

Borough of Fair Lawn, NJ
Thursday, April 11, 2013

Chapter 177. RENT CONTROL

[HISTORY: Adopted by the Council of the Borough of Fair Lawn 7-27-1982 as Sec. 11-6 of the 1981 Revised General Ordinances; amended in its entirety at time of adoption of Code (see Ch. 1, General Provisions, Art. I). Amendments noted where applicable.]

GENERAL REFERENCES

Housing Authority — See Ch. 19.
Affordable housing — See Ch. 49.
Schedule of Fees — See Ch. 94, Art. VI.
Heating — See Ch. 117.
Rent Leveling Board — See Ch. 2.
Housing Authority — See Ch. 19.
Affordable housing — See Ch. 49.

§ 177-1. Preamble.

It is deemed necessary by the Borough Council in view of the demand for apartment dwelling units within the borough that some type of Rent Leveling and Control be enacted by the Council, and the use of a relationship between the consumer price index issued by the U.S. Bureau of Labor Statistics as provided in prior ordinances has resulted in inequities, and under the police powers granted to the Council in order to promulgate the health, safety and welfare of the citizens of the borough a Rent Leveling and Control Board is determined to be necessary within the borough.

§ 177-2. Definitions.

As used in this chapter, the following terms shall have the meanings indicated:

AVAILABLE FOR RENT TO TENANTS

Fit for habitation as defined by the Housing Inspection Code and occupied or unoccupied and offered for rent.

BASE RENT

The lawful rent in effect for housing space and garage or parking space, if any, on July 1, 1982, plus any increases specifically permitted by ordinance subsequent to that date or adjudicated by the Rent Leveling Board.

COMPLEX

A group of two or more dwellings which are operated as a single entity for management purposes.

DWELLING

Any building or structure rented or offered for rent, commonly known as an "apartment," and in addition, any housing unit that is not exempt as set forth hereinafter. Exempt from this section are housing units of two units or less in which the owner of the premises resides. Housing units newly constructed and rented for the first time are exempted, and the initial rent may be determined by the landlord. All subsequent rents will be subject to the provisions of this section.

HOUSING SPACE

That portion of a dwelling, rented or offered for rent for living and dwelling purposes to an individual or family unit together with all privileges, services, furnishings, furniture, equipment, facilities and improvements connected with the use or occupancy of such portion of the property.

JUST CAUSE

Action on the part of the landlord in refusing to let, rent, relet or reread to a tenant or basis for dispossession for any one or more of the following:

- A. Failure on the part of the tenant to pay rent due and owing under the lease when the same is oral or written.
- B. Disorderly or disturbing noises or conduct on the part of the tenant that destroys the peace and tranquillity of the landlord, other tenants or other persons living in or about the neighborhood.
- C. Intentional or persistent neglect, damage or injury by the tenant to the property of landlord.
- D. Constant violation by the tenant of the rules and regulations of landlord if signed by tenant or incorporated in the lease with a copy being given to tenant.
- E. Substantial breach of the terms and conditions of the lease agreement by the tenant.
- F. Owner seeks to occupy premises himself/herself.
- G. Owner seeks to close premises down without permitting any further occupancy.

LEASES

Any contract or agreement to let or hire for rent a housing space, and garage or parking space, if any, whether it is in writing or oral.

MAXIMUM RENT

The highest legal rent payable and includes all rent increases authorized under this chapter to date.

MONTH-TO-MONTH TENANT

A tenant whose right to occupancy of the premises is renewable monthly, and this right may be evidenced by a written agreement or it may depend upon a simple oral agreement.

PERCENTAGE DIFFERENCE

That factor arrived at by dividing the point change between the two appropriate consumer price indexes by the lower index.

PERIODIC TENANT

A tenant whose right to occupancy of the premises is for a term certain, and is evidenced by a written agreement commonly known as a "lease."

PRICE INDEX

The Consumer Price Index (all items) for the region of the United States of which northeastern New Jersey is a part, published periodically by the Bureau of Labor Statistics, United States Department of Labor.

TENANT AT WILL

A tenant whose right to occupancy of the premises is for an uncertain period, arrived at solely by oral agreement, and subject to the will of the landlord.

