

RENT REGULATION

Noteworthy Changes Enacted By the Rent Act of 2015



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On June 26, 2015, Governor Andrew Cuomo signed into law the Rent Act of 2015, also known as L. 2015, ch. 20. The Rent Act was not the mere “extender” that landlords wanted, but was also not the wholesale “strengthening” of the rent laws that tenants sought. Instead, the Legislature left the fundamentals of rent regulation as they were, but tinkered around the edges, particularly with respect to luxury deregulation, MCI rent increases, and vacancy increases.

The most relevant changes enacted by the act are discussed below.

Extension Dates

Section 1-a of the act provides that the Emergency Tenant Protection Act, which governs most rent-stabilized apartments in New York City, will be extended through June 15, 2019. Section 2 of the act made the same change with respect to the statute governing rent-controlled tenants in New York City. Thus, these statutes will come up for renewal four years from now.

Luxury Deregulation

Luxury deregulation, whether based on a vacancy or on high income, is premised on a threshold rent amount. Pursuant to the Rent Act, that figure has now increased from \$2,500 per month to \$2,700 per month.

But that’s not all. The act also provides that “starting on January 1, 2016, and annually thereafter, the maximum legal regulated rent for this deregulation threshold, shall also be increased by the same percentage as the most recent one year renewal adjustment, adopted by the applicable rent guidelines board.” Thus, if the rent guidelines board (RGB) in 2016 authorizes a two percent increase for a one-year renewal lease, the \$2,700 figure increases to \$2,754. If in 2017, the RGB authorizes a one percent increase for a one-year renewal lease, that figure rises to \$2,781.54.

What should be obvious by now is that this scheme theoretically allows tenants in occupancy to permanently avoid high income luxury deregulation through the expedient of electing each year to renew for one year only. Thus, for example, if a tenant’s current rent is \$2,690 per month, and the RGB authorizes a two percent increase for a one-year renewal in 2016, the threshold goes to \$2,754, but the tenant’s rent only goes to \$2,743.80 if he or she

takes a one-year renewal. No matter what the RGB does in future years, the tenant’s rent will never exceed the threshold. In another scenario, if the RGB authorizes a zero increase for a one-year renewal for each year during the next ten years, the threshold will remain at \$2,700, while the hypothetical tenant’s rent remains at \$2,690.

The obvious answer to the landlord’s dilemma with respect to tenants in occupancy is obtaining major capital improvement (MCI) rent increases, as a significant MCI rent increase can increase the hypothetical tenant’s rent well above the deregulation threshold if the tenant’s rent was previously within striking distance of that figure. Thus, a likely outcome of the act is an increase in MCI rent applications. But as set forth below, the act has made MCI increases less lucrative.

Notably, the rent threshold has been increased to \$2,700 for rent-controlled apartments as well, despite the fact that rent-controlled rents are unaffected by any rent guidelines board. Presumably, in New York City, the one-year increase for stabilized apartments will govern the threshold for rent controlled apartments.

MCI Increases

The Rent Act also provides, with respect to both rent-stabilized and

rent-controlled apartments, that MCI rent increases shall be amortized “over an eight-year period for a building with thirty-five or fewer housing accommodations, or a nine-year period for a building with more than thirty-five housing accommodations, for any determination issued by the division

less than three years ago; fifteen percent of the previous legal regulated rent if the last vacancy lease commenced less than four years ago; twenty percent of the previous legal regulated rent if the last vacancy lease commenced four or more years ago.

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of housing and community renewal after the effective date of the rent act of 2015.” The previous amortization period was seven years.

Although this change is clearly harmful to landlords, it should be noted that tenant advocates sought to amend the rent laws such that MCI rent increases dropped out once they became fully amortized. For at least the next four years, MCI rent increases shall remain a permanent part of the rent.

Vacancy Increases

Under prior law, landlords were entitled to a statutory 20 percent vacancy increase where the incoming tenant selected a two-year vacancy lease, and a slightly lower increase where the incoming tenant selected a one-year vacancy lease. Where the outgoing tenant was not paying a preferential rent, these rules are unchanged. Where that tenant was paying a preferential rent, however, the various rent laws now provide that the vacancy increase shall not exceed:

...five percent of the previous legal regulated rent if the last vacancy lease commenced less than two years ago; ten percent of the previous legal regulated rent if the last vacancy lease commenced

The rationale for this change appears to be that if the vacancy increase was intended to allow landlords to catch up to market rates, allowing a landlord to do so is less critical where the landlord was unable to charge and collect the full legal rent to begin with.

Penalties

The act increased monetary penalties for owners who have been found, after a hearing, to have violated a DHCR order. The act also increases penalties for harassment to “a minimum in the amount of ten thousand dollars but not to exceed eleven thousand dollars.”

Apartment Improvements

Notably, the act does not affect individual apartment improvements, which allow owners to amortize over a period of 40 or 60 months (depending on the size of the building) monies spent on new equipment and improvements, usually in vacant apartments. This is important, because landlords use such improvements as a way to increase rents, in the hope of reaching the rent threshold and permanently deregulating units by virtue of luxury deregulation.

Retroactivity

The act generally provides that all provisions “shall be deemed to have been in full force and effect on and after June 15, 2015,” i.e., the day the rent laws previously expired. Thus, there was no period during which rent regulations were not in effect.

Conclusion

The primary effect of the act is to make it more difficult for landlords to reach the rent threshold necessary to obtain vacancy or high rent luxury deregulation. Notwithstanding, this was a victory of sorts for landlords, in that tenants sought to eliminate luxury deregulation altogether. Such deregulation had resulted in the loss of tens of thousands of rent-regulated apartments.

Although the act will make it more difficult to deregulate apartments, and may delay the deregulation of any given apartment by several years, landlords are still expected to make the necessary investments to achieve luxury deregulation. Deregulated apartments will be permanently exempt from the rent laws, unless the Legislature subsequently acts to regulate those apartments. As the Rent Act of 2015 proves, however, such wide-ranging and fundamental changes to the rent laws are not always easy to obtain.