



# New York APARTMENT LAW INSIDER®

The How-to Monthly for Owners, Managers & Real Estate Professionals

## What to Do if Tenant Installs Appliance Without Your OK

If you discover that a tenant has violated his lease by installing an appliance (for example, a washing machine or dishwasher) in his apartment without your consent, you have two options: You can ask the tenant to remove it. Or, if the tenant is rent controlled or rent stabilized and has installed a washing machine, dryer, or dishwasher, you can let the tenant keep the appliance and collect a monthly surcharge from the tenant.

We'll tell you more about these two options. And we'll give you sample letters that you can send to the tenant, depending on which option you choose (pp. 3-4).

### OPTION #1: ASK TENANT TO REMOVE APPLIANCE OR FACE EVICTION

Most residential leases bar the tenant from installing an appliance without the owner's consent, says Manhattan attorney Adam Leitman Bailey. If your lease does and you find out that a tenant has installed an appliance without your consent, you can take steps to try to get the tenant to remove it. If the tenant refuses to do so, you can, as a last resort, seek his eviction. For example, an appeals court allowed an owner to evict a tenant who installed a washing machine and dryer without first getting the owner's written consent, as required by the lease. The court ruled that the tenant violated a substantial obligation of the lease. It rejected the tenant's argument that the washing machine and dryer were needed for medical purposes [Starrett City Inc. v. Granthan].

### Is This Option Right for You?

This option may be right for you if your building's plumbing and/or electrical systems can't withstand the installation of certain appliances in individual apartments, says Aaron Sirulnick, president of the Community Housing Improvement Program (CHIP) and vice president of Ditmas Management Corp. For example, this option may be right for you if the tenant's appliance may cause leaks and/or pipe backups, which can cause you lots of headaches.

But keep in mind that you may not be able to choose this option if you, a prior owner, or one of your employees knew about the tenant's appliance and you or the prior owner did nothing about it, warns Bailey. For example, when one owner tried to evict a tenant for installing a washing machine in his apartment in violation of house rules, an appeals court ruled that a trial was required to determine if the owner had "waived"—that is, given up—its right to object to the washing machine because a former super had seen the wash-

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## TENANT INSTALLS APPLIANCE (continued from p. 1)

ing machine in the apartment while making repairs [255 Fieldston Buyers Corp. v. Michaels].

Also, you'll have a hard time going ahead with this option if your lease doesn't bar the tenant from installing the appliance in question. In that situation, says Bailey, you'll have to prove that the appliance is a nuisance, which is a much tougher standard to prove. For example, in another case, an appeals court refused to let an owner evict a tenant for installing a washing machine without the owner's consent. The lease didn't bar the tenant from installing the washing machine, and the owner didn't show that the tenant's machine created a nuisance [Shahid v. Guzman].

### What to Do

Before you seek the tenant's eviction in court, you can take some steps to get the tenant to remove the appliance, says Sirulnick. Here are four steps you can take:

**Step #1: Check lease.** First, check whether your lease bars the tenant from installing the appliance without your consent. Many leases have clauses barring installation of appliances, such as washing machines. For example, paragraph 10 of the Standard Form of Apartment Lease of the Real Estate Board of New York, Inc., bars installation or use of a washing machine or dryer if, in the owner's "reasonable opinion," it "will overload the existing wiring installation in the Building or interfere with the use of such electrical wiring facilities by other tenants of the Building."

**Step #2: Give oral warning.** If your lease bars the tenant from installing appliances without your consent, call or visit the tenant and ask him to remove the appliance. Inform the tenant that his lease bars the installation of the appliance in his apartment. Also, if true, tell him that the appliance could damage the building's electrical and plumbing systems, and its use could be dangerous to him and others living in the building.

