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How to Win Eviction Case Against Tenant Who Overcharges Roommate

If you discover that a rent-stabilized tenant is overcharging a roommate, you may be able to win the tenant's eviction in housing court. But winning these types of eviction cases isn't easy, says Manhattan attorney Adam Leitman Bailey. You have to prove that the tenant, in fact, has been charging the roommate more than what's allowed by Rent Stabilization Code Section 2525.7, which bars a tenant from charging a roommate more than his proportionate share of the rent. We'll tell you what Section 2525.7 and the courts have said about overcharging roommates. And we'll tell you what to do to improve your chances of winning this type of case.

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Tenant Overcharges

Roommate (continued from p. 1)

Code Bars Tenants from Overcharging Roommates

Section 2525.7 of the Code bars a tenant from charging a roommate more than his proportionate share of the rent. Here's how the Code says to calculate what a roommate's proportionate share of the rent is.

Step #1: Add the total number of tenants named on the lease (not including the tenant's spouse) and the total number of occupants (not including a tenant's family member or an occupant's dependent child) living in the apartment.

Step #2: Divide the apartment's legal regulated rent by the number you got in Step #1. This number is the roommate's proportionate share of the rent.

Example: One tenant named on a lease lives in a rent-stabilized apartment. The tenant's child also lives in the apartment. The apartment's legal regulated rent is \$1,200 per month. The tenant then takes on an unrelated roommate. Here's how you would calculate the roommate's proportionate share of the rent.

First, add the number of tenants named on the lease (one) and the number of unrelated roommates (one). Don't count the tenant's child.

Your total is two. Then divide the legal regulated rent (\$1,200) by two. The roommate's proportionate share of the rent is \$600.

If roommate chips in for additional expenses. Some tenants may claim that they can charge a roommate more than the proportionate share of the rent for certain additional expenses or services—for example, furniture or electricity. But some courts have rejected this justification, says William J. Neville of the Manhattan law firm of Mitofsky Shapiro Neville & Hazen, LLP.

For example, in one case, a lower court ruled that a tenant couldn't justify charging a roommate more than his proportionate share of the rent by claiming that the extra amount was for various additional services, including the tenant's cleaning of the apartment. Instead, the court said, the tenant should have figured out a specific dollar amount for these expenses, and then divided them between himself and the roommate. By charging this additional amount, the tenant had overcharged the roommate.

The tenant appealed. Although the appeals court agreed with the lower court that these extra charges weren't permissible, it ruled that given the total amount of the rent overcharge and the tenant's belief that he was entitled to charge for these additional

items, the tenant could avoid eviction by refunding any overcharges to the roommate [*Roxborough Apartments Corp. v. Becker*].

In another eviction case involving a tenant who overcharged a roommate, the tenant claimed that the additional \$411.11 she was charging was actually a surcharge for electricity and the use of her furnishings. But the court ruled that this amount was beyond any "reasonable apportionment" for the electricity and furnishings, and therefore was an overcharge for which the tenant could be evicted [*Breson Corp. v. Halo*].

Be wary that some judges may take a different view and let the tenant add a charge for extra expenses or services, notes Bailey.

When Eviction Is Permitted

Under the right circumstances, courts have let owners evict tenants who've overcharged their roommates. For example, an appeals court recently ruled that an owner could evict a tenant who overcharged her roommates. The owner proved that the tenant had rented a portion of her apartment to a series of roommates and had charged each of the roommates nearly double the monthly stabilized rent [*W. 148 LLC v. Yonke*].

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Tenant Overcharges

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But a court may not give you the right to evict the tenant if it decides that the overcharge amount was minor. For example, another appeals court refused to let an owner evict a tenant who had overcharged his roommate. The amount of the overcharge was small, and there was no evidence of bad faith or an intent to profiteer [*54 Greene St. Realty Corp. v. Shook*].

