

Major Capital Improvement (MCI) Rent Increases

A Fact Sheet for Tenants

When your landlord makes a building-wide improvement or replaces a major building system and passes the cost on to you and other tenants, you receive a Major Capital Improvement or MCI rent increase.

Landlords can pass on the cost of new windows, new boilers, new roofs and other work to the tenants if the apartments are rent stabilized or rent controlled. If the landlord gets approval from the New York State Division of Housing and Community Renewal (DHCR), your rent will be permanently increased to pay for the MCI work.

How to Fight the MCI Rent Increase

Tenants must file an answer to the landlord's application to the DHCR, raising objections to the way the work was done, how it was paid for, and any other mistakes the landlord made. When the landlord has filed a MCI application with DHCR, all tenants will be sent a one-page notice of the filing. Tenants have an opportunity to respond in writing (called the answer) to the landlord's application. Plan a tenants' association meeting so that all tenants can agree to answer the landlord's MCI application together.

This notice from the DHCR only contains the barest information about the landlord's application. The notice will explain what the improvement was and how much the landlord paid for it and calculate the proposed per-room monthly rent increase. At this point in the proceeding, DHCR has not approved any of the landlord's figures and they are all challengeable. The landlord must file with the DHCR for the increase only after the work has been completed, but not more than two years after the work was completed (for rent

stabilized; no time bar under rent control). If granted, the effective date of the application will be set retroactive to 30 days after the landlord filed the application, *but tenants do not have to pay until the DHCR approves the application and mails rent increase orders to all of the tenants.* The approval process takes from about one month to one year from the time the landlord applies.

First Step in Answering the MCI

You will probably need more time than the allowed 30 days to answer your landlord's rent increase application. To get a 30 day extension, write to the main rent office (at Gertz Plaza in Queens) of the DHCR. You can ask for more than one extension. Each one lasts 30 days but you will need a good reason for the DHCR to grant the second extension. Send your request for an extension, and all correspondence, by certified mail, return receipt requested. Always put your docket number on all correspondence. You can deliver it in person, but get the agency to stamp a copy so you have proof that it was received.

Examine the landlord's entire MCI application file. This file will be either in the management's office in your building or at the DHCR's main office in Queens (use the DHCR's copy if at all possible). This file will have the landlord's full application and copies of all the invoices, canceled checks, permits, and any affidavits from contractors who performed the work: these items must be sent to the DHCR in order for the agency to allow the rent increase. If you need to look at the application file at the DHCR, you must file a Freedom of Information Law request (FOIL Form FS-1) to get access to it. Because the DHCR takes a long time to answer your request, you will need at least one extension for the FOIL. When you write for an extension, send in the completed FOIL request form (which you can get from the DHCR) at the same time, and include a cover letter

For more detailed information about your rights as a tenant, or for assistance in organizing a tenants' association:

METROPOLITAN COUNCIL ON HOUSING

339 Lafayette Street, New York, NY 10012 • www.metcouncil.net

Tenant Hotline: 212-979-0611 (Mondays, Wednesdays and Fridays 1:30-5:00 p.m.)

Free Tenant Clinic: Tuesdays 6:30 p.m., Cooper Square 61 East 4th Street (between Bowery & 2nd Ave.)

MCI Fact Sheet page 2

which says you need to examine the file before your tenants' association can complete its answer.

One more important part of your first step: if there are violations in your building, file a complaint of decrease in services form with the DHCR. Be sure to file a form for building-wide complaints as well as individual (each tenant in the association), and request a rent decrease. Make sure you first complain to the landlord in writing. You must furnish proof to the DHCR that you have complained of the violation to the landlord. If you get a rent reduction order for violations, the landlord's MCI application will be rejected or delayed. Although the landlord can re-file, the delay will save you money by putting off the payment date.

Writing Your Answer

Look at the work that was done and the application file and object to the landlord's claims based on the following applicable points. Be sure to look carefully at the file to make sure all invoices, canceled checks, work permits, and affidavits are there. Regulations adopted by the DHCR in December of 2000 require tenants to hire an engineer or architect or to get the signatures of 51% of the tenants to make the claim that the job was not completed or is not in good working order. Use the following points in your answer if they apply:

- The work was not for the "operation, preservation and maintenance of the building" and would not be "depreciable under the Internal Revenue Code." The DHCR has a list of jobs which qualify for MCI increases. Call Met Council if you need a list.

- The work doesn't benefit all of the tenants and or is not building-wide (example: the landlord only replaced windows on the north side of the building).

- Was the work completed in the two years previous to the landlord applying for the increase? The landlord cannot apply for increases for work completed more than two years before (for rent stab only).

- A system was replaced which had not out-lived its useful life (for example, the boiler that was replaced was only 2 years old). A "useful life chart" is available at the DHCR or call Met Council.

