



New York State  
Division of Housing and Community Renewal  
**Office of Rent Administration**

*Operational Bulletin 96-1 (July 31, 1996)*  
(Replaces Operational Bulletin 89-1)

***Procedures Pursuant to the Rent Stabilization Code  
for the Filing of an  
Owner's Application to Refuse to Renew Leases  
on the Grounds of Demolition***

***Implementing  
New York City Rent Stabilization Code***

*I. Introduction*

This Operational Bulletin replaces Operational Bulletin 89-1, issued June 15, 1989, and is issued pursuant to Sections 2524.5 (a) (2) and 2527.11 of the Rent Stabilization Code ("Code"). It reflects judicial determinations subsequent to the issue date of the earlier Bulletin.

Section 2524.5 (a) (2) of the Code provides that an owner shall not be required to offer renewal leases to tenants where DHCR has granted such owner's application to demolish all of the apartments located in the subject premises for the purpose of constructing a new building. Below are the eligibility, notice, order, relocation and other requirements relating to the demolition application process.

*II. Eligibility & Application*

The term "owner" is specifically defined in Code Section 2520.6 (i). For the purpose of filing a demolition application, the proceeding must be instituted in the name of the owner as defined in that Code section.

The owner may file the application with DHCR personally or by mail. At the time the owner files the application, the owner shall also submit a sufficient number of copies of the application for each tenant to receive a copy.

The owner must file the application on a form prescribed by DHCR.

The owner must state in the application that he seeks in "good faith" to recover possession of the housing accommodations for the purpose of demolishing them and constructing a new building. The phrase "good faith"

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*The original document which contains signatures of authorization is on file at DHCR's Office of Rent Administration.*



means that the owner actually intends to accomplish the purpose stated in the application. To establish good faith, the owner must file with DHCR the following:

1. Approved plans; or completed plans and evidence that the completed plans have been filed with the New York City Department of Buildings (DOB); or an executed contract with the project architect calling for delivery of completed plans within 12 months of the date of the application and proof of payment of no less than ten percent of the total contract price.
2. Evidence of financial ability to complete the project, which may include at the applicant's option: a Letter of Intent from a financial institution, or a Commitment Letter from a financial institution, or post a bond, payable to DHCR to be sufficient to offset the reasonable costs actually paid and documented by tenants and DHCR, or a letter of credit naming DHCR as the beneficiary, issued by a financial institution acceptable to DHCR and in a form acceptable to DHCR in an amount sufficient to offset the reasonable costs to be incurred by the tenant and DHCR.

As promptly as practicable thereafter, DHCR shall serve each tenant with the application, and afford the tenant twenty days to answer. The word "tenant" as used throughout this Bulletin means all persons named on the lease, treated as a single entity. DHCR will also mail to each tenant a copy of the Operational Bulletin advising the tenants of the owner's obligations concerning Termination Notice requirements pursuant to Code Section 2524.2 (c) (3); the owner's obligations pursuant to Code Section 2524.5 (c) to pay certain moving expenses and relocation benefits and the owner's other obligations, tenants' rights and procedural advisements contained herein.

### *III. Notice Provisions*

Once an application has been filed, the owner may refuse to renew tenants' leases until a determination of the owner's application is made pursuant to Code Section 2524.2 (c) (3). The tenant may remain in occupancy during such period and the owner may not increase the rent. Should the application be denied or withdrawn, the owner must again offer prospective renewal leases to the tenants as directed in DHCR's order of denial or withdrawal.

Pursuant to Code Section 2524.2 (c) (3), after filing a demolition application, the owner must serve each tenant with a Termination Notice at least 120 and not more than 150 days prior to the expiration of the tenant's lease term ("window period"), or in the case of a hotel permanent tenant without a lease, at least 120 and not more than 150 days prior to the commencement of a court proceeding. Provided each tenant whose window period occurs prior to issuance of the Order is served with a timely Termination Notice, the Order granting the application may be issued. See exceptions below.

The Termination Notice may be served personally or by mail, or certified mail. An affidavit by the person making the service or a receipt indicating proof of certified mailing shall constitute sufficient proof of service. When service is by registered mail, the stamped post office receipt shall also constitute sufficient proof of service. Once such proof of service has been submitted, the burden of proving non-receipt shall be on the party denying receipt. (Code Section 2527.9 [a]).

