

THE
RENT CONTROL BOARD
HANDBOOK
for Landlords and Tenants

CITY OF CAMBRIDGE
MASSACHUSETTS

CAMBRIDGE RENT CONTROL:

A HANDBOOK FOR LANDLORDS AND TENANTS

Prepared by:

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P R E F A C E

The purpose of this publication is to provide an overview of Rent Control in The City of Cambridge in easily understandable language. There are always dangers inherent in reducing a complex system of law and regulation to simple or concise language. On the other hand, there is a genuine need to make the effort. An attempt has been made to write a publication which is consistent with presently existing interpretations by the Rent Control Board and the Courts.

Some of what is written may be subject to differing legal opinions or subject to change by subsequent litigation. Therefore, it is important to note that this publication should not, under any circumstances, substitute for competent professional advice or legal representation. All parties are strongly urged to seek counsel from attorneys or others familiar with rent control in Cambridge concerning their rights and responsibilities under the Rent Control Act.

Comments or suggestions for improvements of this handbook are always welcome.

The Rent Control Board in particular wishes to recognize the efforts of the following staff members in putting this handbook together: Bruce Eisenhat, Jaqueline Sacks, Cheryl Donohue, Margaret Drury, Doris Cochran, and Roger Mervis.

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I. INTRODUCTION

Rent control was initially adopted in Cambridge in 1970, by the Cambridge City Council in response to a serious emergency detrimental to the public welfare -- a severe shortage of rental housing. Because of this shortage -- and the lack of new construction of apartments for low and moderate income tenants -- the city chose to control rents and evictions so that tenants might not be forced out of their community by the rising cost of housing in Cambridge. The City Council voted in 1976 to keep these controls in place because the housing emergency still existed.

A. The Rent Control Board

The Cambridge Rent Control Board consists of five members, appointed by the City Manager, who meet every Wednesday night at the Rent Control Office in Central Square at 639 Massachusetts Avenue to consider and adopt rules and regulations governing rent control and to decide cases. Two members are chosen to represent landlords, two to represent tenants, and the fifth, a single-family home-owner, is chosen as Chairperson.

Rent control is administered on a daily basis by a staff of 25-30 members, who are available to assist landlords and tenants in filing various types of applications and to provide information relative to all controlled rental units in Cambridge (e.g. legal maximum rents, services included in

the rent). They provide free public assistance, either in person or by phone, each afternoon from 12:45-4:45 and in person on Wednesday evenings from 5:00-9:00. They can answer questions from landlords and tenants of rent controlled property concerning rent control policies and procedures. However, landlords and tenants are urged not to rely solely on such public assistance but rather to seek the advice of an attorney or someone familiar with rent control. A compendium of important Rent Control Board and Court decisions organized by topic is also available for public review in the General Counsel's office upon appointment.

There is usually at least one Spanish-speaking staff member in the office. Presently, there is one Portuguese-speaking staff person available by appointment.

B. Registration

All property in Cambridge subject to rent control must be registered with the Board. A willful failure to register controlled rental property may subject an owner to criminal prosecution or civil or administrative sanctions (see Board Regulation 21). Controlled rental property in Cambridge essentially encompasses all property rented or offered for rent or used for living or dwelling purposes with the following exceptions:

- 1) rental units in hotels, motels, tourist homes, etc. rented for less than 14 consecutive days;
- 2) rental units constructed or created by conversion from a nonhousing to a housing use on or after January 1, 1969;
- 3) rental units owned, operated, or rent regulated by a public agency;
- 4) rental units in cooperatives;
- 5) rental units in hospitals, nursing homes, school dormitories or other charitable or educational institutions, and
- 6) rental units in an owner-occupied two- or three-family house.

Owners are strongly urged to seek from the Board a formal ruling of exemption from rent control for particular property rather than assuming such property is exempt.

Registration forms are available at the Rent Control Office. The staff is prepared to assist any landlord in filling out these forms, which include a variety of essential information such as the number of units in the building, the number of rooms in each unit, and the services and appliances provided to each unit (e.g. heat, electricity, refrigerator, etc.). When a landlord moves, a Supplemental Registration

form should be filed indicating the new address to facilitate the Board's communication with the landlord. Similarly, any new owner of controlled rental property must also file a Supplemental Registration.

A registration file is maintained by the Board for each controlled rental property in the City. (To the extent that the Board receives the necessary information concerning rental property that in part or total has been legally converted to condominiums, a separate registration file will be created for each condominium unit.) The registration file is a public record open to inspection by any interested party. This file should be the first point of reference for any property owner, tenant or other interested party with questions about a particular property. For instance, the file contains many documents pertaining to the property which may prove useful to both landlords and tenants in knowing and exercising their rights and responsibilities under the law. Among these documents are initial and supplemental registration forms, notices of general and individual adjustments of rents granted to the property, and other Notices of Ruling affecting the legal status of the property. The registration file should be reviewed with a member of the Rent Control Board staff so that the legal and practical significance of each of these documents may be fully understood. Upon request, the Board will provide interested persons with a computer printout free of charge of any property indicating the legal maximum rent for

each unit, the number of rooms in each unit, the services provided, and allowable additional charges, if any, for furniture and parking.

C. The Hearing Process

All Rent Control hearings are conducted in two parts. The first part is before a hearing officer to establish the facts of a particular case. The second part is before the Rent Control Board, to apply the law to the facts and to render a decision based on the recommendation of the hearing officer. All the evidence and testimony, either oral or written, is taken under oath at the hearing before a hearing officer. No new evidence may be presented to the Board. If the Board determines additional evidence is required, the case will be remanded to the hearing officer.

The informal hearing is conducted by a hearing officer, who administers an oath to all those intending to testify and tape records the proceedings. All parties have the opportunity to present and comment on evidence relevant to the case. All parties are strongly urged to be represented by counsel or someone familiar with rent control.

Throughout the hearing, each party may expect questions from the hearing officer and each party is subject to questioning by the other. This hearing represents the only opportunity for the parties to present evidence. The hearing officer will consider all testimony and evidence presented

and, if necessary, will request that another staff member inspect the building for the existence of Sanitary Code violations.

