

## DHCR Sets Monthly Surcharges You May Collect for Tenant-Installed Appliances

The Division of Housing and Community Renewal (DHCR) just set the monthly surcharges you can collect from rent-controlled and rent-stabilized tenants who buy and install their own portable or permanent washing machines, dryers, or dishwashers. The surcharges are set out in DHCR Operational Bulletin 2005-1. For your convenience, we've reproduced the Operational Bulletin on p. 2.

The DHCR says the surcharges set in the Operational Bulletin are in effect immediately and that it will apply them in all currently pending cases in which the owner is seeking a surcharge for one of these tenant-installed appliances.

The Operational Bulletin implements a change made to the Rent Stabilization Code in December 2000. That change authorized owners to collect surcharges for tenant-installed appliances and directed the DHCR to set the amount of the surcharges (for more information, see "Two New Rent Surcharges Authorized by Revised Code" in *ALI*, Feb. 2001, p. 3).

We'll tell you how much the Operational Bulletin says you can collect for each type of appliance and how to collect the surcharges. We'll also give you two examples of letters you can send to tenants to notify them about a surcharge.

### How Much to Collect

The amount you may collect as a monthly surcharge depends on the type of portable or permanent appliance the tenant installs and who pays for electricity.

**Practical Pointer:** According to the Operational Bulletin, these amounts will remain in effect at least through Sept. 30, 2006. At that time, the DHCR may update them. If it doesn't do so, they'll continue to apply until the DHCR does update them.

### When to Collect

Both Rent Stabilization Code (RSC) section 2522.9 and the Operational Bulletin say that you may collect the surcharge when you consent to the tenant's installation of a portable or permanent washing machine, dryer, or dishwasher in the tenant's apartment.

You may collect the surcharge in the following two situations:

1) The tenant asks your permission to install and use a washing machine, dryer, or dishwasher in his apartment, and you consent. In this situation, you may start collecting

Appliance	Who pays for electricity	Surcharge
Washing Machine	Tenant	\$.13.62
Washing Machine	Owner	\$.14.92
Dryer	Tenant	\$.00.00
Dryer	Owner	\$.10.89
Dishwasher	Tenant	\$.03.77
Dishwasher	Owner	\$.05.50

the surcharge as of the date the tenant installs the appliance; or

2) You discover that the tenant has already installed a washing machine, dryer, or dishwasher in his apartment, and you consent to the appliance's continued use. In this situation, you may start collecting the surcharge prospectively—from the date you give your consent to the continued use of the appliance.

Note that in this second situation, you may want to speak with your attorney about your other options instead of collecting the surcharge. For example, you may want to try to get the tenant to remove the appliance. Or you could sue to evict the tenant for installing the appliance without first getting your consent.

**If lease allows tenant to install appliance.** The Operational Bulletin says nothing about whether you may collect the surcharge if your lease with the tenant specifically allows the tenant to install these appliances. So should you collect the surcharge in this situation? Yes, says Manhattan attorney Adam Leitman Bailey, unless your lease with the tenant says that you can't collect any extra amount from a tenant who installs a permitted appliance.

But keep in mind that the DHCR (and the courts) haven't yet ruled on this issue. They may decide it on a case-by-case basis, depending on the terms of your lease. To be safe, speak to your attorney before collecting a surcharge in this situation.

**PRACTICAL POINTER:** What if you've known about the tenant's appliance for several years, but haven't collected the surcharge because you didn't know how much you could collect? Can you now start collecting the surcharge from the tenant? Neither the RSC nor the Operational Bulletin specifically addresses this situation, points out Leitman Bailey. So it's not clear if you may collect the surcharge under these circumstances. The answer may depend on a number of factors, including how long you've known about the appliance and whether you gave the tenant permission. The DHCR may offer further guidance as it decides cases in which owners claim that they have the right to collect the surcharge. We'll keep you posted on any new developments. In the meantime, speak with your attorney if you're in this situation.

## How to Collect

The Operational Bulletin makes clear that you shouldn't include the monthly surcharge in the tenant's base rent. That is, it doesn't become part of a rent-stabilized tenant's legal regulated rent or a rent-controlled tenant's maximum collectible rent (MCR) for the purpose of calculating future rent increases. To avoid confusion, show the surcharge as a separate charge on your rent bills to tenants.

Also, when collecting the surcharge from rent-controlled tenants, you may collect it even if the surcharge plus the MCR equals more than the maximum base rent

(MBR), says DHCR Deputy Counsel Michael B. Rosenblatt.

## Who's Responsible for Repairs

The Operational Bulletin also makes clear that owners and managers aren't responsible for repairing or replacing an appliance subject to the surcharge. Presumably, this means that the tenant is responsible.

## What to Tell Tenant

Although you're not required to do so, it's a good idea to send the tenant a letter the first time you bill him for the surcharge, explaining that you're allowed to collect it, says Leitman Bailey. Your letter should refer to the new Operational Bulletin and you may even want to include a copy of it with the letter, he says. Sending a letter like this should help avoid confusion and make it more likely that the tenant will pay the surcharge.

*Example 1:* Say a tenant asks to install a washing machine in a building where you pay for electricity. The tenant intends to install the washing machine on May 1, 2005. Your letter to the tenant consenting to the request might say something like this:

I consent to your recent request to install your own washing machine in your apartment on May 1, 2005. Based on that installation, as of May 1, 2005, your rent bill will reflect a \$14.92 monthly surcharge for the washing machine. This surcharge is authorized by Division of Housing and Community Renewal (DHCR) Operational Bulletin #2005-1 (copy enclosed) for tenant-installed washing machines in buildings where the owner pays for electricity.

