

Ask The Administrator

Question: *I have received several inquiries lately from RSA members concerning how they should handle a situation where an existing tenant is vacating an apartment and wants to substitute another person on the lease in that tenant's place.*

Answer: One must first remember that there is a big difference between a substitution of a tenant and a tenant subleasing an apartment. Under current law, a tenant has the right to sublease their apartment provided that they follow a very specific set of rules. Those rules designate the exact way the notice must be given and the justifications an owner has to reject the sublease request.

In fact, under the law, removing one tenant from the lease and adding a new tenant allows the owner to treat the substitution as a request for a new lease. Please remember that the mere substitution of one person for another is an accommodation to the tenant of record and you, the owner, are not required by law to allow it. There is no advantage to you to permit the substitution. It only helps the tenant. If you merely acquiesce to the old tenant's request and substitute names on the lease, the new tenant is now a tenant at the old tenant's rent. A new lease gives an owner the right to collect one vacancy increase that represents 20% increase in rent for a two-year lease every calendar year (and slightly less for a one-year lease). An RSA counselor can assist you with the actual calculation.

Your water and sewer bills are rising this year – a “5.6%” after many years of double digit increases, as are your real estate taxes. Your insurance is probably increasing as well. Furthermore, your heating costs rose dramatically over the winter. So, why would you not seek to increase your legally collectable rent?

Recently, one of the owners I spoke with started with three tenants on the lease and, over the past ten years, not only have the initial tenants left, but their replacements have moved out as well (he is well into the fifth generation). The only increases the owner received were the renewal lease increases allowed by the

Rent Guidelines Board. Yet, he allowed the tenants to move in and out, without ever once taking advantage of his right to a single vacancy increase. In my rough and inexact calculations, the owner could have legally increased the rent 200% on that apartment over the years, as opposed to the 45% that he did receive. We also learned that the old tenants were receiving cash payments from the new tenants in order to “buy into” the cheap rent of the apartment.

Should you as an owner agree to substitute tenants, you must make sure to receive, in writing, a notarized statement from the existing tenants with the specific request and, ultimately, a notarized surrender letter from the tenant leaving. You should insist that the proposed new tenant go through the same RSA background checks (credit, criminal, prior court appearances, etc.) as a new tenant. After you permit the change in tenants, you cannot then retroactively request the background checks. Once you find the tenant to be acceptable, contact an RSA Counselor for assistance and guidance in determining whether you are entitled to a vacancy increase and for the new lease with the required notices and pamphlets.

Please remember one of my mantras: “No good deed goes unpunished.” The best thing you can do to protect your bottom line, and thereby protect your building, is to ensure that substitute tenants pay the vacancy and any other increases allowed by law. ■



Answer provided by Howard Stern, Esq., Administrator of the RSA Legal Plan, who is solely responsible for its content.