

# Ordinance Withdrawn: 03/27/2019

## ORDINANCE 07-2019

### BOROUGH OF EATONTOWN COUNTY OF MONMOUTH, STATE OF NEW JERSEY

#### ORDINANCE AMENDING CHAPTER 256, ARTICLE II, ENTITLED, "RENT CONTROL" AMENDED TO BE ENTITLED, "RENT CONTROL; PROTECTIVE TENANCY AND RENT LEVELING BOARD"

**WHEREAS**, a large portion of residents of the Borough of Eatontown live in apartment complexes and mobile home parks, and are in dire need of protection as tenants; especially in the area of rent increases and affordable, available housing.

**NOW THEREFORE, BE IT ORDAINED and ENACTED** by the Mayor and Council of the Borough of Eatontown, County of Monmouth and the State of New Jersey that Chapter 256, Article II of the Code of the Borough of Eatontown is hereby amended as follows:

#### §256-5. Definitions.

As used in this Chapter, the following terms shall have the meanings indicated:

#### DATE THAT THE LEASE IS ENTERED INTO

The renewal of leases shall mean the starting date of the last renewal term. Anniversary date shall mean the date that the lease is entered into or periodic tenancy commenced (oral lease) and each yearly renewal date thereafter.

#### EXISTING LEGAL RENT

The actual legal monthly rental a tenant is paying for his apartment or unit or space or mobile home. At the time of this Ordinance if the present monthly rent being paid by a tenant is five hundred and eighty dollars (\$580.00) and the tenant is also paying a twenty (\$20.00) dollar a month hardship surcharge, the existing legal rent for the next permissible increase will be six hundred (\$600.00) dollars and the next permissible increase will be the increased percentage in CPI as set forth in Subsection 256.6B x \$600.00. Thereafter, the "existing rent" will be this six hundred dollars (\$600.00) plus any CPI increases. Any capital improvement surcharge shall be separate from the rent and not be included in the base rent.

#### HOUSING SPACE, DWELLING, MOBILE HOME OR APARTMENT

Includes the portion of a structure rented or offered for rent for living and dwelling purposes to one individual or family unit together with all privileges, services furnishings, furniture, equipment, facilities, parking and garage facilities (whether optional or mandatory), and improvements connected with the use or occupancy of such portion of the property. Included are any building, mobile home, structure or land used as a mobile home park, rented or offered for rent to one or more tenant or family units. Exempt from this Ordinance are: motels, hotels and similar type buildings; commercial buildings with regards to commercial rentals; and housing structures owner occupied with two (2) units or less rental units or non-owner occupied duplex or single family homes. Housing units newly constructed and rented for the first time are exempted, with regards to tenant's first year rental. That is the initial rent may be determined by the landlord but all subsequent rents will be subject to the provisions of this Ordinance, subject further to any State Statute such as N.J.S.A. 2A:42-84.2, which may provide a temporary exemption for newly constructed multiple dwellings. Further exemption may exist by the preemption by Federal and State Statutes regulating residential rents such as, but not limited to, dwellings owned by HUD, financed under federal programs and subject to regulations promulgated by the Department of Housing and Urban Development, and housing regulated and provided under the New Jersey Housing Finance Agency Law of 1967. (N.J.S.A. 55:14J)

#### LEGAL RENT

Any consideration paid by tenant for the use and occupancy of the rental property. All charges that are considered mandatory for all tenants, including but not limited to refurbishment fees and administrative fees, shall be considered "rent" and shall be illegal unless inclusive of all rents and meeting the ceiling limitations of this Ordinance. Optional charges, which are chosen by tenants such as pet fees, pool fees, recreation fees, and the like, shall not be inclusive of the definition of "rent" as viewed by this Ordinance. Enforcement fees or security fees such as late fees, bounced check fees, legal fees and costs of court for

enforcement of a breach of lease agreement and increases in security deposit are also not considered "rent" for purposes of this Ordinance.