**Step #3: Send polite letter.** If, despite your oral warning, the tenant refuses to remove the appliance, send him a polite but firm letter asking him to do so. We've given you a sample polite letter on p. 3. Your letter, like our Sample Letter, should:

- Tell the tenant that he has installed an appliance in violation of his lease;
- If applicable, say that the appliance interferes with the building's systems and how it interferes. Also say that it could interfere with his and other tenants' health and safety. And mention any complaints you've gotten from other tenants about the appliance;
- Remind the tenant of your oral warning; and
- Ask the tenant to remove the appliance immediately.

**Step #4: Send get-tough letter.** If your polite letter doesn't work, it's time to get tough. We've given you a sample get-tough letter on p. 3. Your letter, like our Sample Letter, should:

- Tell the tenant that he has illegally installed an appliance in violation of his lease, and refer to your prior warnings;

■ Cite the specific lease clause that bars the installation of the appliance, as well as a recent court ruling allowing an owner to evict a tenant who installed an appliance in violation of his lease;

■ If applicable, say again that the appliance interferes with the building's systems and how it interferes. Also say that it could interfere with

his and other tenants' health and safety. And mention again any complaints you've gotten from other tenants about the appliance ; and

■ Warn the tenant that if he doesn't remove the appliance by a set deadline (say, 15 days), you'll seek his eviction in court. Also warn him that you'll bill him for any damages the appliance causes.

## OPTION #2: ASK TENANT TO PAY SURCHARGE

If the tenant who installed an appliance without your consent is rent controlled or rent stabilized and has installed a washing machine, dryer or dishwasher, you can opt to let the tenant keep the appliance and collect a monthly surcharge from the tenant. This surcharge is permitted by Division of Housing

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## SAMPLE LETTERS

### ► Polite Letter Seeking Removal of Illegal Appliance

Here's a polite letter you can adapt and send to a tenant who installs an appliance in his apartment in violation of his lease. This letter is adapted from one used by Aaron Sirulnick of Ditmas Management. This letter assumes that the tenant installed a washing machine. **ALI0455**

Nov. 1, 2005

John Tenant  
999 E. 99 St., Apt. 1Z  
New York, NY 10010

Dear John Tenant:

It has come to my attention that you have installed a washing machine in your apartment without my consent, in direct violation of paragraph 10 of your lease.

Your installation of the washing machine is interfering with the building's plumbing and electrical systems. These systems aren't made to withstand the installation of such machines in individual apartments, and backups in pipes and/or leaks may occur as a result. Also, your washing machine could interfere with your and other tenants' health and safety. In addition, I have received complaints from your neighbors about the noise and vibrations coming from the washing machine.

On Wednesday, Oct. 26, 2005, I spoke with you and asked you to remove the washing machine. To date, however, it is still in the apartment.

Please remove the washing machine immediately. I will schedule a follow-up inspection of your apartment to confirm that you have removed it. If you have any questions, feel free to contact me.

Thank you for your anticipated cooperation.  
Owner & Owner, Inc.

By: John Q. Owner, President

### ► Tough Letter Threatening Eviction

Here's a get-tough letter you can adapt and send to a tenant who doesn't remove an illegally installed appliance after getting your polite letter. This letter is adapted from one used by Aaron Sirulnick of Ditmas Management. This letter assumes that the tenant installed a washing machine. **ALI0456**

Nov. 8, 2005

John Tenant  
999 E. 99th St., Apt. 1Z  
New York, NY 10000

#### Re: Notice to Remove Illegal Washing Machine

Dear John Tenant:

1. You are in violation of your lease due to your failure to remove a washing machine installed in your apartment. You have ignored an oral warning on Oct. 26, 2005, as well as a letter dated Nov. 1, 2005.

2. This is a very serious matter. You are in violation of paragraph 10 of your lease, which specifically prohibits you from installing a washing machine in your apartment. New York courts have found that tenants can be evicted for refusing to correct this type of lease violation. See: *Starrett City Inc. v. Granthan*, 784 NYS2d 924 (App. T. 2nd Dept. 2004).

3. Your washing machine continues to interfere with the building's plumbing and electrical systems, and could interfere with your and other tenants' health and safety. Also, I have received complaints from your neighbors about the noise and vibrations coming from the washing machine.