*Example 2:* Say you discover that a tenant has already installed a washing machine in a building where the tenant pays for electricity. Your letter to the tenant might say something like this:

I have just discovered that you installed a washing machine in your apartment without my prior written consent, as required by your lease. Based on that installation, as of May 1, 2005, your rent bill will reflect a \$13.62 monthly surcharge for the washing machine. This surcharge is authorized by Division of Housing and Community Renewal (DHCR) Operational Bulletin #2005-1 (copy enclosed) for tenant-installed washing machines in buildings where the tenant pays for electricity.

**PRACTICAL POINTER:** The Operational Bulletin applies only if the tenant installs a washing machine, dryer, or dishwasher, not for any other appliance the tenant may install. So, for example, if the tenant installs her own refrigerator or garbage disposal, you can't collect a surcharge from the tenant. ■

# Operational Bulletin 2005-1

## SURCHARGES FOR TENANT-INSTALLED WASHING MACHINES, DRYERS AND DISHWASHERS

### - Implementing -

New York City Rent Stabilization Law (RSL)  
Emergency Tenant Protection Act of 1974 (ETPA)  
New York City Rent and Rehabilitation Law  
(City Rent Control Law)  
Emergency Housing Rent Control Law  
(State Rent Control Law)

This Operational Bulletin is issued pursuant to Sections 2522.9 and 2527.11 of the Rent Stabilization Code; Sections 2502.8 and 2507.11 of the Emergency Tenant Protection Regulations; Section 2209.8 of the City Rent and Eviction Regulations; and Section 2109.8 of the State Rent and Eviction Regulations. It applies to all rent controlled and rent stabilized housing accommodations throughout New York State.

Unless a lease provides otherwise, owners are not required to allow tenants to install washing machines, dryers or dishwashers. Where a tenant requests permission from the owner to install such appliance or appliances, whether permanently installed or portable, and the owner consents, the owner may collect a surcharge or surcharges, as set forth below. Such surcharge or surcharges shall not become a part of the legal regulated or maximum rent for the purpose of computing any guidelines or other increases under the Rent Laws or Regulations. Under no circumstances shall servicing or replacement of such appliance or appliances become a service required to be provided by the owner.

### Monthly Surcharges

Monthly surcharges are shown on the attached chart. Permissible surcharges for housing accommodations regulated pursuant to the State Rent Control Law and not located within the ETPA counties will be determined on a case-by-case basis. "Electrical exclusion" means the tenant pays for electricity; "electrical inclusion" means the owner pays for electricity. DHCR may make a downward adjustment of the surcharge where a tenant pays for heating of hot water.

### Factors Considered in Developing the Surcharges

Various cost factors were considered, including, where applicable, the cost of energy to heat water and the cost of electricity. Non-energy factors considered were water costs and wear and tear on plumbing. Cost estimates were based on properly installed and functioning machines placed in buildings whose plumbing, water supply, and electrical systems are adequate for use of the relevant appliance.

Disputes arising because the owner claims that the installation of an appliance by the tenant has damaged the owner's plumbing or other property, if not resolvable between the parties, are not within the jurisdiction of the DHCR and would have to be determined by the courts.

### Applicability and Prior Practice

The surcharges set forth on the attached chart shall be applicable to all pending administrative proceedings, where those proceedings include the issue of a charge for the tenant's installation of a washing machine, dryer or dishwasher.

Where a prior installation by a tenant of such appliance or appliances comes to the attention of the owner and the owner consents to the continued use of the appliance or appliances, these surcharges shall only be available prospectively.

The permissible monthly surcharges set forth in this Operational Bulletin shall take effect immediately and shall apply to all tenancies subject to this Operational Bulletin. The permissible monthly surcharges shall be subject to an annual update, which shall take effect as of October 1 of each year and continue until September 30 of the following year, provided that the surcharges set forth in this Operational Bulletin 2005-1 shall remain in full force and effect until September 30, 2006. In the event DHCR does not, in any given year, issue an annual update, the permissible monthly surcharges then in effect shall continue in effect unless and until the issuance of a subsequent annual update.

PAUL A. ROLDAN  
Deputy Commissioner  
for Rent Administration

Dated: March 24, 2005

<b>Authorized Monthly Surcharges By Appliance and Locality</b>			
<b>Appliance</b>	<b>Electrical Exclusion or Inclusion Buildings</b>	<b>New York City (Rent Stabilized or Controlled)</b>	<b>ETPA Localities<sup>1</sup> (Rent Stabilized or Controlled)</b>
Washing Machine	Exclusion	\$ 13.62	\$ 10.96
	Inclusion	\$ 14.92	\$ 12.26
Dryer	Exclusion	\$ 0.00	\$ 0.00
	Inclusion	\$ 10.89	\$ 10.89
Dishwasher	Exclusion	\$ 3.77	\$ 3.77
	Inclusion	\$ 5.50	\$ 5.50

<sup>1</sup> ETPA localities are those within the Counties of Nassau, Rockland and Westchester that have adopted the Emergency Tenant Protection Act of 1974.

THE LAW FIRM OF  
**ADAM LEITMAN BAILEY, P.C.**

---

26 Broadway, 21st Floor, New York, NY 10004 • T (212) 825-0365

[www.ablawfirm.com](http://www.ablawfirm.com)