After the fact-finding hearing is adjourned, the hearing officer writes a report and submits it to the Executive Director. The report contains a summary of the evidence introduced at the hearing, findings of fact, and recommendations to the Board. The Executive Director or Assistant Director then reviews the report and puts the case on the Board's agenda for a Wednesday evening. Approximately one week before this Board hearing, all parties receive written notice of the Board hearing and of the right to have a copy of the report. All parties or their representatives have a right to be present at the Board hearing and to present oral arguments on their behalf. No new evidence may be presented at this hearing. If the hearing officer has made any material errors in the report, they should be brought to his/her attention before the case goes before the Board to allow the hearing officer to correct the errors.

At the Board hearing, the five Board members have before them a copy of the report, which they received one week earlier. The Chairperson will ask the parties involved in the case and their representatives, if any, to sit in the front row and to identify themselves. All parties are given ample opportunity to comment on the report and on the recommendations. The Board listens to the presentations, discusses

the outstanding issues and votes either to affirm, reverse or amend the hearing officer's recommendations, or to remand the case for further investigation. All parties receive written notification of the Board's ruling by mail soon after the hearing. Aggrieved parties have 20 days from the date of the notice of the Board's decision in which to submit a written request for a rehearing of the case. (See Regulation 41-03 for specific grounds for requesting a rehearing). Aggrieved parties may also appeal to the Cambridge District Court within a reasonable time. It is not necessary to request a rehearing before appealing.

D. Overview of the Law

1. Introduction

The legal rules which govern landlords and tenants of rent controlled property in Cambridge are a product of four different sets of laws:

- 1) the "Rent Control Act" passed by the City Council and the State Legislature, (referred to in this booklet as "the Act"), which sets out the basic rent control law;
- 2) the Removal Permit Ordinance, enacted by the Cambridge City Council, which limits the right of property owners to remove controlled rental units from the rent control rolls;

- 3) the Regulations, adopted by the Board, which spell out in more detail the rights and responsibilities of landlords and tenants and the procedures that are used by the Board; and
- 4) state laws which regulate a variety of landlord-tenant matters, from health code violations and rent withholding to eviction procedures.

Copies of the Rent Control Act, the Removal Permit Ordinance, and the Board Regulations are available to the public for a nominal fee.

Although the principal function of the Board is to enforce the first three of these sets of laws, the Board must also consider the relevance of state law in any matters that come before it. The Board, however, does not have the authority to resolve every type of landlord-tenant dispute. Some matters involve only issues of state law and, therefore, must be resolved by the procedures outlined in the state law.

Examples of issues the Board will not generally consider are:

- 1) violations of the Massachusetts Security Deposit Law,
- 2) claims of discriminatory practices,
- 3) enforcement of the State Health Codes, Building Codes, and Lead Paint Removal Statute,
- 4) illegal utility shutoffs, lockouts, or evictions,

- 5) claims for money or damages,
- 6) all disputes between landlords and tenants in non-rent controlled units.

In general, the Board's function is limited to:

- 1) determining whether particular units are subject to the Rent Control Act,
- 2) setting and adjusting the legal maximum rents for rent controlled units,
- 3) controlling the initial eviction process for units protected by the Rent Control Act, and
- 4) administering and enforcing the provisions of the Removal Permit Ordinance and the Rent Control Act.

Although the Board cannot enforce laws which are the exclusive domain of the state, the staff may assist the public in finding the proper agency to whom these problems should be addressed. Moreover, the Board maintains a list of attorneys who are available to represent landlords and/or tenants. This list is provided as a public service and does not constitute an endorsement of any individual or organization.

ATTENTION ATTORNEYS: If you wish to be placed on this referral list, please fill out a request form (available at the front desk). The list is updated monthly.

2. Summary of the Rent Control Act

The Act requires the registration with the Board of all rental units in Cambridge, EXCEPT those in:

- hotels, motels, inns, tourist homes and rooming or boarding houses, where the rooms are rented primarily to short-term occupants (two weeks or less);
- buildings newly constructed after January 1, 1969, or converted from a nonhousing to a housing use after January 1, 1969;
- some types of publicly owned, operated, financed, or subsidized housing;
- any hospital, convent, monastery, asylum, public institution or college or school dormitory operated for charitable or educational purposes; or nursing home or other non-profit residence;
- owner-occupied two and three family houses;
- cooperatives.

If a unit is initially exempt from rent control (because it falls under one of the exceptions listed above) but later becomes subject to rent control due to changed circumstances, it must be registered immediately.

The Act requires that a legal maximum rent be set for each unit. These rents* may be increased or decreased based on increases or decreases in operating expenses, capital improvements to the unit and/or building, and changes in the living space, services, or other amenities provided. Landlords and tenants are urged to keep accurate records and receipts to be used as evidence by the Board in determining whether increases or decreases should be granted. It is illegal for a landlord to charge rent in excess of the legal maximum rent set by the Board.

In addition to considering adjustments for an individual unit or building, the Board may also on occasion implement "general" rent adjustments (either upward or downward), applicable to all or certain classes of controlled rental units. The Board has granted general citywide adjustments in the past for increases in the cost of heat, fuel, real estate taxes and other operating expenses. Such general adjustments are only implemented where the evidence presented at public hearings and meetings indicates that the costs of providing housing have substantially changed on a city-wide basis.

*"Rent" is defined by Section 3(c) of the Rent Control Act as "the consideration, including any bonus, benefits, or gratuity demanded or received or in connection with the use or occupancy of rental units or the transfer of a lease of such rental units". Board Regulation 13-01(d) states that rent, "shall include monies demanded or paid for parking, furniture, appliances or subletting". Therefore, no additional charge may be legally collected for any service connected with the use and occupancy of a controlled rental apartment without the prior approval of the Rent Control Board.

In both types of rent adjustments, individual and general, the Board must allow landlords rents which yield a "fair net operating income." This standard is not defined in the Act, but the Board has adopted a formula for individual adjustments in its regulations which is explained in more detail below.

The Act also limits the right of a landlord to evict a tenant to specifically enumerated reasons constituting "just cause" and establishes penalties for rent overcharges and other violations of rent control rules.

