

# Preferential Rents

## A Fact Sheet for Rent Stabilized Tenants

**What is a “preferential rent”?** Many rent stabilized tenants pay a rent that is less than the rent the landlord is legally permitted to charge – this rent is called a **preferential rent**. In most cases, this rent was negotiated between the tenant and the landlord when the tenant first moved in. In some cases, the lower rent was negotiated because the landlord was unable to get the legal rent (because of building conditions, size of apartment or neighborhood reputation) or because the landlord wanted to do a favor for the tenant or in return for something that the tenant was providing (called a concession). However, in many cases the landlord tells a tenant that the rent is a preferential rent but it is not – it is the legal rent – and the landlord is saying the rent is preferential so that the rent can be illegally raised later. The **legal rent**, the highest rent an owner is allowed to charge for a rent stabilized apartment, is established by the apartment’s history of vacancies (about 20%), lease renewals (set by the RGB and depends on the year), improvements during a tenancy, and renovations during vacancy (1/40 the cost of improvements). Landlords are required to put the legal rent on all leases and to register the legal rent with the state housing agency, the Division of Housing & Community Renewal (DHCR), every year. However, many landlords either do not register or register an improperly high rent. The DHCR does not police the registrations or leases—only a tenant complaint can trigger an overcharge award or rent adjustment.

---

### The current scam

Prior to a change in the law in 2003, a preferential rent was permanent for the life of the tenancy. Prior to 2003, when a landlord renewed the lease, the rent had to be based on the preferential rent—the landlord could only return to the legal rent with a new tenant. Thanks to pro-real estate forces in the state legislature, the law now allows a landlord to raise the rent from the preferential rent to the legal rent on any lease renewal provided certain conditions are met.

### In many cases, the higher “legal rent” is a fiction and not legal at all.

Landlords trick tenants into signing leases for rent stabilized apartments saying that the rent is a preferential rent, or by not telling the tenant and simply putting the language in the lease (for tenants who are not likely to read their leases or not understand them) and then registering the legal regulated rent at an artificially high level. After four years, the landlord increases the rent to that regulated rent and the tenant has missed the opportunity to file a challenge. In some of these cases, the legal rent is high enough to get the apartment over the \$2,000 vacancy decontrol threshold. In many cases the difference between the two rents, the rent the tenant is paying and the

legal regulated rent, is hundreds of dollars and the elimination of the preferential rent means that the tenant has to give up the apartment. When this happens, the landlord has successfully deregulated the apartment for all future tenants.

### What rights do tenants with preferential rents have?

Tenants have the right to challenge a higher rent demanded by their landlord, and can do this in a number of ways. Also, tenants who have just moved into an apartment with a preferential rent should examine the rent history for the apartment before the landlord asks for the higher rent.

It is very important for tenants to get accurate legal or lay advice before taking any steps that may affect your rights, such as signing or refusing to sign a lease renewal offer ending the preferential rent, or withholding rent to go to housing court. With a new administration at the state housing agency, and a number of cases going through the courts, the best way to challenge the rent depends on the specifics of the tenant’s history and what the courts and the agency are doing at the time of the challenge. A number of challenge options are on the back of this fact sheet.

---

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](http://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.)

Over, please

**What actions can tenants take?** The success of a tenant's challenge will depend on what the facts are: tenants with preferential rents should gather all of their leases, lease renewals and registration statements. Get a rent history from the DHCR - tenants can call the agency (718-739-6400) or go to a borough rent office (with a copy of the lease and identification). Insist on a rent history back to 1984. The type of challenge tenants should take depends on what leases and the rent history say.

**The choices are:**

- **File an overcharge or failure to renew lease complaint with the DHCR.** NOTE: The DHCR follows an extremely pro-landlord interpretation of the law and this course should only be followed after a tenant gets advice on his/her specific situation. If there is a clear illegal overcharge within the last 4 years shown by the rent history (a jump in the rent that cannot be explained by 1/40th increases for improvements, vacancy allowances, or other allowable increases), the tenant will probably be successful at the DHCR. Example: if the tenant moved in two years ago and the landlord states that the preferential rent is \$1,000 and the legal rent is \$1870 but the tenant in the apartment two years earlier was paying only \$800 and there is no evidence in the apartment of replaced appliances or a renovation, the new tenant will probably succeed at the DHCR with an overcharge challenge.
- **Raise the issue in Housing Court** or file an action for “declaratory relief” in state supreme court if the lease says the preferential rent is for the life of the tenancy or is silent on the issue. There are a number of ways the issue can be raised in Housing Court: (a) the tenant can withhold rent and let the landlord start a nonpayment case in housing court; (b) the tenant may not be able to pay the new rent, and the landlord will start a nonpayment case; (c) the tenant might refuse to sign a renewal offer demanding the higher rent, and the landlord can commence a holdover proceeding based on failure to renew the lease [even if the tenant loses, it is highly likely that the tenant will be given an opportunity to sign the lease at the higher amount, assuming she can pay it, without forfeiting the tenancy, but this is a slight risk]; (d) the landlord could start a holdover on some other grounds (having a dog, for example) and claim in the court papers that the rent is the higher amount. In any case started by the landlord in Housing Court (nonpayment or holdover) the tenant can claim that she has a right to continuation of the preferential rent as a term and condition of the tenancy, leaving it for the Court to determine. Tenants may also have other defenses and claims, both technical and substantive (such as hazardous conditions) which should be raised in any court case. Tenants taken to Housing Court for any grounds, or considering action that may land them there, should get legal advice first. Keep in mind that as a defendant in a housing court case, tenants will be on the “blacklist.”
- **Discuss the issue informally with the landlord.** Be sure that the resulting agreement is reflected in the lease and in amended registration filings. Be aware that if the legal regulated rent was over \$2,000 before moving in and the apartment was de-regulated despite the new tenant paying a preferential rent below \$2,000, it may not be possible to “re-regulate” or make the apartment again rent stabilized simply by contract with the landlord.

**Which challenge should be used?** Examine the rent history, the leases (initial lease and the renewals). Do all of these clearly show the preferential rent and the legal regulated rent with legal increases (that is, increases based on the guidelines in effect when the lease was renewed)? Most preferential rent-paying tenants do not have a lease with clear language indicating that the preference lasts for the duration of the tenancy, but have initial leases which are either ambiguous or silent on this issue. Tenants with clear evidence of an overcharge in the last four years for an apartment that has had no renovations (the landlord is not claiming 1/40th increases for improvements to the apartment) might do best with a complaint filed with the DHCR. Tenants with other fact patterns will probably do better in court.

**Try to get expert advice before proceeding – and be sure to take action before an illegally increased rent has been in the DHCR’s registration system for four years.**

**Tenant attorney Seth Miller, of Collins, Dobkin & Miller, contributed his expertise to this fact sheet.**