



NEW YORK RENT REGULATION CHECKLIST

Every chapter of the **2019 NEW YORK RENT REGULATION CHECKLIST** is organized for quick and easy access to the exact information you need when you need it.

Let's look at Chapter 4: Eviction of Rent-Regulated Tenants:

Every chapter starts with

1 WHO IS AFFECTED

Followed by **2 WHAT LAW REQUIRES** which spells out exactly what you need to do to lawfully evict a rent-regulated tenant.

seeks to use the premises in connection with its charitable, religious, or educational purposes, Certificate of Eviction required; lease nonrenewal required while application pending 150-120 days prior to the end of the current lease.

EXCEPTION: No Certificate of Eviction will be granted where landlord seeks eviction for immediate and personal use and occupancy of the housing accommodations by its employees, students, or staff members.

- ▶ **Within NYC, co-op or condo conversion eviction plan has been declared effective by the NYS AG and owner seeks to recover apartment for owner occupancy after nonpurchasing tenant's occupancy rights have expired:**

No Certification of Eviction required, but no eviction proceeding can be commenced until three years after an eviction plan is declared effective in accordance with applicable co-op conversion law. Eviction under these provisions cannot be obtained against eligible senior citizen or disabled tenants.

- ▶ **Nonprimary residence:**

Outside NYC, 90-120 day lease nonrenewal notice required before lease expiration date; within NYC, 90-150 day lease nonrenewal notice required before lease expiration date; nonrenewal notice may be combined with required 30-day termination notice.

Additional considerations on recovery of apartments based on tenants' nonprimary residence are discussed in **CHAPTER 19: PRIMARY RESIDENCE.**

HOW TO COMPLY

3

Before proceeding for eviction in court, owners should check the laws and regulations to determine the notice requirements, including whether a copy of any tenancy termination notice to the DHCR is required within 48 hours after delivery to the tenant or whether a Certificate of Eviction is required, before going forward.

Any predicate notice should clearly and sufficiently set forth the applicable law and/or regulation section relied on in the notice, the factual reasons for the notice, the date by which the tenant must cure if a notice to cure is provided, the date upon which the tenancy is terminated, and the owner's intent to proceed for eviction if the tenant does not surrender possession by the termination date.

Owners must add five days to a cure period where a notice to cure is delivered by mail. Owners also must add five days to a lease termination date when a seven-day termination notice is delivered by mail. Court decisions may vary on whether an additional five days is needed for other notices delivered by mail.

Copies of any predicate notices that also must be sent to the DHCR must be filed at the local District Rent Office within 48 hours (excluding Saturdays, Sundays, or legal holidays) of delivery of the notice to the tenant. The copy of the notice sent to the DHCR must include an affidavit of service of the notice upon the tenant.

DEADLINE

Before proceeding for eviction in court, owners should check the laws and regulations to determine deadlines for notice requirements, which vary depending on the reason that tenancy termination and eviction are sought.

PENALTY FOR FAILURE TO COMPLY

Failure to comply with predicate notice requirements, including any requirement to send the DHCR a copy and/or requirements to obtain a Certificate of Eviction from the DHCR, will result in the dismissal of eviction proceedings on procedural grounds. Defective predicate notices are not amendable in court.



Eviction of Rent-Regulated Tenants

WHO IS AFFECTED

1

Owners of rent-controlled and rent-stabilized housing accommodations who seek to evict tenants must send proper notices, get prior DHCR approval where required, and identify proper grounds for terminating the tenancy.

WHAT LAW REQUIRES

2

In general. Before evicting a tenant, an owner must send any required "predicate notice," and then commence a lawful eviction proceeding. "Self-help" eviction is not permitted.

Owners may evict rent-controlled or rent-stabilized tenants only for specified reasons because their tenancies are subject to continued renewal as a matter of law. Permissible reasons for eviction include nonpayment of rent, breach of lease obligations, and conduct of illegal activities. An owner also may refuse to renew a rent-stabilized lease or a statutory rent-controlled tenancy for grounds including demolition, owner occupancy, and nonprimary residence.