3. Summary of the Removal Permit Ordinance

The Removal Permit Ordinance prohibits the removal of controlled rental units from the rent control rolls after August 10, 1979 without a removal permit. The Ordinance further prohibits the conversion of multifamily buildings subject to rent control to condominiums or cooperatives after August 1, 1981 and the owner occupancy of condominium units, except where the owner is entitled to a Certificate of Exemption or possesses a Removal Permit. Mergers or combinations of controlled rental units or other actions which prevent a unit from being inhabited as a separate unit are also prohibited. Moreover, rehabilitation (not required by City or State law) which would prevent reasonable residential occupancy of a controlled rental unit during the period of rehabilitation is subject to the Ordinance. Finally, the vacancy of a controlled rental unit for 120 days or more due

to the failure of an owner to rent or offer for rent the unit in good faith or to restore the unit to habitable condition may also constitute a violation of the Ordinance.

4. Summary of the Regulations

The regulations adopted by the Board set out the day-to-day operating procedures by which rent control is administered, as well as most of the actual rules governing controlled rental units. Although the regulations are too numerous and too detailed to summarize here, they should be carefully reviewed by all landlords owning and all tenants residing in rent controlled property. Copies of the regulations are available at the Rent Control office for a nominal fee.

II. EVICTIONS

A. General Information

For rent controlled apartments in Cambridge, evictions involve a two-step process. First, the landlord must get a "Certificate of Eviction" from the Rent Control Board. A Certificate of Eviction represents the Board's decision, based on the evidence presented at the hearing officer's (first) hearing, that there are reasonable grounds for an eviction. The landlord must then seek an order from the Court to evict a tenant.

1. Certificate of Eviction Requirement

It is illegal for a landlord to commence an eviction case in Court without first obtaining a Certificate of Eviction from the Rent Control Board unless the unit in question is exempt from the Rent Control Act.

Furthermore, a landlord cannot simply order a tenant to get out or take any direct action to force a tenant out (such as changing locks, shutting off the utilities, or removing the tenant's belongings) without successfully completing this two step process.

If a landlord attempts any of the above actions, the tenant should consult with an attorney immediately or inform the Board.

2. Starting the Eviction Process

A landlord must apply for a Certificate of Eviction on a form provided by the Rent Control Board. The Application must allege in detail acts constituting one or more of the ten grounds for eviction specified in Section 9 of the Rent Control Act (see below).

All the information the landlord supplies on the Application has to be accurate and complete. A landlord must follow precisely all of the instructions in the Application about how to serve the tenant with notice of the hearing. If the service is not properly done, a landlord will have to start all over with a new Application, unless the tenant waives this requirement. If there are any questions about how to fill out and serve the Application, a landlord should check with the Rent Control Board staff first.

No action will be taken on an Application if the unit in question is not properly registered.

B. Grounds for Eviction Under Rent Control.

Under the Rent Control Act, the Board may issue a Certificate of Eviction only in certain situations which are listed in Section 9 of the Act. These grounds for eviction are discussed in detail in the sections which follow.

1. Non-payment of Rent (Section 9(a)(1) of the Rent Control Act)

The general rule is that a landlord may evict any tenant who fails to pay the agreed-upon rent. However, there are some important exceptions to that rule. For example:

- A tenant cannot be required to pay more than the legal maximum rent set by Rent Control. If one is not certain what the legal maximum rent is, (s)he should check with Rent Control.
- A tenant cannot be evicted if the rent is paid up at the time of the hearing. (However, a landlord may be able to evict a tenant who regularly or repeatedly pays the rent late every month for chronic late payment pursuant to Section 9(a)(10) of the Act.)
- If a tenant sincerely believes that (s)he has paid the correct amount of rent, but the Board decides that the tenant actually owes the landlord more, the tenant will generally be given time to pay what (s)he owes. If the tenant is not "paid up" at the end of the grace period, the landlord may request in writing that the Certificate of Eviction issue, and the Board will issue the Certificate.

- If the Board after hearing determines that the value of the rental unit during the period in question was diminished due to the existence of substantial Sanitary or Building Code violations, the Board may abate (reduce) the rent due by the amount of the diminished value. The tenant will then be given time to pay this abated rent.

2. Violation of an Agreement (Section 9(a)(2) of the Act)

If the tenant has a written lease, (s)he can be evicted for violating a term of that lease -- but only if the landlord demands in writing that the violation stop, the tenant continues to violate the lease, and the lease term is legally enforceable. For example, if the lease prohibits pets, the landlord can evict a tenant who refuses to comply with that part of the lease.

Most tenants in Cambridge do not have written leases. They are called "tenants at will." Unless they have made special oral agreements with their landlords, the only obligations to which they are bound are the obligation to pay rent and not damage the apartment.

Oral agreements between a landlord and a tenant pose a much more difficult legal situation, because often it is hard

to prove exactly what was said and understood by each person. For that reason, oral agreements concerning the use of an apartment are difficult to enforce.

If a landlord sells a building, the new owner cannot evict the tenants for a breach that occurred and was cured before (s)he acquired title.

If there is no written lease or oral agreement to the contrary, a tenant may have roommates and guests.

3. Damage or Nuisance (Section 9(a)(3) of the Act)

A tenant can be evicted for damaging the apartment (or other part of the building) -- but only if the damage is serious. Ordinary wear and tear is not enough. In addition, a tenant can be evicted for creating a nuisance -- for example, seriously interfering with the peace and safety of the landlord or other tenants. However, one incident is not enough to warrant an eviction unless that one incident is very serious, such as physically hurting someone or causing substantial damage to the building. (Note: to evict a tenant for nuisance or damage, the landlord must present direct evidence at the hearing -- testimony from a person who actually saw it, not someone who heard about it from someone else).

4. Criminal Conviction (Section 9(a)(4) of the Act)

Under state law, a landlord is guilty of a crime if (s)he knowingly allows an apartment to be used for certain kinds of criminal activity, such as gambling, prostitution, or selling drugs. Therefore, a landlord is permitted to evict a tenant who is convicted of using an apartment for illegal activities. (Note: an arrest, by itself, is not enough; in fact, no eviction can take place until all possible appeals of the case are exhausted.)

The eviction will not be allowed under this section unless the tenant's use of the apartment was an essential part of the criminal activity. Also, if the landlord knew about the tenant's criminal conviction but continued to accept rent from the tenant anyway, the landlord may lose the right to evict the tenant.