§ 177-3. Establishment of rent.

- A. Establishment of rents for a dwelling between a landlord and a tenant, to whom this chapter is applicable, shall hereafter be determined by the provisions of this chapter. At the expiration of the lease of a periodic tenant, where said lease is for a term of one year or more, and for any lease or letting for less than one year, at the expiration of every twelve-month period following first letting, whether or not the landlord has ever presented the tenant with a lease, the maximum rent that a landlord may request or receive as a rent increase shall be 4% of the current rent or the percentage increase of the Consumer Price Index, whichever is less, as established by the U.S. Department of Labor, Bureau of Labor Statistics for the New York, New York - northeastern New Jersey area, or its successor.
- B. The maximum rent as set forth in this chapter shall not include any additional rent for garages and parking spaces. The landlord and tenant shall execute a separate agreement for rent to be charged for garages and/or parking spaces. This separate agreement may be set forth in the same lease document for the premises but shall be listed separately and conspicuously. The lease shall break down the rent of the apartment as one item of cost and the rent for garages and parking spaces as a separate item of cost. Increases for the rent for garages and/or parking spaces under this chapter shall be the same as the permissible percentage increase for the rent for the dwelling as set forth in this chapter. On vacancy of a housing unit, no landlord may request or receive a new rental for said housing unit in excess of 10% of the maximum rent last charged for said housing unit. Said increase may only be charged once in any twelve-month period, no matter how often said housing unit becomes vacant. When any apartment becomes vacant, the increase on vacancy as permitted by this subsection shall be added to the maximum rent legally charged to the last tenant that occupied said apartment.
- C. No increase on vacancy shall be charged where the vacancy is caused by a failure of habitability of the housing unit unless and until the housing unit is made fully habitable and a certificate of reoccupancy is issued by the building maintenance official of the Borough of Fair Lawn.
- D. Where a tenant moves from one apartment to another within the same complex, the landlord may charge the increase of rent permitted on vacancy both to the apartment vacated by the moving tenant and to the apartment to be occupied by the tenant.
- E. To establish the "base rent," July 1, 1982, shall be used as the date for first computation for purpose of calculating the maximum rent.

F. The provisions of this chapter permitting certain annual increases in rent and increases on vacancy of apartment, are in lieu of any other surcharge for taxes, major capital improvements, increased services or other increases in rental payments, including payments denominated as "payment in lieu of rent." Such additional charges are prohibited except as may be allowed by the Rent Leveling Board, on a proper application filed pursuant to § 177-10 of this chapter.

§ 177-4. Rents relating to vacancy/occupancy decontrol.

Capital improvement(s) for vacant dwellings. Notwithstanding the provisions of § 177-3, the rent between a landlord and a tenant, to whom this chapter is applicable, shall hereafter be determined by the provisions of this section should the option provided herein be selected by the landlord. The landlord may seek and obtain a rent for a vacant dwelling without limitation, provided that the following conditions are met:

- A. The value of the dwelling shall be determined by the Borough Assessor. The Assessor shall execute a certification as to the amount equal to 15% of the value of the dwelling.
- B. The landlord shall spend an amount equal to at least 15% of the value of the dwelling for capital improvements to that dwelling. A "capital improvement" shall be defined as those permitted pursuant to the Federal Internal Revenue Code codified as 26 U.S.C.A., § 263, and the rules and regulations relating thereto. Generally, a capital improvement shall be an expenditure that adds to the value or useful life of the dwelling and is not allowed as an expense deduction by the landlord. Capital improvements shall include but not be limited to new construction relating to the dwelling, new bath fixtures, kitchen cabinets, kitchen fixtures, air-conditioning installation, heating system installation, electrical rewiring, electrical outlets, replacement of doors, windows or other fixtures. Incidental repairs which are defined as expenditures that keep property in an ordinarily efficient operating condition and do not add to its value or appreciably prolong its useful life shall not be deemed capital improvements under this chapter.
- C. In the event the landlord elects to make a capital improvement(s) under this chapter, the landlord shall apply to the Rent Leveling Board for approval. The Rent Leveling Board shall establish the appropriate forms for submission to it which shall include but not be limited to the following:
 - (1) Certification by Tax Assessor as to full value of the dwelling and 15% thereof.
 - (2) An itemization of the specific capital improvements that the landlord desires to make.
 - (3) The rent charged by the landlord to the last tenant that occupied the dwelling to be improved.
 - (4) Such other reasonable and necessary information that is required by the Rent Leveling Board for the application.
- D. Upon submission of a completed application by the landlord, the Rent Leveling Board shall render its determination no later than the second regular meeting of said Board after the date of the submission of a complete application.