#### **NOTIFY OR NOTIFICATION**

Either certified mail, or regular mail or hand delivery acknowledged by written receipt; or if the party refuses to claim or acknowledge delivery, by regular mail.

#### **PRICE INDEX**

The "Consumer Price Index for all urban consumers" for the region of the United States, of which Eatontown, New Jersey, is a part (i.e. the New York-East-New Jersey region) published periodically by the Bureau of Labor Statistics, United States Department of Labor.

#### **SUBSTANTIAL COMPLIANCE**

The housing space, mobile home park and dwelling are free from all heat, hot water, elevator and all health, safety and fire violations as well as ninety (90%) percent qualitatively free of all other violations of the Eatontown Property Maintenance Ordinance<sup>1</sup>, Uniform Construction Code, Hotel and Multiple Dwelling Law, and Mobile Home Park Ordinance (mobile home units only)<sup>2</sup> and all relevant Housing Statutes.

#### **§256-6. Establishment of Rent; Increase.**

- A. Establishment of rents between a landlord and a tenant in any dwelling shall hereafter be determined by the provisions of this Ordinance. Any rental increase in excess of that authorized by the provisions of this Ordinance shall be void.
  
- B. Upon proper notice at the expiration of a lease or periodic tenancy, no landlord may request or receive an increase greater than the percentage increase, if any, in the Price Index published in the fourth month prior to the month in which the lease or periodic tenancy terminates over the Price Index published in the sixteenth month prior to the month of termination. The rent resulting from the imposition of any increase provided hereunder may be rounded to the nearest dollar with regard to the final step of calculation only. Calculation of the CPI published shall be in the month it is published not the month of designation, i.e., November CPI published in December is December's CPI. Calculation of percentages shall be calculated out two decimal points only and then dropped not rounded. No landlord shall request or receive more than one rental increase per year per housing space or mobile home space unless said housing space or mobile home space is decontrolled by a vacancy. By way of example, a rent increase computed in accordance with the provisions of this section shall be computed as follows:

#### **EXAMPLE**

Assuming a lease or periodic tenancy expires in April of 2005, use the CPI published in the fourth preceding month, or December of 2004 (a. below). Take the CPI published in the sixteenth month preceding the month of termination, or December of 2003 (b. below) and subtract b. from a. To calculate the percentage change in the CPI, take c. and divide it by b. (d. below). Next, multiply the current rent by the percentage change in the CPI (e. below) and add to the current rent to arrive at the new rent.

a. CPI published in December 2004	293.9
b. CPI published in December 2003	<u>-283.6</u>
c. Difference in CPI	<u>10.3</u>
d. Percentage change in CPI 10.3 divide by 283.6 =	.03
e. Permissible increase is \$400 (current rent) multiplied by .03 =	12.00
f. New rent is (rounded to nearest dollar)	\$412.00

#### **§256-7. Rent Increase; notice required.**

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<sup>1</sup> Editor's Note: See Ch. 250, Property Maintenance.

<sup>2</sup> Editor's Note: See Ch. 207, Mobile Home Parks.

- A. Any landlord seeking an increase in rent shall, at least sixty (60) days prior to the effective date of the increase, notify the tenant of the calculations involved in computing the increase, including the Price Index at the respective dates as required in §256-6 the allowable percentage increase, the allowable rental increase, the previous year's base rent, and a certification by the landlord that the dwelling is in substantial compliance with the Eatontown Property Maintenance Ordinance<sup>3</sup>, Uniform Construction Code, Hotel and Multiple Dwelling Law and Mobile Home Park Ordinance (mobile home units only)<sup>4</sup> and all relevant Housing Statutes. Failure to comply with this provision shall result in the rental continuing at old rent until proper notice is given.
- B. Any landlord seeking a rent increase, a lease renewal or an agreement to extend or renew leases shall provide notice of said action in writing and in duplicate to the tenant at least sixty (60) days prior to the effective date of increase renewal, extension or other action and further that no tenant shall be required to sign any such rent increase notice, renewal or agreement to extend or renew lease until such tenant has had the opportunity to review the documents for a period of five (5) business days.