Prior to commencing an eviction proceeding, an owner must comply with predicate notice requirements. For nonpayment of rent, a rent demand is required. Otherwise, a lease or tenancy termination notice generally is required. In some instances, such as breach of a substantial obligation of a lease

or tenancy, a notice to cure is required before a termination notice is served.

Either prior approval from, or notification to, the DHCR is required in some instances before proceeding for eviction. Rent control and rent stabilization laws and regulations provide specific requirements, which can vary depending on the housing location, type of rent regulation, and the reason for terminating the tenancy. Most eviction proceedings against rent-stabilized tenants do not require prior DHCR approval.

Where prior DHCR approval is required, owners must seek and obtain a Certificate of Eviction from the DHCR before proceeding in court for eviction. Alternatively, where notice to the DHCR is required, this consists of delivering to a local district rent office a copy of the termination notice served on the tenant, within 48 hours of doing so. Predicate notices should clearly state the grounds for tenancy termination or lease nonrenewal since insufficient notices may be grounds for dismissing an eviction proceeding.

It is unlawful to remove, seek eviction, or refuse to renew a lease because a tenant has taken or proposes to take any action authorized by law. For example, an owner cannot seek to evict a tenant because the tenant has filed complaints with a city agency regarding building or apartment conditions.

The next section,

3 HOW TO COMPLY, shows just that — in easy-to-understand language.

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More from Chapter 4: Eviction of Rent-Regulated Tenants:

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4 DEADLINE section tells you when you need to take action.

5 PENALTY FOR FAILURE TO COMPLY lays out all the problems you could face for non-compliance.

6 FORMS REQUIRED references what forms you're going to need, with copies reproduced at the end of the chapter.

7 FOR FURTHER INFORMATION points you to other chapters of the book and other publications related to the topic at hand that may be helpful. Plus, relevant **Court Rulings & DHCR Decisions** are listed to you show how the regs have been interpreted by the courts and DHCR.

8 TEXT OF LAW provides the NYS and NYC rent control and rent stabilization laws and regulations that apply to the topic within and outside New York City.

FORMS REQUIRED

Owners seeking a Certificate of Eviction must file

- ◆ **DHCR Form RA-54:** Owner's Application for Order Granting Approval to Refuse Renewal of Lease and/or to Proceed for Eviction (10/04), see p. 125.
- ◆ Online: www.nysdcr.org/Forms/Rent/ra54_NYC.pdf

FOR FURTHER INFORMATION

1. Checklist Chapters to Review

- ◆ **Chapter 1: Assignments, Subletting & Roommates**, for discussion of prerequisites to eviction based on unauthorized assignment or subletting.
- ◆ **Chapter 2: Demolition**, for discussion of prerequisites to eviction based on plans to demolish a building containing rent-controlled and rent-stabilized tenants.
- ◆ **Chapter 3: DHCR Powers & Procedures**, for discussion of the appeal process of a DHCR order concerning a Certificate of Eviction, and for a list of local District Rent Offices.
- ◆ **Chapter 8: High-Rent/High-Income Deregulation**, for discussion of how to proceed for tenancy termination and eviction if the DHCR determines that a high-rent/high-income unit has become deregulated.
- ◆ **Chapter 14: Nuisance by Tenants**, for discussion of prerequisites to eviction of rent-controlled or rent-stabilized tenants who create or permit nuisance conditions.
- ◆ **Chapter 15: Owner Occupancy**, for discussion of prerequisites to eviction for personal use of a rent-own-

- ◆ Chapter 19: Primary Residence
- ◆ Chapter 20: Rent Control and Rent Stabilization

2. Publications

- ◆ **DHCR Fact Sheet #32:** Eviction (3/17); online: www.nysdcr.org/Rent/FactSheets/rafac32.pdf