- E. The capital improvement(s) shall not be deemed complete until an inspection is made by the appropriate borough official with respect to the improvement(s), to wit: Construction Code Official or any Subcode Official, Code Enforcement Officer, etc. The landlord shall submit to the Rent Leveling Board a certification of satisfactory completion of the improvement(s) by these officials. Upon receipt, the Rent Leveling Board shall issue final approval for the capital improvement(s) and the landlord shall then be entitled to enter into a lease agreement with a tenant for such ever rent as shall be negotiated between them.
- F. Once the new base rent pursuant to § 177-4 is established, the limitation with respect to any rental increases set forth in § 177-3 shall apply.
- G. A landlord may only elect to implement a capital improvement and receive the increase set forth in Subsection E hereof once in any five consecutive years.
- H. In any calendar year, a landlord may only elect to implement a capital improvement under this chapter for not more than 15% of the total number of dwellings in the respective complex where they are located.

§ 177-5. Base rent established.

The base rent shall be deemed to be lawful rent for the housing space which was in effect on July 1, 1982, plus any increases which have been adjudicated by the Rent Leveling Board as allowable under the provisions of this chapter.

§ 177-6. Number of rent increases limited.

Neither a periodic tenant whose tenancy is for less than one year, nor a tenant at will shall suffer or be required to pay more than one rent increase within any single twelve-month period.

§ 177-7. Escalator clauses.

Escalator clauses, and clauses which require the tenants to assume the cost of painting or waive their rights in connection with the painting of the housing space shall be declared null and void. Any clause in a written lease or any oral agreement in a tenancy at will which ignores, denies or seeks to subvert the provisions of this chapter or the rules and regulations and the decisions of the Rent Leveling Board shall be deemed to be against public policy and shall be null and void; except that agreement to appeal through the exercise of due process is deemed not to fall within the meaning of this chapter. The presentation of a lease to a tenant which violates this clause shall be deemed subject to the penalties of this chapter. A landlord claiming benefits under the provisions hereof on the basis of a renewal lease shall present a written lease to the tenant at least 50 days before the new renewal period date.

§ 177-8. Procedure required for landlord seeking percentage increase.

- A. Any landlord seeking a percentage increase in rent shall notify the tenant, pursuant to the laws of the State of New Jersey, by certified mail, return receipt requested, or by personal service, of the calculations involved in computing the increase, including:

- (1) The lawful base rent in effect for the housing space prior to the requested increase;
 - (2) Plus the lawful base rent in effect for garage and/or parking space, if any;
 - (3) The basis for the calculation of the increase, whether using 4% of the current rent or the percentage increase of the Consumer Price Index, whichever is less, as established by the U.S. Department of Labor, Bureau of Labor Statistics for the New York, New York - northeastern New Jersey area;
 - (4) Other rent increases previously authorized by the Rent Leveling Board.
- B. The sum of all items in Subsection **A(1)** through **(4)** multiplied by the allowable percentage equals the allowable increase.

§ 177-9. Reduction in property taxes; benefit to tenant.

Every rental arrangement shall assume a continuation of the present tax structure in the state. Should the tax structure of the state be modified so that local property taxes are reduced substantially, any savings accruing to the landlord shall be refundable to the tenant in proportion to the space occupied by the tenant to the amount of rentable space, and such tax reduction shall result in a reduction of the maximum rent.

§ 177-10. Rental increase for extreme financial hardship.