**§256-8. Appeal by Landlord.**

- A. In the event that a landlord cannot receive a fair return after having received the increase provided in §256-6, he may appeal to the Rent Leveling Board for increased rental. The Board may grant a hardship rent increase to meet this requirement. The landlord must provide evidence according to the standards recognized at law for determining fair return. The Board will rely upon the recognized standard that a landlord should receive a net operating income of at least forty (40%) percent of the gross annual income after deducting reasonable and necessary operating expenses, in the absence of an adequate showing that utilization of this standard will result in an unfair return to the landlord. Operating expenses shall not include mortgage principal or interest payments, depreciation or amortization. Any hardship increase granted by the Board will take the place of the annual CPI increase and shall be equally prorated to all units within the structure or mobile home park thirty (30) days after the decision of the Rent Leveling Board, provide that no increase shall take effect with regard to any tenant who has a written lease until the expiration of the lease unless the lease provides otherwise.
- B. Landlord may seek in addition surcharges for major capital improvements or services. To qualify for a major improvement surcharge, claimant must show a benefit to the tenant, in the form of improved lifestyle, convenience, ease and/or security and compliance with the definition of Capital Improvement found in the Internal Revenue Code. The landlord must notify each tenant of the total cost of the completed capital improvement or service, the number of years of useful life of the improvement as claimed by the landlord for purposes of depreciation for income tax purposes, the cost of the improvement, the total number of square feet to the dwelling or garden apartment complex, the total square footage of the tenant's occupied space to the total occupied square footage of the building or in the case of mobile home parks, square footage of the lot size of the mobile home and the capital improvement surcharge the landlord is seeking from each tenant. The landlord seeking a capital improvement or service surcharge shall appeal for the surcharge to the Rent Leveling Board who shall determine if the improvement is a major improvement and if so, may permit such increase to take place and may direct that the increase shall be collected in equal monthly payments spread over the useful life of the capital improvement. If the increase is granted it shall not be considered rental and calculated in cost of living increases. In any event, no increase authorized by this section shall exceed fifteen (15%) percent of the tenant's rent.
- C. Prior to any such appeal to the Board provided for in paragraphs A and B of this section, a landlord must post in the lobby of each building or if no lobby is present, in a conspicuous place in and about the premises a notice of the appeal setting forth the basis for the appeal. The notice must be posted for a least fifteen (15) days prior to the proposed date of appeal. He shall also send a separate notice by regular and certified mail return receipt requested to each tenant at least fifteen (15) days prior to the proposed date of the appeal. Landlord must also submit to the Board a certification from the Housing Department of the Borough of Eatontown that the building and grounds are in substantial compliance with the Eatontown Property Maintenance Ordinance<sup>5</sup>, Uniform Construction Code, Hotel and Multiple Dwelling Law, Mobile Home Park Ordinance (mobile home units only)<sup>6</sup> and all relevant Housing Statutes.

<sup>3</sup> Editor's Note: See Ch. 250, Property Maintenance.

<sup>4</sup> Editor's Note: See Ch. 207, Mobile Home Parks.

<sup>5</sup> Editor's Note: See Ch. 250, Property Maintenance.

<sup>6</sup> Editor's Note: See Ch. 207, Mobile Home Parks.