The Termination Notice shall state:

- (1) that the owner will not renew the tenant's lease because the owner has filed an application pursuant to Code Section 2524.5 (a) (2) for permission to recover possession of all of the housing accommodations in the building for the purpose of demolishing them and constructing a new building for which plans and financing have been obtained, or are in the process of being obtained, as stated in the application;
- (2) that while the application is pending, the tenant may remain in occupancy at no increase in rent;

- (3) that the tenant shall not be required to vacate until DHCR has issued a final Order approving the application and setting forth the time for vacating, stipends and other relocation conditions; and
- (4) that the tenant must be offered a prospective renewal lease if the application is withdrawn or denied.

Interested parties should be aware that DHCR does not order the eviction of any tenant. Warrants of Eviction are obtained from courts of competent jurisdiction. Additionally, it should be noted that tenants that elect to vacate prior to the dates provided in the order, will, if stipends are applicable, be eligible to receive an enhanced stipend.

#### *IV. Hearing*

After submission of the application and proof of financial ability, supporting documents including copies of the plans that have been submitted to DOB, and completing an offering if applicable, of comparable apartments in accordance with "Comparable Apartments and Relocation" below, the owner shall request in writing that DHCR schedule a hearing. DHCR will schedule the hearing with written notice to all parties. However the request to DHCR must be within 12 months of service of the application on the tenant. A copy of all plans, statements or other documentation, and any amendments thereto, which have been submitted to DHCR, shall simultaneously be made available for review by the tenants, either in the office of the superintendent or such other area readily accessible to all tenants. Notice of the location where such material may be reviewed shall be provided to tenants, by the owner no less than 30 days before the hearing. The owner is advised to make this material available at least 30 days before the request to schedule a hearing is made so that the hearing can be scheduled expeditiously.

Any harassment proceeding(s) pending against the owner with respect to the subject premises shall be consolidated with the owner's application and determined at the demolition application hearing. A finding of harassment shall result in the denial of the application.

At the hearing, both the owner and tenants will be afforded an opportunity to testify and submit proof on all relevant issues as may be determined by the hearing officer, including, at the owner's option, the comparable apartments available, at the same or lower legal regulated rents; or proof of such other relocation plan as may be authorized by the Code. The hearing officer will issue a report recommending whether the application should be granted, contingent upon approval by DOB of the plans and the owner securing the necessary funding. If a recommendation is made that the application should not be granted or be granted conditionally, such recommendation shall clearly indicate the reasons, and specify what additional measures need to be taken by the owner and the time frame for completion if the subject application is to be granted.

#### *V. Administrative Order*

In the event that DHCR finds that the project meets all the requirements of Law and is feasible, the plans are approved by the Buildings Department and proof that necessary funding has been secured has been established, DHCR will issue an Order granting permission for demolition. *No order approving the owner's application will be issued until the building plans have been approved and the owner has secured the necessary funds to complete the project specified in such approved plans.* DHCR may, at the discretion of the Administrator, and upon 30 days written notice to the owner, dismiss an application because of the owner's failure to proceed in a timely fashion. Upon the issuance of an order denying the application, or if the application is withdrawn by the owner, prospective renewal leases must be offered to all affected tenants as directed in the order of denial or withdrawal.

An Order granting the application shall also be conditioned upon the compliance by the owner with such terms as shall be set by the Administrator relating to stipends and moving expenses, and the compliance by the owner with service of Termination Notices.

In the event that the owner does not serve each tenant whose window period occurred prior to the issuance of the Administrator's Order with a Termination Notice, but can establish before the Administrator that such failure

was not the result of a willful attempt to evade this obligation, and if the owner can establish that he or she has otherwise substantially complied with the obligation to serve every such tenant, DHCR shall not be required to terminate the proceeding and may issue the order. Nevertheless, any such tenant who is not served with the Termination Notice will be entitled to remain in occupancy at no increase in rent pursuant to a one-year “deemed lease,” commencing on the date following the expiration date of the prior lease. Thereafter, during the pendency of the proceedings, no additional renewal rights vest pursuant to the “deemed lease.” The Administrator’s Order shall provide that alternatively, the owner may, at his or her option, elect to pay a stipend based on an additional period up to one year for any tenant remaining in occupancy who was not served with a timely Notice of Termination and who leaves on or before the vacate date indicated in the final order.