3. Court Rulings & DHCR Decisions

- ◆ **ATM One, LLC v. Landaverde:** 2 NY3d 472 (2004)
New York's highest court ruled that owners who serve 10-day notices to cure must add five days to the minimum cure period to allow for sufficient notice.
- ◆ **Fleetwood Holdings I, LLC v. Smith:** 59 Misc.3d 1232(A), 2018 NY Slip Op 50852(U)
A history of repeated eviction proceedings based on nonpayment commenced to collect tenant's chronically late rental payments was grounds for an eviction proceeding based on tenant's violation of a substantial obligation of tenancy.
- ◆ **1802 Associates LP v. Arias:** Index No. 53046/16, NYLJ No. 1202765661912, LVT #27196 (Civ. Ct. NY 2016)
An eviction proceeding was dismissed where landlord's termination notice didn't provide sufficient information about the reasons for an eviction proceeding based on nuisance and violation of a substantial obligation of tenancy in connection with tenant's placement of unauthorized partitions within the apartment.
- ◆ **1504 Associates v. Westcott:** Index No. 79943/09, NYLJ No. 1202568914035, LVT #24163 (Civ. Ct. NY 2012)
No Certificate of Eviction from the DHCR was required for an eviction proceeding involving succession rights.
- ◆ **Zunce v. Rodriguez:** 22 Misc.3d 265, LVT #20817 (Civ. Ct. Kings 2008)

TEXT OF LAW

The following laws and regulations apply:

- EHRCL §§5, 10(2), (4), (5)
- SRER §§2104.1 through 2104.4
- GARL §26-408
- CRER §§2204.1 through 2204.4(a)–(d), §2206.7
- ETPR §§2504.1 through 2504.4
- RSL §§26-511(c)(9); 26-515
- RSC §§2524.1 through 2524.4; RPAPL §715

EHRCL §5: Evictions

1. So long as the tenant continues to pay the rent to which the landlord is entitled, no tenant shall be removed from any housing accommodation with respect to which a maximum rent is in effect pursuant to this act by action to evict or to recover possession, by exclusion from possession, or otherwise, nor shall any person attempt such removal or exclusion from possession notwithstanding the fact that the tenant has no lease or that his lease, or other rental agreement has expired or otherwise terminated, notwithstanding any contract, lease agreement or obligation heretofore or hereafter entered into which provides for surrender of possession, or which otherwise provides contrary hereto, except on one or more of the following grounds, or unless the landlord has obtained a certificate of eviction pursuant to subdivision two of this section:
 - (a) the tenant is violating a substantial obligation of his tenancy other than the obligation to surrender possession of such housing accommodation and has failed to cure such violation after written notice by the landlord that the violation cease within ten days, or within the three month period immediately prior to the commencement of the proceeding the tenant has willfully violated such an obligation inflicting serious and substantial injury to the landlord; or
 - (b) the tenant is committing or permitting a nuisance in such housing accommodation; or is maliciously or by reason of gross negligence substantially damaging the housing accommodations; or his conduct is such as to interfere substantially with the comfort or safety of the landlord or of other tenants or occupants of the same or other adjacent building or structure; or
 - (c) occupancy of the housing accommodations by the tenant is illegal because of the requirements

- (d) the tenant is using or permitting such housing accommodation to be used for an immoral or illegal purpose; or
 - (e) the tenant who had a written lease or other written rental agreement which terminates on or after May first, nineteen hundred fifty, has refused upon demand of the landlord to execute a written extension or renewal thereof for a further term of like duration not in excess of one year, but otherwise on the same terms and conditions as the previous lease, except in so far as such terms and conditions are inconsistent with this act; or
 - (f) the tenant has unreasonably refused the landlord access to the housing accommodations for the purpose of making necessary repairs or improvements required by law or for the purpose of inspection or of showing the accommodations to a prospective purchaser, mortgagee or prospective mortgagee, or other person having a legitimate interest therein; provided, however, that in the latter event such refusal shall not be ground for removal or eviction if such inspection or showing of the accommodations is contrary to the provisions of the tenant's lease or other rental agreement.
2. No tenant shall be removed or evicted on grounds other than those stated in subdivision one of this section unless on application of the landlord the commission shall issue an order granting a certificate of eviction in accordance with its rules and regulations, designed to effectuate the purposes of this act, permitting the landlord to pursue his remedies at law. The commission shall issue such an order whenever it finds that:
 - (a) the landlord seeks in good faith to recover possession of housing accommodations because of immediate and compelling necessity for his own personal use and occupancy or for the use and