D. As used in this section:

- a. Fair Net Operating Income shall mean the amount determined by subtracting reasonable and necessary operating expenses from gross annual income which amount should not be less than forty (40%) percent of the gross annual income.
- b. Gross Annual Income shall mean all income resulting directly or indirectly from the operation of a property or building, such as all rent received or collectable, including any rent from a less than arms-length transaction, the landlord's share of interest on security deposits, all earnings from commission, vending machines, late fees, pet fees, parking fees, pool fees, key charges, finder's fees, amount received from successful tax appeals, income from rebates, tax surcharges, capital improvement surcharges, computed in accordance with the provisions and limitations of this section.
- c. Reasonable and Necessary Operating Expenses includes all expenses incurred and paid by a landlord necessary to the operation and maintenance of the residential rental property during the period reflected in the income computed in this section, excluding mortgage, principal or interest payments, depreciation or amortization, computed with these limitations:
  - (1) Taxes shall be limited to amounts actually paid, including those in escrow for appeal;
  - (2) Repairs and maintenance shall be limited to arms-length transactions and shall be reasonable and necessary. Cost of service contracts shall be prorated over the period covered. Painting shall be prorated at a period of three (3) years for the interior of dwelling units or five (5) years for the exterior and common areas;
  - (3) Purchase of new equipment shall be reflected and prorated over the useful life of the item;
  - (4) Legal and auditing expenses shall be limited to reasonable and necessary costs of the operation of the property;
  - (5) Management fees shall be limited to actual services performed, such as the resident manager's salary, telephone expenses, postage, office supplies, stationery, and the value of the apartment provided if included in income. In no event shall management fees exceed five (5%) percent of the first \$50,000.00 of gross maximized annual income; 4 and one half (4 ½%) percent of the next \$25,000.00; four (4%) percent of the next \$100,000.00; three and one half (3 ½%) of the next \$100,000.00 and three (3%) percent of any amount over \$275,000.00;
  - (6) Salaries not included in management fees shall be limited to actual services performed and reasonable for similar position in the area, including rental value, if included in income and expenses and wages and benefits paid;
  - (7) Advertising shall be actual costs that are reasonable to insure occupancy only;
  - (8) Utilities such as gas, electric, water and oil, shall derive from arms-length transactions and the landlord shall demonstrate that all reasonable efforts to conserve energy and fuels have been used;
  - (9) Insurance costs shall derive from all arms-length transactions prorated over item of policies;
  - (10) The history of the income and expense shall be consistent with the application or fully documented as to any changes.

E. In any such application for a hardship increase, the landlord shall specifically submit adequate proof to demonstrate:

- a. He/she is an efficient operator of the residential rental property;
- b. The residential rental property is in a safe and sanitary condition and in substantial compliance with State Health Codes and the Property Maintenance Code;
- c. If, during consideration of a hardship increase, the Rent Leveling Board shall determine that the landlord is not in substantial compliance with any or all of the above, the Board may temporarily withhold further consideration of the Hardship Increase Application until the landlord has corrected any such deficiency.

F. If, after a full hearing on a Hardship Application, the Rent Leveling Board shall determine that the landlord is in full compliance with the provisions of this section, it may permit a rental increase sufficient to reestablish the sixty (60%) percent relation of reasonable and necessary operating expenses to the forty (40%) percent fair net operating income. Any

increase shall be equally prorated to all of the affected units within the structure or on the property, upon thirty (30) days notification after the Board has approved of the hardship increase.

G. In determining the rent increases under this section for a Hardship Application, the Rent Leveling Board shall consider whether the rent increase permitted by this section provides the landlord with a just and reasonable rate of return. The Rent Leveling Board shall be guided in its determination by whether the rental increase will result in a rate of return, which is sufficiently high so as to:

- a. Encourage good management, including adequate maintenance of services;
- b. Furnish reasonable reward for efficiency to the landlord;
- c. Enable landlords to maintain and support their credit.

H. If the Rent Leveling Board determines that the rental increase under a Hardship Application does not provide the landlord with a fair and reasonable rate of return under Subparagraphs a, b and c of Paragraphs E and G, the Rent Leveling Board shall have the authority to appropriately adjust the rental increase to provide the landlord with a fair and reasonable rate of return.