5. Refusal to Renew Lease (Section 9(a)(5) of the Act)

While a tenant at will cannot be evicted for refusing to sign a written lease, a tenant under lease can be evicted for refusing to renew the lease, but only if three conditions are met:

- (1) the landlord has asked for the renewal in writing;
- (2) the terms of the new lease are substantially the same as the terms of the old lease; and

(3) those terms do not violate any of the rules of Rent Control.

A landlord could lose the right to evict for this reason by waiver if (s)he demands a renewal but then accepts rent from the tenant before the renewal is signed without reserving the right to evict at the time of acceptance.

6. Denial of Access (Section 9(a)(6) of the Act)

A landlord can evict a tenant who refuses to provide reasonable access to the apartment. "Reasonable access" means, among other things, access to show the apartment, after giving notice to the tenant in advance, to prospective buyers of the building, and to make necessary inspections and repairs -- for example, those required by the Health and Building codes. The landlord's agents or employees have the same rights as the landlord.

Ordinarily, a tenant may insist on written notice from the landlord, but in emergency situations (e.g. a broken water pipe), the landlord has a right to insist on immediate access.

When there is no emergency, however, it is not an unreasonable denial of access for a tenant to insist on a mutually agreeable time. Also, the landlord may lose the right to evict on these grounds if (s)he accepts rent after being denied access by the tenant.

7. Unapproved Subtenant (Section 9(a)(7) of the Act)

To evict the occupant of a unit pursuant to this section, a landlord must establish that:

- 1) there was a written lease which has expired,
- 2) the person named on the expired lease as a tenant no longer occupies the apartment,
- 3) the person currently occupying the unit is not named on the expired lease as a tenant, and
- 4) the person currently occupying the unit has not been approved by the landlord.

A landlord will be deemed to have approved of the occupant, UNLESS:

- the landlord states his/her disapproval within two weeks of the time (s)he knew or should have known of the roommate or subtenant, AND
- the landlord hasn't accepted rent from the new person.

If both of these conditions have been met, the landlord may evict the "unapproved subtenant" after the original tenant moves out. If these two conditions are not met, however, the new tenant may not be evicted.

8. Owner-Occupancy (Section 9(a)(8) of the Act)

The landlord may evict a tenant in order to use the apartment as his/her own residence OR as a residence for the

following family members: the landlord's child, parent, brother, sister, mother-in-law, father-in-law, sister-in-law, or brother-in-law. No other relative qualifies.

The landlord must file a sworn statement, called an Affidavit, which says that (s)he, or the family member, definitely plans to move in. If the landlord intends the apartment as a residence for a family member, that family member must also sign a sworn statement. These statements are sworn under the penalties of perjury, so the landlord or family member may be liable for criminal prosecution if (s)he is not being truthful. Both the landlord and the family member should appear at the hearing on the application for the Certificate of Eviction.

The landlord's primary motive for commencing the eviction must be owner or family occupancy. If the landlord's primary motive is to achieve some other goal or purpose, the eviction will be denied. Examples where the Courts have denied evictions on this basis are:

- 1) where the landlord's primary motive was economic;
- 2) where the primary motive was to renovate the unit, and;
- 3) where the primary motive is retaliatory.

9. Demolition or Removal from the Rental Market (Section 9(a)(9) of the Act)

The landlord may evict a tenant to demolish or renovate the apartment, or remove it in some other way from the rental

market, but only if the Rent Control Board first issues a removal permit.

Removal permits are rarely issued if there is a tenant living in the apartment and the issuance of the permit would result in the eviction of a tenant. A landlord seeking this type of eviction must file an affidavit, sworn under the penalties of perjury, that (s)he intends to demolish the unit or remove it in some other way from the market. (See discussion of the Removal Permit Ordinance in Section IV.4.)

10. Other Just Cause (Section 9(a)(10) of the Act)

A landlord may evict a tenant for "any other just cause" that doesn't conflict with the purposes of Rent Control, the Removal Permit Ordinance, or the Massachusetts Consumer Protection Law. Rent Control rules specifically exclude as a "just cause" the conversion of an apartment to a condominium unit. Also excluded are improvements not required by the Building or Health Codes.

The courts have recognized certain reasons as just cause and have rejected others. For instance, habitual late payment of rent is recognized as just cause. In order to prevail, a landlord must prove that fair warning was given to the tenant that payment beyond the due date is not acceptable and that there has been no waiver of the claim. A waiver may occur where the landlord accepts a late payment without reserving rights or making protests.

Refusal of a tenant at will to agree to a proposed rent increase by a landlord should be filed under this Section, rather than as a nonpayment eviction under Section 9(a)(1). A landlord may evict unapproved roommates and subtenants not otherwise occupying the unit at the end of a lease term (see discussion of Section 9(a)(7) of the Act.) A landlord will be deemed to have approved of the occupant, UNLESS

- the landlord states his/her disapproval within two weeks of the time (s)he knew or should have known of the roommate or subtenant, AND
- the landlord hasn't accepted rent from the new person.

C. Other Rules Governing Evictions

If the Board grants the landlord a Certificate of Eviction, the tenant(s) may appeal the Board's decision to Court. The landlord, however, does not have to wait for the appeal to be heard. (S)he may begin the second step of the process -- filing an eviction (called Summary Process) complaint in court. The judge who hears the eviction case may decide to postpone a decision on the eviction until the appeal of the Board's decision is completed. Often the Court will consider the appeal and the eviction action together (consolidation). In each of these proceedings before the Court, the assistance of an attorney is recommended for all parties.

The landlord's Certificate of Eviction expires after two months. Therefore, if the landlord does not file a case in Court within that time, the landlord loses the right to evict the tenant. The Board may extend the duration of a Certificate upon a request for good cause.

If the Board denies the landlord a Certificate of Eviction, the landlord may appeal the Board's decision to Court.

A Standing Order of the Cambridge District Court requires that the landlord notify the tenant of all Court proceedings in this appeal and that the tenant(s) provide notice to the landlord if they appeal.

