

Residential Landlord Tenant L. in N.Y. § 2:57

Residential Landlord - Tenant Law in New York | November 2019 Update
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Chapter 2. Residential Landlord-Tenant Relationship

II. Period of Occupancy

§ 2:57. Subletting and assignment, in general—Subletting—Limits on rent charged subtenant—Term of sublease—Tenant limited to 10% surcharge where apartment furnished

Summary

The Rent Stabilization Code and the Emergency Tenant Protection Regulations place certain limitations on the amount of rent that can be charged a subtenant in a Rent Stabilized apartment. See [9 NYCRR § 2525.6](#) (NYC RSC); [9 NYCRR § 2505.7](#) (ETPR).

The rent charged to the subtenant by the prime tenant may not exceed the legal regulated rent plus a 10% surcharge. The surcharge is collectible only where the "housing accommodation is sublet fully furnished." [9 NYCRR § 2525.6\(b\)](#) (NYC RSC).

Rent-stabilized tenants who charge a sub-tenant more than the legal required rent are subject to lease termination. However, there are multiple factors the court will use to determine if the harsh penalty of tenant's lease termination should be ordered: amount of overcharge; length of sub-tenancy; and improvements to premises. An overcharge of 24% does not constitute "profiteering" or "commercial exploitation." Additional factors that can lead to prevention of termination is departure of the sub-tenant and refund of the rent that was in excess of the legal maximum. [672 Ninth Avenue LLC v. Burbach](#), 14 Misc. 3d 1236(A), 836 N.Y.S.2d 503 (N.Y. City Civ. Ct. 2007). See [§ 8:166](#).

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