#### §256-9. Rent Leveling Board Established.

- A. There is hereby created a Rent Leveling Board within the Borough of Eatontown. The Board shall consist of five (5) regular members and two (2) alternate members. The members of the Board shall be appointed by the governing body and their terms of office shall be for a period of one year each, with each member serving without compensation.
- B. Except as provided herein, the powers herein granted to the Rent Leveling Board are advisory powers and its actions shall be subject to review by the governing body of the Borough hereinafter provided.
- C. The Board shall elect among themselves a Chairperson at the first annual meeting of the Rent Leveling Board, which it is called. The Borough Council shall appoint a paid Board Secretary and legal counsel when needed. The Construction Official, Housing Inspector and/or Code Enforcement Officer may be called for specific reasons when needed by the Board and in its discretion. The Board shall be subject to Open Public Meeting Act.
- D. Members of the Rent Leveling Board shall be appointed in the sole discretion of the governing body, but with a goal of providing a diversified Board, which is inclusive of members as tenants in Eatontown apartment complexes, members as tenants in the mobile home parks, landlord representatives and citizens at large.

#### §256-10. Rent Leveling Board: Powers.

The Rent Leveling Board is hereby granted, and shall have and exercise, in addition to other powers herein granted, all the powers necessary and appropriate to carry out and execute the purposes of this Ordinance, including but not limited to the following:

- A. To issue and promulgate such rules and regulations as it deems necessary to implement the purposes of this Ordinance, which rules and regulations shall have the force of law until revised, repealed or amended by the Board in the exercise of discretion, providing that such rules are filed with the Borough Clerk.
- B. To supply information and assistance to landlords and tenant to help them comply with the provisions of this Ordinance.
- C. To hold hearings and adjudicate applications from landlords for additional rental and surcharges.
- D. To hold hearings and adjudicate applications and complaints from tenants for reduced or improper rentals. The Board shall give both landlord and tenant reasonable opportunity to be heard before making any determination.
- E. Upon application the Board may in its discretion issue written advisory opinions as to any issue of jurisdiction on any future potential matter. The opinion shall not be binding but shall be advisory in nature and provide guidance for future actions.

#### §256-11. Appeal.

Both landlord and tenant may appeal in writing the findings of the Board to the governing body within twenty (20) days from the date of the determination. The Borough Council shall hold a hearing on the record before the Board. Procedures for appeal and costs shall be determined in the Rules and Regulations of the Board.

## §256-12. Standards of Service.

During the term of this Ordinance, the landlord shall maintain the same standards of service, maintenance, furniture, furnishings and equipment in the housing space, mobile home space and park, dwelling and common areas as it provided or was required to do by law or lease or tenancy at the date the lease or tenancy was entered into or started. In the event the landlord fails to provide such services, tenants may petition the Board for a rent reduction.

## §256-12. First Time Rental (Vacancy Decontrol).

The owner of housing space or dwelling or mobile home space being rented for the first time shall not be restricted in the initial rent charged. Any subsequent rental increases, however, shall be subject to the provisions of this Ordinance.

## §256-13. Precedence of Ordinance.

Should a lease entered into between the landlord and tenant prove to be in conflict with a Rent Leveling Ordinance, the Ordinance shall take precedence.

## §256-14. Vacant Housing Decontrolled, Recontrolled.

- A. Any housing space, dwelling, apartment or mobile home which is presently vacant or which will become vacant during or at the end of any lease term shall be decontrolled and the rent may be raised by the landlord. The rent to be charged to a new tenant as well as the rent previously charged for the same space shall be reported to the Rent Leveling Board within fifteen (15) days of renting the space. Upon being re-rented, the rental space shall be considered recontrolled to the same extent and under the same conditions as any space originally controlled.
- B. Failure to report the information required within the fifteen (15) days specified shall result in the rental space remaining controlled to the same extent and under the same conditions as if it had not been vacant and any rental charged the new tenant in excess of that controlled rate shall be void.

