



New York State  
Division of Housing and Community Renewal  
Office of Rent Administration

*Emergency Tenant Protection Act  
Tenant Protection Regulations*

*Operational Bulletin No. 92-1 (January 15, 1992)*

***Owner's Notice to New Tenant of Legal Regulated Rent For  
A Vacant Housing Accommodation Previously Regulated  
Under The Emergency Tenant Protection Act and Regulations***

*Section 48, now codified at 9 NYCRR Section 2503.8, of the Tenant Protection Regulations*

This Bulletin relates to the requirement under the Act and Regulations concerning the collection of guideline increases on vacancy whenever an applicable County Guidelines Board has authorized the utilization of comparable apartment rentals for determining rents on vacancy leases.

The Regulations require that an owner of a vacant housing accommodation for lease shall make available to prospective tenants a notice in writing of the monthly rent under the offered lease and of the prior legal regulated rent, if any, which was in effect immediately prior to the vacancy. The Notice must also state that any increase under the offered lease does not exceed the applicable rent adjustment pursuant to the guidelines filed with the Division by the Rent Guidelines Board for the county where the housing accommodation is located, or as otherwise authorized by the Act.

The Regulations further require that a similar notice be added to a tenant's vacancy lease. Where the amount of the rent of the vacancy lease is based on the rent for a comparable apartment as authorized by the County Guidelines Board, the Notice must set forth the prior legal regulated rent, the amount of any rent increase under the lease, the fact that a comparable apartment's rent is being used to establish the vacancy lease rental, and the designation of the comparable apartment, its rent, the number of rooms and services provided. [Note that some Guidelines Board Orders specify the date(s) on which comparable rent(s) must have been charged so as to be eligible for use as the comparable rent.]

The above notices to prospective tenants and to vacancy tenants may be combined into a single notice.

Failure to comply with the notice requirements pursuant to this Operational Bulletin shall bar any rent increase until the owner serves proper notice on the tenant.

When the owner provides the tenant with the required notice in writing, the authorized monthly rent increase shall be collectible prospectively commencing with the first rent payment thereafter. Such notice shall be deemed to have been given when served upon the tenant, or upon the Division in the course of a proceeding to determine the lawful rent for the apartment in question.

*This document is being reissued for informational purposes only.*

*The original document which contains signatures of authorization is on file at DHCR's Office of Rent Administration.*



Under the requirements of the Regulations and consistent with the purposes and intent of the Emergency Tenant Protection Act, for the owner to include a rent increase in the lease of the new tenant based upon comparable vacancy guidelines, the comparable apartment must contain the same number of rooms and should include similar services, equipment and improvements as are provided to the subject apartment, unless there are no other apartments in the building or complex with the same number of rooms, similar services, equipment and/or improvements.

Where there are no other apartments in the building or complex with the same number of rooms, an apartment with a different number of rooms may be used by the owner with an appropriate adjustment to the comparable rent. Where the services, equipment or improvements are not similar, the owner should explain any adjustment in the comparable rent. For example, if an apartment utilized as a “comparable” includes a garage rental and the apartment for which the vacancy rent is being set does not include the same garage services, then the comparable rent that is used must reflect an adjustment commensurate with the garage rental for the apartment. The owner must explain these adjustments in the notice(s) to the prospective/vacancy tenant, as described on page 1 of this Bulletin.

In determining these issues upon tenant challenge, the Division shall look at all the evidence presented to it by the parties or evidence that it develops, including the Registration Statements required to be filed with the Division. If the owner utilizes an apartment that the Division finds is not comparable, than the Division may require the owner to submit additional comparable apartments to justify the rent charged for the subject apartment. If the DHCR finds that there is a different number of rooms the agency will adjust the comparable rent. If there is a variation in services, equipment or improvements in an apartment used by the owner as a comparable apartment that substantially affects the rental value of the apartment, the agency may adjust the rent increase to reflect that variation.

If the applicable guidelines order permits, the owner may, as an alternative to collecting a rent increase based on a comparable rent, be allowed a one (1) or two (2) year guidelines increase depending upon the term selected by the tenant, above the prior regulated rent, plus other adjustments, if any.

If a tenant files a complaint with the Division concerning the rent that can be charged upon a vacancy lease, and the owner fails to respond to the Final Notice or fails to provide a suitable comparable apartment after issuance of a Final Notice permitting him to do so, and the Final Order is issued determining the tenant’s complaint, then the owner shall be barred from ever including that vacancy increase in the computation of the legal regulated rent for that apartment.

*Elliot G. Sander*  
*Deputy Commissioner*  
*for Rent Administration*