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PRACTICAL POINTER: What if you find out that a rent-controlled tenant is overcharging his roommate? You can't evict the rent-controlled tenant, according to a recent appeals court case. The court said that the rent control law doesn't bar tenants from charging roommates more than their proportionate share of the rent. Therefore, there's no legal basis for the owner to evict a rent-controlled tenant in this situation [*WSC 72nd St. Owners LLC v. Bondy*].

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How to Find Out About Overcharge

One of the hardest things about these cases is finding out that the tenant is overcharging a roommate, says Bailey. Here are some suggestions:

1) Speak to building employees.

Ask your employees if they've noticed that a tenant has a new roommate. You may even want to offer your employees a cash bonus if they tell you about a roommate and that information leads to an eviction, says Bailey. Once you've identified the roommate, try to learn the details of his occupancy, including the amount of rent he's paying the tenant. You may need to hire a private investigator

who's skilled at getting useful information without alarming the roommate, says Neville.

2) Read classified ads. Check classified ads in community newspapers, and check bulletin board postings in area supermarkets and banks, suggests Neville. You may see a listing for a tenant who's advertising for a roommate at an illegal amount.

3) Review rent checks. You may get a check directly from the roommate for his part of the rent, says Bailey. If so, you can easily tell how much rent the roommate is paying.

Get Roommate's Cooperation

It's difficult to win this type of case without the roommate's cooperation, says Bailey. Here are some tips on getting the roommate's cooperation.

1) Offer roommate another apartment. If you have another rent-stabilized apartment in your building, you can offer it to the roommate at a preferential rent. Or you can offer the roommate an unregulated apartment in your building at a discounted rent.

2) Offer roommate money. You can offer the roommate money to cooperate with you by giving you the proof you need (see below).

3) Let roommate know he's being overcharged. The roommate may cooperate after he learns that he's being overcharged and is entitled to triple damages from the tenant, says Neville.

Get Proof

Once you have the roommate's cooperation, get the proof you'll need to win your case. Evaluate this proof with your attorney to see whether it's worth the effort to go forward with the case, says Bailey. Or you could

present this proof to the tenant to try to get the tenant to settle the case either by moving out or for a set sum of money. When confronted with overwhelming proof, tenants sometimes give in and agree to settle, says Bailey.

For example, ask the roommate for:

- Copies of cancelled rent checks. This will show that the roommate was, in fact, paying more than his proportionate share of the rent.

- Signed affidavit. This is a sworn (notarized) statement. It should state how long the roommate has been living in the apartment with the tenant and the amount of rent that the roommate is paying. It should also state whether the tenant is providing the roommate with any furnishings or other services, and list those services. Keep in mind that a court may decide that the tenant can charge the roommate extra for these items.

Getting a signed affidavit will also help you if the roommate later backs out and decides not to cooperate, says Bailey.

- Photos of inside of apartment. You'll want photographs to show that the roommate is indeed living in a specific area of the apartment, says Bailey. For example, it's good to have a photograph showing the door to the roommate's room, especially if that door has a lock on it.

- Written agreement. If there's a written agreement between the tenant and the roommate, get a copy of it. ■

- *Breson Corp. v. Halo*: NYLJ, 6/23/04, p. 19, col. 1 (Civ. Ct. NY).

- *54 Greene St. Realty Corp. v. Shook*: 779 N.Y.S. 2d 77 (App. Div. 1 Dept. 2004).

- *Roxborough Apartments Corp. v. Becker*: NYLJ, 4/5/06, p. 28, col. 2 (App. T. 1 Dept.), affirming 784 N.Y.S. 2d 924 (Civ. Ct. NY 2004).

- *W. 148 LLC v. Yonke*: NYLJ, 2/13/06, p. 26, col. 3 (App. T. 1 Dept.).

- *WSC 72nd St. Owners v. Bondy*: 806 N.Y.S. 2d 449 (App. T. 1 Dept. 2005).