D. Tenant's Defenses to Evictions

If the landlord does not prove all of the facts necessary to establish one of the ten grounds for eviction discussed above, the Board will deny the application for a Certificate of Eviction. In addition, Rent Control Board regulations provide tenants with several possible defenses to a landlord's application for a Certificate of Eviction. These defenses are discussed in the following sections.

1. Retaliation

If the landlord's reason for eviction is to retaliate against the tenant for or to discourage a tenant from organizing or asserting his/her legal rights, the eviction will be denied.

While the landlord's true motives are frequently difficult to prove, state law allows the Board to presume an intent to retaliate when an eviction action is commenced within six months of a tenant's asserting certain legal rights. For example, if the landlord files an application for a Certificate of Eviction within six months of a tenant complaint of a Sanitary Code violation to the Cambridge Inspectional Services Department, the presumption of retaliation applies. The landlord can overcome the presumption of retaliation only by clear and convincing evidence that the eviction would have been brought in the same manner and at the same time even if the complaint were not made.

2. Waiver

A waiver is a known surrender of rights. For example, if a tenant is being evicted on the ground that a condition of a lease was violated, such as a no pets provision, and the evidence indicates that the landlord had through words or deeds accepted this violation, this may constitute a waiver warranting a denial of the Certificate. It is always best to get this consent in writing because oral consent is often hard to prove and sometimes inadmissible in court.

Similarly if a landlord accepts the rent with knowledge of a breach of the lease, (s)he may waive the right to object to that breach, unless (s)he expressly reserves his/her rights. However, acceptance of rent does not always act as a waiver,

and written reservation of rights does not always prevent a waiver. Whether or not a waiver has occurred is determined from the totality of the circumstances.

3. State Sanitary Code Violations Which May Endanger Health, Safety or Well Being

State law provides that where one or more State Sanitary Code or other housing code violations exist on the premises of which the landlord knows or should have known, the landlord may not be entitled to collect the full agreed upon or legal maximum rent. In such a case, the Courts limit the landlord to collection of the fair value of the premises. This is an oversimplified statement of a very complex area of law. The Board has attempted to deal with this issue in part in Regulation Series No. 61. This Regulation Series should be studied carefully by any party or attorney involved in an eviction proceeding. On appeal, however, the Courts may not necessarily accept the Board's determination of the fair value of the premises or the standard deductions as set forth in the Regulation 61-04 schedule of conditions.

4. Other Defenses

If a tenant believes that (s)he is being evicted for reasons which are discriminatory, (s)he should contact the Massachusetts Commission Against Discrimination, One Ashburton Place, Boston, MA 02108, telephone 727-3990, or the newly-created Cambridge Human Rights Commission at Cambridge City

Hall. The Board will defer to any proceedings or rulings of the Massachusetts Commission Against Discrimination, as claims of discrimination are not suitable for resolution at the Rent Control Board.

Where the application for Certificate of Eviction is for the ground of non-payment, if the tenant in good faith tenders or has tendered the legal maximum rent before the Board rules on the case, the application will be dismissed.

No tenant shall be evicted for non-payment solely by virtue of having deducted from his/her rent any amounts due from the landlord for rent previously collected in excess of the maximum lawful rent established by the Board.

State law gives tenants rights to withhold rent under certain specified circumstances. If the tenant is withholding rent pursuant to a Court Order, an application for non-payment will be dismissed.

Other defenses may be available to the tenants. Lack of space prevents a discussion of all of the possible defenses. There may be procedural defects in the Application or Notice to Quit which may result in a dismissal or continuance of the case.

Potential defenses in an individual case may be discussed with the hearing officer assigned to public assistance each afternoon at the Rent Control Office. In addition, although the Board does not endorse any particular attorney, it does maintain lists of attorneys who are interested in representing

landlords and/or tenants' in Board proceedings, as well as lists of organizations which provide legal assistance to people who cannot afford private attorneys.

E. The Eviction Hearing

The landlord will be required to establish that (s)he is the landlord and that the property is properly registered with the Rent Control Board. The landlord will also be required to establish all the facts necessary to prove the grounds for the eviction. (See discussion of grounds above.) The tenant may present both evidence to contradict the landlord's evidence as to the grounds and evidence concerning defenses to the grounds alleged. (See discussion of defenses above.)

F. Opportunity for Mediation in Eviction Cases

On the day set for the fact-finding hearing, a landlord and tenant may agree to have the case mediated. Mediation involves the opportunity for both parties to discuss the situation with a hearing officer and to attempt to reach a voluntary settlement. In this way, the parties have the chance to fashion their own agreement and to resolve the issues quickly. Any mediated agreement will be entered in the Rent Control Board's records as the final resolution of the case, and the terms of the agreement will become the decision of the Board. If no voluntary settlement acceptable to both parties can be reached through mediation, an eviction hearing

will be held before another hearing officer. Whatever is said in the mediation session as far as settlement is confidential, and the mediating hearing officer will make no recommendation to the hearing officer who conducts the eviction hearing.

Any parties interested in mediation should let the Board's Assignment Officer know this on the morning for which the eviction hearing is scheduled.

III. RENT ADJUSTMENTS

A. Introduction

Maximum rent levels may be adjusted by the Rent Control Board only after the initial rent level has been established. The Board authorizes such adjustments to reflect changes in annual operating expenses and capital improvements to the property.

The purpose of a rent adjustment is to ensure that the landlord receives a fair net operating income (FNOI) and that the tenant pays a fair rent. The basis for calculating the FNOI will be explained in greater detail later in this booklet. The Rent Control Board has promulgated regulations setting up two methods of regulating rent levels for controlled units: 1) a city-wide general adjustment and 2) individual adjustments.

B. General Adjustments

The Board authorizes periodically a city-wide adjustment of rents based on widespread and documented changes in the normal operating expenses incurred in the maintenance of rental property. In the past, such adjustments have been made for changes in taxes, heating fuel costs, and the general inflation level.

A general adjustment, as it is called, normally applies to all controlled rental units. It is authorized only after public hearings are held to determine the need for such an

adjustment and the formula and procedures to be used to adjust the legal maximum rents.

General adjustments usually involve a percentage increase or decrease in the legal maximum rent level for a controlled rental unit. The percentage increase or decrease granted a particular unit or building may vary from unit to unit. An upward adjustment, however, will not be granted if the owner has not properly registered his/her controlled rental units.