In no event may any tenant be required to move out of an apartment before the expiration date of that tenant’s lease, or the vacate date indicated when the owner’s application is finally determined, whichever is later. Where DHCR determines that an owner’s failure to serve a timely Notice of Termination occurred but was not willful, and where such owner does not pay an additional one-year stipend, such affected tenant may remain in occupancy for the deemed one-year lease term, if later than such periods.

#### *VI. Stipends and Other Relocation Conditions*

The word “tenant” means all persons named on the lease, treated as a single entity.

Any Order granting an owner’s application shall require the owner to pay all reasonable moving expenses. The tenant shall also be afforded a reasonable period of time within which to vacate the apartment. If the tenant vacates the apartment on or before the date provided in DHCR final Order which authorizes the owner to refuse to renew the tenant’s lease and obtain possession of the apartment, such tenant shall be entitled to receive all stipend benefits pursuant to subparagraphs (1), or (2), or (3) below. The owner may, at his or her option, pay a stipend to the tenant larger than the stipend set forth in the schedule recited herein only if the tenant vacates the apartment prior to the vacate date provided in the administrator’s order. Under no circumstances shall the owner be required to pay a stipend in excess of the stipend set forth in such schedule.

If the tenant vacates before such date, such tenant shall be eligible for an additional stipend to be negotiated between the owner and the tenant. If the tenant does not vacate the apartment on or before the date upon which a final Order authorizes the owner to obtain possession of the apartment, the stipend shall be reduced. The reduction of the stipend shall be one-sixth of the total stipend for each month the tenant remains in occupancy after the vacate date indicated in the final Order.

The order granting the owner’s application shall also provide that, at the owner’s option, the owner may:

- (1) Relocate the tenant to a suitable housing accommodation at the same or lower regulated rent in a closely proximate area, or in a new residential building if constructed on the site in which case suitable interim housing is provided to the tenant at no additional cost; plus, in addition to reasonable moving expenses, payment of a \$5000 stipend, provided the tenant vacates on or before the vacate date in DHCR Order; or
- (2) Where an owner provides relocation of the tenant to a suitable housing accommodation at a rent in excess of that for the subject housing accommodation, in addition to the tenant’s reasonable moving expenses, the owner may be required to pay the tenant a stipend equal to the difference in rent, at the commencement of the occupancy by the tenant of a new housing accommodation, between the subject housing accommodation and the housing accommodation to which the tenant is relocated, multiplied by 72 months (6 years), provided the tenant vacates on or before the vacate date in the DHCR Order; or

- (3) Pay the tenant a stipend which shall be the difference between the tenant's current rent and an amount to be calculated as follows: \$293<sup>1</sup> per room<sup>2</sup> per month multiplied by the actual number of rooms in the tenant's current housing accommodation, but no less than three rooms. This difference is to be multiplied by 72 months (6 years).

<sup>1</sup> The 1993 New York City Housing Vacancy Survey calculated the mean asking rent level at \$279 per month. Since the actual enumeration for the Survey occurred between January and May of 1993, the rent level was increased by 3% (one year lease renewal guideline for 1993-1994) and by 2% (one year lease renewal guideline for 1994-1995) to a total rent of \$293.

<sup>2</sup> As registered

Please consult the following Demolition Stipend Chart for sample calculations of stipends:

Number of Rooms	Maximum Monthly Allowance	Monthly Allowance By Current Rent, If Rent Equals				Total Stipend by Current Monthly Rent For Tenancies Based On A 6 Year Length Of Tenure			
		\$200	\$500	\$1,000	\$1,500	\$200	\$500	\$1,000	\$1,500
3	\$879	\$679	\$379	\$0	\$0	\$48,888	\$27,288	\$0	\$0
4	1,172	972	672	172	0	69,984	48,384	12,384	0
5	1,465	1,265	965	465	0	91,080	69,480	33,480	0
6	1,758	1,558	1,258	758	258	112,176	90,576	54,576	18,576
7	2,051	1,851	1,551	1,051	551	133,768	111,672	75,672	39,672
8	2,344	2,144	1,844	1,344	844	154,368	132,768	96,768	60,768
9	2,637	2,437	2,137	1,637	1,137	175,464	153,864	117,864	81,864
10	2,930	2,730	2,430	1,930	1,430	196,560	174,960	138,960	102,960