- A. A landlord may apply to the Rent Leveling Board (hereinafter "Board") for increased rentals in a building based on economic hardship relating to that building. To qualify under this provision, the landlord must demonstrate that the building meets a minimum threshold requirement by proving that net operating expenses exceed 60% of the total gross income.
- B. Application for a hardship increase shall be on the form specified by the Board and shall be filed with the Rent Leveling Board. The following information must be filed along with the application:
- (1) A rent roll which lists the rent for each apartment in the building for each of the four immediately preceding one-year periods.
 - (2) A detailed operating statement for each of the four immediately preceding one-year periods, or if the applicant has owned the building for less than four years, for each year the applicant has owned the building, certified by an accountant to be true and accurate.
 - (3) Any other evidence relevant to the application on which the applicant intends to rely.
- C. At the time of the application, the applicant must provide 12 complete copies of the application along with a filing fee in the form of a check made out to the Borough of Fair Lawn in the amount as set from time to time by resolution of the Borough Council. *Editor's Note: See Ch. 94, Fees, Art. VI, Schedule of Fees.*
- D. The applicant must, within 10 days of the filing of the application, notify each tenant in the building that an application for a hardship increase has been filed and that all books and records applicable to the operation of the building are available for review. Such notice shall

be in the form of certified or registered mail or personal service, providing a signed acknowledgment of service is obtained. The applicant shall certify to the Board that notice has been given.

E. If the applicant fails to meet the requirements of this section, the Board shall reject the application without prejudice to reapplication upon completion of the necessary requirements.

F. Hearing.

(1) If the applicant meets the above requirements, the Board shall hold a hearing on the application no sooner than 30 days nor later than 75 days after acceptance of the application.

(2) At least 10 days in advance of the hearing, the applicant shall notify all tenants of the hearing date as specified in this chapter above.

(3) At the hearing, the applicant will be required to prove the following:

(a) That the notice requirements of this section have been complied with.

(b) That the accounting practices used in the preparation of the operating statements and any other financial documents submitted are normal and consistent with the guidelines set forth in applicable chapters of the Internal Revenue Code.

(c) That reasonable attempts have been made by the applicant to alleviate the source of the hardship.

G. The Board may establish such other criteria as it may deem generally appropriate or warranted in an individual case and shall give affected tenants the right to present testimony or other evidence.

§ 177-11. Formula for determining hardship increase.

A. If the Board determines that the applicant has met all the requirements of the foregoing chapter, it will compute the following:

(1) The percentage of net operating expenses to total gross income shall be computed for each of the applicable prior years.

(2) The Board shall determine the landlord's total gross income that results directly or indirectly from the operation of the building, including but not limited to:

(a) All rent received or collectible, including any rent or income from a less than arms length transaction.

(b) The landlord's share of interest on security deposits.

(c) Late fees.

- (d) Parking fees.
- (e) Pool fees.
- (f) Insurance proceeds less expenses applicable to the insurance claim.
- (g) Amounts received from successful tax appeals in excess of reasonable expenses necessary to obtain the tax rebates.
- (h) Income tax rebates.

- (3) The percentage of net operating expenses to total gross income for the most recent year shall be compared to the average of the prior applicable years.
- (4) If the most recent year's percentage of net operating expenses to total gross income exceeds the average of the prior applicable years and the most recent year's percentage of net operating expenses to total gross income exceeds 60%, the applicant shall receive a hardship rent increase sufficient to restore the percentage of net operating expenses to total gross income of the most recent year to the average of the prior applicable years.

B. In making the computations, the Board may allow those expenses which it deems to be reasonable and necessary for the efficient operation of the building.

C. The formula for figuring the hardship increase, if the Board has determined there is a hardship, is as follows:

$$\frac{\text{Net operating expense (4th year)}}{\text{Three-year average (as a decimal)}} = \text{New rental to cure hardship}$$

For example, if the three-year average of expenses to total gross income is 64% and the net operating expense in the fourth year is \$10,000, the new yearly rental figure will be:

$$\frac{\$10,000}{.64} = \$15,625$$

.64

D. Any hardship increase granted will be expressed in numerical amount. The amount of rent increase shall be apportioned to each tenant in a dollar amount per room.

E. The hardship increase shall become a permanent part of the base rent.

F. Any increase granted under this chapter shall be in addition to any increase granted under § **177-3** of this chapter.

