burden of proving to the court that the rent increase is fair and not unconscionable.

Note: If the tenant chooses not to pay the rent increase he should continue to pay the regular rent and be prepared to pay the full amount of the rent increase if the court rules in the landlord's favor.

Determining if a Rent Increase is Unconscionable

In Fromet Properties Inc. v. Dolores Buel, et al., the court found that in determining unconscionability, the trial judge may consider: 1) the amount of the proposed rent increase; 2) the landlord's expenses and profitability; 3) how the existing and proposed rent compare to rents charged at similar rental properties in the geographic area; 4) the relative bargaining position of the parties; and 5) based on the judge's general knowledge, whether the rent increase would shock the conscience of a reasonable person.

Rent Control

The State of New Jersey does not have a law governing rent increases. However, municipalities within the State may adopt ordinances regulating the amount and frequency of rent increases within their specific municipality. A municipality's ordinance may not cover all rental units. To find out if a rent control ordinance exists, and if it applies to a specific rental unit, contact the municipal clerk in the municipality where the rental premises is located. (See Attachment B, Rent Control Survey.)

Exemption from Rent Control

Pursuant to N.J.S.A. 2A:42-84.2 through 2A:42-84.6, certain newly constructed multiple dwelling units may be exempt from rent control ordinances. Prior to entering into any lease for tenancy, the landlord of an exempt property must notify the prospective tenant that the rental unit is exempt from rent control. (See Attachment C, Newly Constructed Multiple Dwelling Law)

Public Financed and Subsidized Housing

Housing Developments owned or subsidized by the U.S. Department of Housing and Urban Development (HUD), the New Jersey Housing and Mortgage Finance Agency (HMFA) or regulated by the N.J. Public Housing and Development Authority are not subjected to municipal rent control ordinances. For proper procedures for notice and comments on rent increase for HUD buildings, call (973) 622-7900, ext. 3400 and (609) 278-7400 for HMFA buildings.

Example: NOTICE WHEN THERE IS NO RENT CONTROL

**NOTICE TO QUIT AND DEMAND FOR POSSESSION AND
NOTICE OF RENT INCREASE**

I _____, landlord of the premises located at, _____ in which _____ (tenant) now resides requests that as of _____, (date) you quit the unit and give up peaceable possession thereof. Should you desire to continue the occupancy of said unit, I request an increase in your monthly rental of \$_____.

BREAKDOWN:
OLD RENT PER MONTH \$_____
Increase \$_____
NEW RENT \$_____

Your rent payment is now due on the _____ of each and every month, hereafter.

Received: _____ on _____
(tenant) (date)

I certify that I personally delivered this notice to _____ on _____.
(tenant) (date delivered)

landlord or agent