Where tenants are provided with the opportunity to file an "affidavit of conditions" (a check list of serious housing and building code violations), an upward adjustment will not be effective until the applicable violations, if any, have been corrected. The landlord cannot evict a tenant for filling out this form or for requesting an inspection. When a general adjustment has been approved by the Board, landlords and tenants are notified in writing detailing the computations made by the Board. In addition to the notice from the Rent Control Board of the increased maximum rent, the landlord must also give one month's written notice to increase the rent. Any decrease, however, will take effect upon notice from the Board.

C. Individual Adjustments

The Rent Board may authorize an individual adjustment of the legal maximum rent based on demonstrated operating and/or capital expenses and on the conditions of the unit(s) or building.

"Individual" in this case generally refers to a particular property (building, condominium unit), but it can also refer to a particular unit (or units) within a property. A landlord may petition for a maximum of 2 such individual adjustments (per unit) per calendar year, except in cases of emergency capital improvements. However, only one of these petitions may be pursuant to Regulation 72. If no Regulation 72 petition is filed, a landlord may choose to file two Regulation 75 or 76 petitions.

There are several types of individual rent adjustment petitions, each raising various issues and receiving different procedural treatment. These are explored in greater detail below. Specific filing instructions are included with the petitions, and the text of the provisions are contained in the Board's Regulation pamphlet. The following section explains in detail how the rent adjustment process works.

1. Regulation 72

According to Rent Control Regulation Series 72, a landlord may receive an increase in the legal maximum rent

based on increased operating expenses and any capital improvements or replacements made to the property. This type of rent adjustment and its effective date are based on the condition of the property and the cost of the capital improvements. This process should only be chosen if the landlord wishes a rent increase based on increases in the regular operating expenses. These expenses are listed in both the regulations (72-04) and the Regulation 72 petition. They include the following annually recurring costs: payroll, electricity, gas (not heat), water and sewer, heating fuel, management (automatically computed at 6% of current gross rents), administrative, painting and decorating, maintenance and repair, supplies, miscellaneous, insurance and real estate taxes (see Regulation 72-04). For an explanation of these categories, see the Regulation 72 petition form. Interest payments and other mortgage-related costs are not included.

a. Calculation of the rent adjustment

Rent levels are determined by a formula which involves the establishment of the gross income for the property during a base year. The base year is normally 1967 unless the units were not in existence on January 1, 1967 or there is no reliable rent data available for the property during the calendar year ending December 31, 1967. In cases where rent data is not available for 1967, the closest following year for which reliable data is available will be used. The year 1967

is preferred because a study of the Cambridge housing market established that in 1967 there was still relatively equal bargaining power between landlords and tenants, which resulted in fair rents. Put another way, the landlords were making a fair profit, while tenants were not paying exorbitant rents.

Once the base year gross income is established, the net operating income for the base year is determined by subtracting the operating expenses in the base year from the base year gross income. The base year net operating income is then adjusted by a cost of living factor called the Implicit Price Deflator (IPD), which compensates for the change in the purchasing power of the dollar since the base year. The adjusted net operating income is then added to the documented operating expenses for the property for the calendar year immediately past. That is, if the petition is submitted in 1985, the landlord should document operating expenses for calendar year 1984. (Fiscal years can only be used when the property has historically been managed on that basis. Unexpired expenses incurred for capital improvements, from the base year to the present, are amortized and added to this total. This includes capital improvements previously allowed (but not yet expired or replaced), as well as any additional improvements the landlord can document. The total resulting from these calculations is the gross income for the property for the current calendar year.

If a landlord cannot provide actual expense data for the base year, the Board will allow the rent adjustment to be recalculated based on "Redbook" figures. Redbook figures are a compilation of average expenses for base years 1967-1973 which the Board and the Courts have found to be valid indicators of reasonable base year expenses for those years. These figures are available at the Rent Control office. Interested parties should request the figures for the proper (base) year and building size (number of units).

The following formula is used to determine the new gross rents. (The example below assumes a 1967 base year and a 1983 operating expense year.):

Operating Expenses:

	1967	Gross Rents
-	1967	Operating Expenses
<hr/>		
	1967	Fair Net Operating Income (FNOI)
x	2.73*	Implicit Price Deflator
<hr/>		
	1984	FNOI
+	1983	Operating Expenses (dollar-for-dollar) (prior calendar year)
+		Any unexpired Capital Improvement Expenses (amortized)
<hr/>		
	1984	Gross Rents

*This figure is revised from year to year each March.

Example: The property had a gross rental income in 1967 of \$10,000 and operating expenses of \$5,000 in 1967 and \$14,000 in 1983. The property had its exterior painted in 1981 for \$2000. The adjustment would be made as follows:

10,000	(1967 Rental Income)
- <u>5,000</u>	(1967 Operating Expenses)
5,000	1967 FNOI
x <u>2.73</u>	(current IPD)
13,650	(1984 Adjusted Net Income)
+ <u>14,000</u>	(1983 Operating Expenses)
27,650	(\$2,000 amortized over a 5-year basis,
+ <u>571</u>	as set forth in Board Regulation 72-10)
28,221	(1984 Rental Income)

The allowable gross income for this property for 1984 would be \$28,221. \$28,221 divided by 12 would give the monthly gross income (in this example, that is \$2351.75). This rent will be collectible, with proper written notice to the tenants, until such time as another rent is authorized.

This sum is apportioned only to the affected units according to the landlord's proposed rent schedule (the way (s)he wants the rental income distributed among the units, provided the proposed schedule is deemed reasonable by the Board) and to the number of rooms in each unit. (See Regulation 76 section for an explanation of capital improvement allocation.) This proposed rent schedule must be included in the petition for the rent adjustment and must be based on the

relative size and quality of the units, including any owner-occupied or exempt residential units.

The proposed rents represent the maximum amount that the new rents can be. The Board may not adjust the rents beyond this level. If the "adjusted fair gross income" (the calculated potential allowable rent total) exceeds the total of the proposed rent schedule, the allowed recommended rents will be cut off at the proposed levels. This could result in a loss of potential income to the landlord. This is especially true where the Board's inflation factor (IPD) is increased while the rent adjustment is being processed. Therefore, the landlord should propose rents high enough to cover expected costs and (allowable) profit.