G. No increase granted pursuant to this section shall take effect until the borough's Tax Collector notifies the Board in writing that all property taxes are current except for arrearages authorized by law, and any tax rebates due have been paid.

H. The landlord shall, 30 days prior to the date the increase shall take effect, notify all affected tenants of the increase and the amount apportioned. Such notice shall be by certified or registered mail or personal service, provided a signed acknowledgment is obtained.

§ 177-12. Establishment of Rent Leveling Board.

There is hereby created a Rent Leveling Board within the borough. The Board shall be constituted as set forth in Chapter 2 of the Code of the Borough of Fair Lawn. Where any regular member is absent from any hearing, the Chair of the Rent Leveling Board shall designate an alternate to sit for the absent member, from the same class as the member missing, i.e., if a landlord member is absent, Alternate 1 shall sit, etc. Once seated in a matter, the alternate shall hear that matter to its conclusion and shall exercise all powers of a regular member, including the power to vote. An alternate may not be designated to sit except for a regular member of the same class. An alternate may attend meetings and participate, but may not cast a vote, on any matter, unless specifically designated to sit for an absent member.

§ 177-13. Powers and duties of Rent Leveling Board.

- A. The Rent Leveling Board is hereby granted, and shall have and exercise, in addition to other powers herein granted, all powers necessary and appropriate to carry out and execute the purposes of this chapter, including but not limited to the following:
- (1) To issue and promulgate such rules and regulations as it deems necessary to implement the purposes of this chapter, which rules and regulations shall have the force of law until revised, repealed or amended by the Board in the exercise of its discretion, provided that such rules are filed with the Municipal Clerk.
 - (2) To supply information and assistance to landlords and tenants to help them comply with the provisions of this chapter.
 - (3) To hold hearings and adjudicate applications from landlords for additional rental as determined by § 177-10.
 - (4) To hold hearings and adjudicate applications from tenants for reduced rental by reason of relevant provisions of this chapter, including § 177-17.
 - (5) To issue orders directing refund or rent credit to the tenant of rent collected by the landlord in excess of the maximum rent permitted by this chapter. Regardless of the date on which the tenancy commenced, the amount of excess rent which the landlord must refund shall be limited to the excess rent collected by the landlord prior to the three years immediately preceding the date of the filing of the complaint and for any overcharge subsequent to the filing of the complaint with the Rent Leveling Board. Such refund or credit against future monthly rents shall be required within 30 days after the issuance date of the order.
 - (6) To review, on appeal, a decision of the Municipal Clerk relative to determinations of eligibility, on the application of any tenant for protected status under the provisions of the Senior Citizens and Disabled Protected Tenancy Act (P.L. 1981, c. 226) *Editor's Note: See N.J.S.A. 2A:18-61.22 et seq.* in any condominium, cooperative or other similar

conversion of any dwellings covered by this chapter. Such review shall be initiated by the applicant, by proper application to this Board together with a check made payable to the Borough of Fair Lawn for a filing fee in the sum as set from time to time by resolution of the Borough Council. *Editor's Note: See Ch. 94, Fees, Art. VI, Schedule of Fees.*

- B. In all proceedings before the Rent Leveling Board, the Board shall have the right to demand and receive from the landlord its current rent roll and any and all other rental information that the Board deems relevant to the proceedings before it. If a landlord shall be required by the Board to produce such information and shall fail to do so, the landlord's application may be dismissed, or testimony by or on behalf of the landlord may be suppressed, as the Board shall direct.
- C. In all proceedings before the Rent Leveling Board, the Board shall give reasonable opportunity to be heard to both landlord and tenant before making any determination.
- D. There is hereby created the position of Enforcement Officer for the Rent Leveling Board within the borough. The Secretary to the Board shall also hold the position of Rent Leveling Board Enforcement Officer who shall serve without additional compensation. The Enforcement Officer shall be appointed by the Rent Leveling Board at its annual reorganization meeting for a term of one year. The duties of the Enforcement Officer are as follows:
- (1) Assure compliance with the submission of rent roll documentation pursuant to this chapter.
 - (2) Assure compliance with submission of documentation that landlords have complied with §§ 177-16 and 177-19.
 - (3) The Enforcement Officer shall be the individual in whose name the appropriate summons may issue for any violation of this chapter.