4. If you do not remove the washing machine within 15 days from the date of this letter, I will turn this matter over to my attorney for appropriate legal action, including starting an eviction lawsuit against you. Also, I will bill you for any and all damages caused by the washing machine.

Owner & Owner, Inc.

By: John Q. Owner, President

**TENANT INSTALLS APPLIANCE**

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and Community Renewal (DHCR) Operational Bulletin #2005-1.

**Is This Option Right for You?**

This option may be right for you if:

- Your building's plumbing and/or electrical systems won't be affected by additional appliances. If so, it may be more cost effective to simply collect the surcharge, instead of fighting with the tenant to remove it; or

- You've known about the appliance for a long time and think a court may rule that you gave up your right to object to the appliance by not objecting to it on time. The DHCR's Operational Bulletin doesn't specifically say whether you can collect the surcharge in this situation, but it may be worth a try, says Bailey.

**What to Do**

If you decide to let a rent-stabilized or rent-controlled tenant keep the appliance, you're entitled to immediately start collecting a surcharge, says Bailey. But it's a good idea to send the tenant a letter letting him know that you're aware of the appliance and will be collecting the surcharge, he says. We've given you a sample letter (see box at right).

If the tenant doesn't pay the surcharge, you can try suing to evict him for nonpayment of rent, says Bailey. But some courts may rule that the surcharge isn't rent, and so can't be recovered in a nonpayment case. Instead, you may be forced to sue the tenant for the surcharge in a different venue, such as small claims court. Or you can try suing to evict the tenant for illegally installing the appliance, unless too much time has passed, he says.

**SAMPLE LETTERS (CONTINUED)****► Inform Tenant of Appliance Surcharge**

Here's a letter you can adapt and send to a rent-controlled and rent-stabilized tenant if you decide to let him keep an appliance he has installed in his apartment and collect a monthly surcharge from him. This letter was drafted with the help of Manhattan attorney Adam Leitman Bailey. This letter assumes that the tenant installed a washing machine. **ALI0457**

Oct. 26, 2005

John Tenant  
999 E. 99 St., Apt. 1Z  
New York, NY 10000

Dear John Tenant:

It has come to my attention that you have installed a washing machine in your apartment without my consent, in direct violation of paragraph 10 of your lease. Based on that installation, as of Nov. 1, 2005, your rent bill will reflect a \$13.62 monthly surcharge for the washing machine. This surcharge is authorized by the 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.

Your right to keep the washing machine is conditional on your payment of this monthly surcharge each month.

By collecting the surcharge, I am not waiving my right to object to the washing machine at a future time if I discover that the washing machine was improperly installed or has caused damage, or if you stop paying the surcharge.

Also, I would like to inspect the washing machine on Nov. 5, 2005 at 9:00 A.M., so that I can make sure it has been properly installed. If this time isn't convenient for you, please call my office at (212) 222-2222 to reschedule.

Owner & Owner, Inc.

By: John Q. Owner, President

**What letter should say.** According to Bailey, your letter, like our Sample Letter, should:

- Say that you've discovered that the tenant has installed an appliance without your consent, in violation of the lease;

- Tell the tenant that you'll be starting to collect a DHCR-authorized surcharge for the appliance he installed, and tell him the amount of the surcharge. It's a good idea to include a copy of the DHCR Operational Bulletin authorizing the surcharge. You can get a copy of it from our May 2005 issue (p. 3), or you can download it from the DHCR's Web site, [www.dhcr.state.ny.us](http://www.dhcr.state.ny.us). The Bulletin lists the surcharges you may collect;

- Tell the tenant that his right to keep the appliance is conditional on his payment of the surcharge each month;

- Say that by collecting the surcharge, you're not waiving your right to object to the appliance at a future time if the appliance is improperly installed or causes damage, or if the tenant stops paying the surcharge; and

- Schedule an inspection of the appliance so that you can make sure it was properly installed. This is important, says Bailey, because an improperly installed appliance can cause floods, which in turn can cause property damage and mold. ■