Nevertheless, a landlord should take care not to propose rents that are unnecessarily high because the higher the proposed rents, the more it is likely that the affected tenants may contest the proposed increases. The Board will not adjust the rents beyond the landlord's proposed level without additional time-consuming procedures (to protect the tenants' rights to receive notice and to be heard.)

If the base year is other than 1967, the same method of adjustment is used as is used for properties with a 1967 base except the base year rents are checked by another formula to make certain that they were fair. Capital improvements and related formulas will be explained in greater detail in the Regulation 76 section of this manual.

b. Filing a Regulation 72 rent adjustment petition

The landlord should complete the Regulation 72 petition and file it with the proper filing fee at the Rent Control Office. The petition will be assigned to a Hearing Officer who will assign a date and time for a hearing (during normal business hours) and mail a notice of this hearing to the landlord and all tenants potentially affected, at least 10 days prior to the hearing date. The tenants will also receive a copy of the petition, as well as a Tenant Response form. On this form, they should indicate (by checking off the appropriate box, or by writing on the back) any substandard conditions in either their apartment or the common areas of their building.

Upon proper grounds, a request for postponement of the hearing (or continuances) may be granted. (The 10 day notice and continuance rules apply to all Regulation 72, 75 and 70 rent adjustment petitions and Regulation 76 appeal hearings.)

At least 5 days prior to the hearing, the landlord must provide to the Rent Control Board two sets of copies of the documentation in support of the claimed expenses. One set will be available for the tenants' review, and the other set will become a part of the Board's permanent file.

For any operating expense amounts (e.g. payroll, maintenance and repair, etc. -- see list in Board Regulation 72-04) and capital improvements claimed, a landlord should submit

written evidence -- bills, receipts, cancelled checks -- documenting what work was done and how much was paid for each and every expense submitted. For example, a landlord must be able to testify what maintenance work was done in the expense year and submit bills to prove it. If no such documentation is submitted, the landlord may not get credit for work that was done.

Although a petition for rent adjustment by Regulation 72 can be complex, the staff of the Rent Control Board will assist in every way possible to make the process understandable. To facilitate prompt and efficient processing of the petition, landlords are urged to take the following steps:

- 1) Read Regulation Series No. 72;
- 2) Read the instructions to the petition before it is filled out. Many delays in processing a Regulation 72 petition result from a failure to follow the instructions;
- 3) Before the petition is filed, have it reviewed by one of the Board's hearing officers;
- 4) Before the petition is filed, contact the tenants concerning the correction of all Sanitary and Building Code violations. The Rent Control Board will not permit an increase in the legal maximum rents to become effective until

any such violations have been corrected. Disputes about conditions or the failure of the landlord to maintain the property could consume a substantial amount of time, considerably delaying the process;

5) Before the petition is filed, make and retain two copies of all necessary documentation to be presented at least 5 days prior to the hearing;

6) Check applicable filing fees with the Rent Control Board staff. Any filing fee is treated as an expense in determining the new legal maximum rents and is reimbursed to the landlord over a 3-year period.

c. The hearing

Throughout the hearing, each witness may expect questions from the hearing officer and each party. In a rent adjustment hearing, the landlord must present written documentation of the following:

Base year rent records

Base year expenses

Expenses for the preceding calendar year

Capital improvements since the base year

The best forms of written documentation of expenses are bills, contracts and cancelled checks. Ledger books may be acceptable. If a landlord claims his/her own labor, (s)he must

present in written form a log detailing the number of hours and the claimed wage, as well as any evidence justifying that wage (e.g. proof that landlord is a licensed plumber). In order to expedite the presentation of evidence, the landlord must organize his documentation by category of expense to which it will be allocated. If possible, an adding machine tape should be run on each category of expenses.

Although the tenants present will be allowed to examine all written documentation presented at the hearing, they are strongly urged to review all such documentation prior to the hearing to prepare their case. Tenants should consider, among other things, whether the improvements were actually made, whether the expenses were actually incurred, and whether the improvements were allocated to the right units. In some cases, evidence of violations of the State Sanitary Code or of the Rent Control Board Regulations will be considered. A report from the Cambridge Inspectional Services Department listing any such violations is the best evidence; however, photographs and testimony may be acceptable.

The hearing officer will ask both sides the following questions:

1. Have there been any changes in space, service or other amenities since the base year?

2. Has there been any substantial deterioration of the property other than as a result of ordinary wear and tear?
3. Has there been a failure on the part of the landlord to repair or maintain the property?
4. Do the parties wish anything else to be considered?

d. Implementing the rent adjustment

The Notice of Rent Adjustment sent out by the Board does not increase the rent a tenant must pay; only an agreement between the landlord and tenant can increase the rent. A landlord may raise the rent to the new maximum lawful level as determined by the Board. However, written notice to a tenant at will must be sent at least one month prior to the effective date of the increase. In the case of a tenant under lease, the terms of the lease will control. Rent decreases are effective immediately with the next rent period. (See Board Regulation 72-07 for rent adjustments in vacant units.)

If outstanding Building or Health Code violations are cited in the hearing officer's report, the increase will not be effective until all conditions have been corrected and the Board certifies this fact. The Notice of Rent Adjustment will list the conditions to be corrected and will outline the procedure for notifying the Board of their correction.

Once the landlord has corrected the conditions, (s)he notifies the Board's inspector in writing. The inspector will send a notice to all affected tenants, stating the landlord's claim. The tenants then have 10 days to dispute this (in which case another inspection is scheduled). If no dispute is received, notice is then sent to the parties by the Board that the rent increase is effective.

2. Regulation 76

A landlord may file a Regulation 76 application where (s)he has made capital improvements to his/her property within 12 months prior to the date of the filing of the application. Regulation 76 calculations are based on cost figures supplied by the landlord and reviewed by a hearing officer, who recommends the rent adjustments subject to the approval of the Executive Director. These adjustments are processed initially and approved without a hearing but are subject to a hearing if the landlord or tenant requests one. The hearing officer may also elect to convene a hearing prior to approval in unusual circumstances.