§ 177-14. Standards maintained.

During the term of this chapter, the landlord shall maintain the same standards of service, maintenance, furniture, furnishings and equipment in the housing space, dwelling or complex as he/she provided or was required to provide by law or lease, or by other agreement at the date of the lease or other agreement was entered into by landlord and tenant. Failure to do so shall constitute grounds for the tenant to apply to the Rent Leveling Board for authorization to pay a lower rent than the rent to which the landlord and tenant had earlier agreed.

§ 177-15. Excess rents; notice to move because of complaint prohibited.

- A. No landlord shall charge any rents in excess of what he/she was receiving on July 1, 1982, for the same premises except for increases lawfully authorized by this chapter.
- B. No landlord shall be entitled to recover possession of any controlled premises except for just cause, as defined in this chapter.

- C. No landlord or premises or dwelling units to which this chapter is applicable shall serve a notice to quit upon any tenant or institute any action against a tenant to recover possession or premises, whether by summary dispossession proceedings, or otherwise, as a reprisal for the tenant's complaint to the Rent Leveling Board of the landlord's alleged violation of the rent ordinance or as a reprisal for the tenant's complaint to a governmental authority concerning alleged violation of any health or safety law, regulation, code or ordinance.
- D. In any action brought under the proceeding subsection, the tenant's receipt of a notice to quit the rented premises or any substantial alteration of the terms of his/her tenancy without just cause within six months after making a report or complaint or within six months after any proceeding resulting from such report or complaint shall create a rebuttable presumption that such notice or alteration is a reprisal against the tenant for making such report or complaint.
- E. A landlord shall be subject to a civil action by the tenant for damages and other appropriate relief, including injunctive and other equitable remedies, as may be determined by a court of competent jurisdiction, in any case in which the landlord has violated the provisions of this chapter. Such landlord shall also be subject to the penalties set forth in § **177-20**.

§ 177-16. Listing of rents.

- A. All landlords with premises subject to Rent Leveling shall advise any new tenant as to the amount of rent paid for the apartment by the immediately preceding tenant. Such notice shall be accomplished by providing the new tenant, prior to the execution of the new lease or agreement to rent, with a written certification signed by the landlord or his/her agent setting forth the amount of rent paid by the immediately preceding tenant.
- B. All leases executed between landlords and tenants shall state in a conspicuous manner what the rent for the apartment covered by the lease had been for the immediately preceding tenant.
- C. All landlords shall print or otherwise insert, on each new lease or lease renewal, the following language: "Rent on this apartment is required to be computed in accordance with certain guidelines established by the municipal Rent Leveling Ordinance, which ordinance is administered by the Fair Lawn Rent Leveling Board."
- D. Each landlord shall submit to the Rent Leveling Board the current rent roll in effect as of July 1, 1982, in order to establish a record as to base rent, as defined in § **177-2** above.
- E. All landlords of controlled dwelling units shall file with the Rent Leveling Board by January 31 in each year a list of rents charged by building and apartment number. In addition, this list of rents shall be updated by July 31 in each year to reflect any change in the list of rents for the period between January 31 and July 31.

§ 177-17. First-time rentals.

The owner of housing space or dwelling being rented for the first time shall not be restricted in the initial rent he/she charges. Any subsequent rental increase, however, shall be subject to the provisions of this chapter.

§ 177-18. Purpose.

This chapter being necessary for the welfare of the borough and its inhabitants shall be liberally construed to effectuate the purposes thereof.

§ 177-19. Landlord to notify Rent Leveling Board of new tenant and monthly rental.

Every landlord affected by this chapter shall notify the Rent Leveling Board of the name of the new tenant and the monthly rental being paid by him/her.

§ 177-20. Violations and penalties.

Any person or entity who shall violate the provisions of this chapter shall, after a summons is issued under the terms hereof, upon conviction, be punished as follows:

- A. For a first offense, by a fine not to exceed \$250.
- B. For a second offense, by a fine of not less than \$100 nor more than \$350.
- C. For a third or subsequent offense, by a fine of not less than \$250 nor more than \$500 or by imprisonment in the county jail for a period not to exceed 90 days, or both.