For orders issued during a period commencing October 1, 1996, and on or after October 1st of each subsequent year, the \$293 per month base will be raised by the applicable guidelines increase available for a one year renewal lease. The \$293 per month base, plus annual adjustments, shall remain in effect until the release of a new Housing and Vacancy Survey for the City of New York, at which time the base rent per room shall be adjusted to reflect the mean asking rent per room for all vacant rental units in that next Survey.

The formula for determining the stipend is based on data derived from the 1993 New York City Housing and Vacancy Survey. The stipend compensates for a reasonably expected alternative rent (\$293 per room per month), multiplied by the typical length of tenure (72 months). While the \$293/month rent remains constant for the projected period of time, it is deemed to be equivalent to taking the present value of such rent with projected guidelines increases over time.

Wherever a stipend would result in any tenant losing a subsidy or other governmental benefit which is income dependent, at the tenant's option the tenant may elect to waive the stipend and have the owner at his or her own expense, relocate the tenant to a suitable housing accommodation at the same or lower regulated rent in a closely proximate area.

In the event that the tenant dies prior to the issuance by DHCR of a final order granting the owner's application, the owner shall not be required to pay such stipend to the estate of the deceased tenant.

Where the Order of DHCR granting the owner's demolition application is conditioned upon the owner's compliance with specified terms and conditions, if such terms and conditions have not been complied with, the Order may be modified or revoked.

The owner's noncompliance with any term or condition of the Administrator's or Commissioner's Order granting the owner's application shall be brought to the attention of DHCR's Compliance Unit for appropriate action. DHCR shall retain jurisdiction for this purpose until all moving expenses, stipends, and relocation requirements have been met.

### *VII. Comparable Apartments and Relocation*

In the event a comparable apartment is offered by the owner, a tenant may file an objection with DHCR challenging the suitability of an apartment offered by the owner for relocation, within ten (10) days after the owner identifies the apartment and makes it available for the tenant to inspect and consider the suitability thereof. The apartment will then be inspected by the staff of DHCR within 30 days, on notice to both sides, so that DHCR may determine whether the offered apartment was suitable. DHCR will make such determination as promptly as practicable thereafter. In the event DHCR determines that the apartment is not suitable, the tenant shall be offered another apartment, and shall have ten (10) days after it is made available by the owner for the tenant's inspection to consider its suitability.

In the event DHCR determines that the apartment is suitable, the tenant shall have fifteen (15) days thereafter within which to accept the apartment. A tenant who refuses to accept relocation to any apartment determined by DHCR to be suitable shall lose the right to relocation by the owner, and to receive payment of moving expenses or any stipend.

"Suitable housing accommodations" as used in this Operational Bulletin shall mean apartments which are similar in size and features to the respective apartments now occupied by the tenants. Such apartments shall be freshly painted before the tenant takes occupancy and shall be provided with substantially the same required services and equipment tenants received in their prior apartments. The building containing such accommodations shall be free from violations of law recorded by the city agency having jurisdiction which constitute fire hazards or conditions dangerous or detrimental to life or health, or which affect the maintenance of required services.

DHCR will consider proposed apartments for relocation which are not presently subject to rent regulation, provided the owner submits a contractual agreement, between the tenant and the new owner, that places the tenant in a substantially similar housing accommodation at no additional rent for a period of six years, unless the tenant requests voluntarily and in writing a shorter lease period.

### *VIII. Administrative Review*

Any party aggrieved by the Administrator's determination may file a Petition for Administrative Review (PAR) in accordance with Part 2529 of the Rent Stabilization Code. The filing of a PAR shall stay such order until the final determination of the PAR by the Commissioner. Upon a showing that there are equitable grounds, the Commissioner may entertain requests for expedited processing of the PAR.

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