

The Rent Charged Clarification Amendment Act of 2018

The Rent Charged Definition Clarification Amendment Act of 2018

Purpose: These bills endeavor to end problems caused by some types of rent concessions. The primary bill makes structural changes to the Rental Housing Act of 1985 to prevent situations where rents are increased to above market levels that engender rent concession abuses. The bill also regulates the use of rent concessions. The second bill clarifies the definition of “rent charged”, consistent with the recent Rental Housing Commission decision in *Fineman v. Smith*, RH-TP-16-30842, January 18, 2018.

Background: The Rental Housing Act protects the affordability of 80,000+ units under rent control. The availability of affordable rent control housing is critical to neighborhood stability, the maintenance of a diverse population, and a healthy economy. The fundamental purpose of rent control is to regulate rents at amounts *less than markets rates* to help protect low- and moderate-income tenants from the erosion of their income from increased housing costs.¹

In 2006, the Council passed legislation that abolished rent ceilings. Rent ceilings are “banked” rent amounts that are greater than the market can bear. (Rent ceilings are built upon annual CPI + 2%², increases, 10% to 30% vacancy increases, and petition increases.) If market rents increase faster than CPI + 2%, housing providers are then able to reach into the “banked” rent ceiling dollars and increase rents by more than they would otherwise be able to do with only a CPI + 2% increase. Thus rent ceilings provide a way for housing providers to get around the CPI + 2% annual rent limitation designed to protect housing affordability and keep rent control units below market rents. Because rent ceilings can effectively nullify rent control, the Council abolished them. However, over the past decade *de facto* rent ceilings have reappeared.

As the purpose of rent control is to keep housing more affordable, *at the very least rent control housing should cost less than market rate housing*. This bill makes structural changes to the Rental Housing Act to help ensure that rent control units remain below market rates, in fulfillment of the intent of rent control.

The Problem of rent concessions: Because of the appearance of *de facto* rent ceilings in amounts higher than what the market may bear, housing providers need to lower rents at least to market levels to rent their units. However, some housing providers do not want to forfeit their “banked” rent ceilings, so they characterize the rents they offer as “concessions” from much higher rent ceiling amounts.

The problem arises when after a year passes and the initial concession lease is over, rents are then significantly raised based not upon CPI + 2% *times* the rent a tenant is *actually paying*, but CPI + 2% *times the much higher rent ceiling*. After these significant increases, tenants are then faced with the stark option of trying to find other affordable housing, or just tightening their belts and paying the higher rent. Sometimes tenants even pay above market rates, calculating into the cost of rent the difficulty of finding other housing and the cost of moving.

For example, a tenant might be paying \$2000 per month on a unit with a rent ceiling of \$2500, representing a \$500 rent “concession” or “discount”. At the end of a one-year lease, the tenant would expect a rent increase of CPI (1.4%) + 2% x \$2000, raising the rent to \$2068. Instead, the housing provider bases the increase on \$2500, increasing the rent to \$2585. If the tenant is charged the full \$2585, instead of a 3.4% increase in rent, the tenant is faced with an untenable ~29% rent increase.

¹ D.C. Official Code § 42-3501.02(1).

² The rents of seniors and tenants with disability are limited to the least of the CPI, the Social Security COLA, or 5%.

As a result of this practice, tenants are faced with the difficult decision of either agreeing to unexpected, dramatic increases in their rent, or searching for new housing accommodations. This is a financially difficult choice that far too many residents of the District are forced to make. By establishing limitations on rent during and after a rent concession is implemented, this bill will bring stability and financial security to tenants.

The solution: The bills address these problems as follows:

- “Rent charged” is defined as the entire amount of money, money’s worth, benefit, bonus, or gratuity a tenant must *actually* pay to a housing provider as a condition of occupancy or use of a rental unit, its related services, and its related facilities.
- The definition of “rent charged” is required to be included on all Rental Accommodations Division forms that include the phrase “rent charged”.
- The rents of all units under rent control are set at the amount of rent tenants *actually are paying* on the effective date of the bill. This eliminates any existing *de facto* rent ceilings, illegal since 2006.
- Any amount of a rent increase permitted under the Rental Housing Act that is not implemented will expire after 30 days. This prevents the re-emergence of future illegal *de facto* rent ceilings.
- An exception to the 30-day expiration of potential rent increases is allowed. The exception might occur when a rent concession is offered to help a tenant when an emergency circumstance makes it difficult for the tenant to pay the full rent charged.
 - If the housing provider lowers the rent by at least 10%, then the potential rent increases that would otherwise have expired after 30-days, do not expire. Instead, the housing provider may preserve the increase for future use when rent is calculated for the *next* tenant.
 - The same applies to a new tenant where the rent is lowered by at least 10% less than the rent of the previous tenant.
- Additionally:
 - Whenever a tenant is given a discounted rent, then all rent increases for that tenant are based on the discounted rent (the actual rent charged), and not the higher “preserved” rent.
 - Any late fee a housing provider may charge a tenant for the late payment of rent must be based on the actual rent charged, and not the higher “preserved” rent.
 - All rental advertisements must include the proposed rent charged and any unexpired rent surcharges.