- The work done was cosmetic, and it was not necessary to cover work on something that was a real MCI. For example, if the landlord replaced the front door and plastering was necessary to repair appearances, that's allowable; however, if the landlord simply wall-papered the vestibule without replacing doors or intercoms, that work does not qualify for an increase.

- The improvement doesn't work or was never finished. Does the new roof leak? Can you use the new mailboxes? Does the buzzer system work for all of the apartments? Do you get constant hot water now that the boiler has been replaced?

- Was the work done by the super, the owner or a company owned by the landlord or his/her family? If so, the landlord can't pass on regular labor costs.

- Were the improvements paid for out of the reserve fund if the building is a cooperative? The tenants then don't have to pay an MCI.

- Are there copies of all bills and canceled checks for the work? Are there copies of all required work and operation permits? Does the landlord have a signed affidavit from all contractors saying that they did the work?

- If the improvements were necessary because of a fire, and the landlord used fire insurance money, the cost cannot be passed onto the tenants. Put the date of the fire in your answer.

- Did the work cost more than industry standards? To find out, check around your neighborhood or community to find out what the general cost of that kind of work is.

- Are there serious violations in the building? The DHCR will prevent the landlord from getting an increase for improvements until the violations are removed. Be sure to get these violations put on the record by filing a Reduction in Services complaint form with the DHCR. If you cannot get the DHCR to inspect the violations, then try to get inspection reports from other agencies (check the NYC HPD website for violations) to show that they exist.

MCI Fact Sheet page 3

■ If the landlord received a J51 tax abatement, the MCI will be less if the work was started on or after June 28, 1988. Tenants should check to see if the landlord received a J51 tax abatement for the work. If so, the MCI increase must be reduced by one half the value of the tax abatement for rent stabilized tenants, and two thirds for rent controlled tenants. You can find out if there is a J51 abatement for your building by calling the city's Department of Housing, Preservation and Development.

■ If the building is not registered with the DHCR, the MCI increase will be delayed until the landlord registers the building. In general, if the landlord doesn't register your apartment every year, there can be no rent increase of any kind. Be sure that you get your annual apartment registration and that the building is registered with the agency.

■ If the landlord has been harassing tenants, file a harassment complaint with the DHCR. Also tell the DHCR if there has been a finding of harassment against the landlord in the past. These can hold off MCI increases.

After filing your building's answer, you will have to wait to hear the DHCR's decision. If new evidence comes to light during this period, you may add it to your file by writing to the agency under your docket number. The agency may approve the landlord's application in total or part, or it may reject it outright.

How Does the DHCR Increase My Rent for the MCI?

If the MCI is approved by the DHCR, all tenants in the building will receive an order with the amount of the increase and what it is for. The DHCR gives only the permanent monthly amount per room per month, not the total rent increase. The DHCR calculates the increase by dividing the amount of money the landlord spent by an amortization period of 84 months and then by the number of rooms in the building. The final figure is what the agency will send to you, along with an explanation of the landlord's allowable costs. (While we use the term "amortization" keep in mind that MCI rent increases are permanent additions to your base rent.)

Rent stabilized tenants' rents can only be increased by 6% a year for an MCI. This means that if your MCI increase is higher than 6% of your rent, your increase will be phased in over a period of years at 6%

installments, until the entire cost is added to your rent. If the MCI application is disputed, the DHCR can take over a year to approve the application so there might be a retroactive increase. The retroactive increase plus the current increase must be 6% or less. For rent control tenants, rents can be increased up to 15% a year, but *there can be no retroactive charge.*

The following points are important in figuring the rent increase:

■ There can be no increase for an apartment if there is a rent reduction order in effect.

■ Lease renewal increases are added on to the base rent which includes the total MCI increase

■ New tenants do not have to pay the increase (if filed for before they moved in and granted after) unless there is a specific clause in the lease warning the tenant of the MCI application with the docket number.

■ If you have a Rent Increase Exemption (SCRIE or DRIE), you don't have to pay the MCI rent increase.

Filing a PAR

You have another chance to challenge the MCI when you get your order. You can file a Petition for Administrative Review (PAR), using the form which should be stapled to the order from the DHCR, within 35 days of the issue date on the order. You must use the same arguments that you used in your original answer. In your PAR (which is read by an administrator, not the same person who read your original answer) you want to argue that the DHCR ignored or unfairly interpreted your answer. Also, add any new information which you could not have gotten during the original answer period.

If your PAR is rejected by the DHCR, your final course of appeal is to file an Article 78 proceeding in the New York State Supreme Court. To do this, you will need a lawyer. You may find that the DHCR rejects the landlord's application and that the landlord files a PAR or an Article 78. Try to keep yourself informed throughout the process and assist the DHCR where possible.