## §256-15. Complaint Against Landlord.

Any tenant filing a complaint with the Rent Leveling Board against the landlord shall be required to sign a complaint and appear before the Board to give testimony as requested by the Board. The landlord and/or his representative upon due notice shall be required to appear and give testimony. Any tenant appearing before the Board may select someone to represent them who need not be an attorney provided the person representing the tenant is authorized to do so in writing. Any person representing a tenant except an attorney is not permitted to charge a fee for his service. Any landlord who is incorporated or is an LLC must be with legal counsel when appearing on a landlord instituted complaint.

## §256-16. Request for Information.

When the Rent Leveling Board shall request of any landlord any information with respect to any rental unit such information shall be provided to the Rent Leveling Board within fifteen (15) days of such request. Failure to report the information required within the fifteen (15) days specified shall result in the rental space remaining controlled to the same extent and under the same conditions as it had not been vacant and any rental charged the new tenant in excess of that controlled rate shall be void.

## §256-17. Posting Required.

All landlords shall be required to have at all times a copy of the Rent Leveling Ordinance posted in the lobby or other conspicuous place in the premises or landlord and provide a copy to all tenants on the initial lease or tenancy or all existing tenants written 60 days of enactment of this Ordinance.

## §256-18. Purpose.

This Ordinance being necessary for the welfare of the Borough of Eatontown and its inhabitants shall be liberally construed to effectuate the purposes thereof.

## §256-19. Violations and Penalties.

### A. Penalties.

- a. Any person violating any of the provisions of this Ordinance shall, upon conviction thereof, be subject to a fine not to exceed two thousand dollars (\$2,000.00) or be imprisoned for a term not to exceed ninety (90) days, community service not exceeding ninety (90) days or any combination thereof. Each day that any violation continues shall be considered a new and separate violation of this Ordinance.

- b. Upon recommendation to the Borough Council by the Rent Leveling Board that a violation be prosecuted, it shall be the duty of the Borough Housing Inspector or Code Enforcement Officer to sign the complaint, within fifteen (15) days after the Borough Council has authorized the same by resolution.

B. Graduation of Penalties for Offenses.

- a. Any person who violates any provision of the Ordinance shall and upon conviction for the first offense pay a fine of not more than seven hundred and fifty dollars (\$750.00) and for the second offense shall pay a fine of not more than one thousand five hundred dollars (\$1,500.00); and for the third offense shall pay a fine of two thousand dollars (\$2,000.00) dollars or be imprisoned for a period not more than ninety (90) days or community service not to exceed ninety (90) days or any combination thereof. Each and every offense shall be deemed to be and constitute a separate and distinct violation of this act.
- b. In addition to the penalties hereinabove provided in the case of conviction under this Ordinance, upon any four (4) convictions for violations of this act, the premises in or upon which the violations occurred shall be deemed a nuisance and the owners, tenants and occupants of such premises shall be liable for the penalties and additional penalties provided for the maintenance of nuisances and in accordance with such acts made and provided.
- c. Any person who is not in willful violation of this Ordinance, but still violates this Ordinance shall first be given twenty (20) days written notice by the Borough of Eatontown Code Enforcement Officer to cease the aforesaid violation before a complaint is filed against the landlord. This does not include complaints filed by tenants before the Rent Leveling Board claiming an illegal rent increase by the landlord or requesting a reduction in rent for reduced services. In those cases, the complaint filed by the tenant before the Rent Leveling Board and served upon the landlord shall be sufficient notice of violation. A willful violation is considered a direct violation of a Board decision or Court order.

**BE IT FURTHER ORDAINED**, that all Ordinances or parts of Ordinances which are inconsistent herewith are repealed, but only to the extent of such inconsistency.

**BE IT FURTHER ORDAINED**, that this Ordinance shall take effect upon passage and publication.

DATE INTRODUCED: February 27, 2019

WITHDRAWN: March 27, 2019