

# Housing Facts

---

## Fact Sheet #4

### **LANDLORD/TENANT IN-PERSON ANSWERS–TENDER AND REFUSAL OF RENT/OVERCHARGES**

#### **Tender And Refusal Of Rent**

A landlord repeatedly refusing to accept a tenant's offer of the proper amount of rent owed is not entitled to a judgment of possession or a Marshal's Notice of Eviction in a nonpayment proceeding. This includes checks or money orders sent by mail or left at the landlord's home or office. It includes a face-to-face tender and refusal of the rent. There are situations where a landlord/petitioner is justified in refusing a tender of rent. For example, refusal may be justified if a holdover proceeding is pending against the tenant.

A landlord/petitioner's failure to accept an offer of all rent owed does not relieve the tenant of the debt. The same is true if the Petition and Notice of Petition are dismissed for failure to accept all rent and costs offered before a judgment is entered. A landlord or petitioner may sue in Civil Court for a judgment equal to the unpaid rent ("money judgment"). A money judgment can be collected by garnishing your wages or attaching your bank account but cannot result in eviction for nonpayment.

#### **Rent Overcharges**

**Private Housing** - Rent Control and Rent Stabilization laws regulate much of the privately owned housing stock in New York City. The laws are designed to address modern housing emergencies. Initial and renewal rental levels are strictly regulated. Unless the lease provides otherwise, a tenant may be overcharged if rent higher than that in the lease is demanded. Many lease terms remain in force if the lease expires and the tenancy continues. Notice must be given before the rent can be increased.

**Public/Subsidized Housing** - To a lesser extent, public and subsidized housing, involving income-determinative rent levels may be the subject of overcharge claims. Housing for persons affiliated with religious, nonprofit or educational groups as well as housing owned or operated by government entities and housing operated for charitable purposes on a nonprofit basis are not generally subject to rent regulation statutes.

A landlord/petitioner must prove that the rent sued for is the correct (legal) rent. Although rent overcharges can be raised as a defense to a nonpayment proceeding, the court may determine, in cases of rents regulated statutorily, that the tenant should pursue such claim with the State Division of Housing and Community Renewal (DHCR). This is especially true if the tenant already has an overcharge claim pending before the DHCR.

#### **Action**

If your rent was returned or refused as described above or if you have proof that the rent listed in the Petition and Notice of Petition is higher than the legal rent, you may want to consider the second (refusal) or fourth (overcharge) sentence in the "RENT" section of the "LANDLORD/TENANT ANSWER IN PERSON."