To receive a rent adjustment for capital improvements, a landlord must file a petition describing the work done, along with copies of any bills, canceled checks and executed contracts which show the cost of the work. These records

should be as specific and as detailed as possible to assist the hearing officer in expeditiously processing the petition. If possible, the landlord or the contractor should classify the improvements according to the categories listed in Board Regulation 72-10. Rent adjustments will be calculated according to the nature and useful life of the particular improvement as classified in this regulation. All documentation relating to a particular improvement should be grouped and submitted together, and labelled accordingly, on both the documentation and on the petition. For example, "new kitchen installation" should include all bills relating to that expenditure. If a second improvement is submitted such as major "plumbing," documentation of that expense should be organized and stapled together.

If any bill or check includes several different kinds of work, with different useful lives (as listed in Reg. 72-10) (such as smoke detectors at 5 years, and electrical service at 15 years, total bill: \$1000), the landlord must provide a price breakdown (how much of the \$1000 was for the smoke alarms, how much for electrical work) or the entire amount will be apportioned over the longer useful life (in this case 15 years). It is to the landlord's advantage to do this breakdown if (s)he wants to recover his/her costs as quickly

as the law allows, because an amount of money allowed over 5 years results in larger monthly rents than the same amount spread over 15 years. If labor is performed by the landlord, or his/her relatives or friends, a written, daily record of the time spent and work performed must be maintained during the course of the work and submitted with the petition. The landlord must also list his/her requested wage rate, as well as his/her qualifications (level of expertise, licenses, etc.) for that wage. Landlords should be aware that the hearing officer may disallow amounts claimed that are found to be unreasonable.

If the landlord obtains a loan from a recognized lending institution for work which the Board considers an energy conservation improvement, the landlord may be granted an increase for this improvement according to the length and interest terms of the loan. Details regarding requirements for qualification for this policy can be found in Reg. 76-05(a) and (b).

Note: When trying to categorize work as capital or maintenance, landlords and tenants should be aware that the Board generally considers work costing under \$100 as mainten-

ance and repair, and items costing over \$100 as capital improvements.

Once the landlord files the completed petition and copies of the expense records with the Rent Control office, the case is assigned to a hearing officer, who checks first with the Cambridge Inspectional Services Department to determine if there are any outstanding violations of the Sanitary or Building Codes. If there are outstanding violations, then the hearing officer will notify the landlord that the rent adjustment petition cannot be processed until the violations are corrected.

Once the violations, if any, are corrected, the officer then reviews the petition and documentation submitted by the landlord, together with the registration file for the units maintained in the Rent Control office. The officer may inspect the work done or question the contractor about the specific costs involved in the entire job, if necessary. Based on this information, a report is prepared summarizing the present conditions and maximum rents, the capital improvements claimed and the rent adjustment calculations. The report concludes with the hearing officer's recommendations for the rent adjustment for the units affected. A copy of

this report, along with the Notice of Rent Adjustment, is mailed to the landlord and all affected tenants. Also enclosed is a form letter by which a hearing can be requested.

a. Calculation of the rent adjustment

The actual amount of the rent adjustment is determined by 1) the properly documented and allowed cost of the capital improvement, 2) the improvement's useful life (usually a period of between 5 and 15 years as listed in Board Regulation 72-10), and 3) the specific rental units affected by the improvement. The landlord may collect the expenditure over the period of the assigned useful life based on an amortization factor calculated at a 15% interest rate. The total cost of the improvement, multiplied by the amortization factor, yields the annual allowable expense of the item. Thus, the monthly rent adjustment is calculated using the following formula:

1. Total Cost of Improvement	x	Amortization Factor	=	Yearly Expense
2. Yearly Expense	÷	12 months per year	=	Monthly Expense or Monthly Rent Increase

For example, a landlord has the floors in one apartment sanded and refinished at a cost of \$1,000. This improvement falls into Category 19 of the table in Regulation 72-10, which has a useful life of 5 years giving the landlord a yearly amortization factor of 0.2855. The calculations would be as follows:

$$\begin{array}{rcl}
 1. & \text{Total Cost of} & \text{Amortization} & & \text{Yearly} \\
 & \text{Improvement} & \text{Factor} & = & \text{Expense} \\
 & \$1,000 & 0.2855 & & \$285.50 \\
 & & & & \\
 2. & \text{Yearly} & \text{12 Months} & & \text{Monthly Expense} \\
 & \text{Expense} & \text{per year} & = & \text{or Monthly Rent} \\
 & \$285.50 & 12 & & \text{Increase} \\
 & & & & \$23.80
 \end{array}$$

An improvement with the same cost and a longer useful life will not permit the landlord to increase the rent as much. For instance, major plumbing work is expected to last 15 years and, therefore, the amortization factor is lower. The calculations for this work, Category 27, are as follows:

$$\begin{array}{rcl}
 1. & \text{Total Cost of} & \text{Amortization} & & \text{Yearly} \\
 & \text{Improvement} & \text{Factor} & = & \text{Expense} \\
 & \$1,000 & 0.1680 & & \$168.00 \\
 & & & & \\
 2. & \text{Yearly} & \text{12 Months} & & \text{Monthly Expense} \\
 & \text{Expense} & \text{per year} & = & \text{or Monthly Rent} \\
 & \$1,000 & 12 & & \text{Increase} \\
 & & & & \$14.00
 \end{array}$$

The longer the improvement is expected to last, the longer the payback period for the improvement. Once the useful life of

the improvement has expired, the legal maximum rent for the affected unit(s) will be reduced by the monthly amount allowed in the rent structure for the item.

In the case of a landlord making capital improvements which affect more than one unit in a building, the cost is passed on to those units which benefit. The calculations are similar to those described above for one unit. However, the monthly cost of a common area improvement is apportioned among the units benefited based on the number of rooms in each unit. Common area improvements are generally assumed to benefit all units, unless they are improvements such as an interior stairway to 3 of 6 units, in which case the cost of the improvement will be allocated only to the 3 benefited units.

For example, a landlord installs a new boiler (Category 3 in Regulation 72-10) at a cost of \$5,000. The building contains four apartments: two units consisting of 5 rooms, one unit consisting of 4 rooms and one unit consisting of 3 rooms--a total of 17 rooms. The new boiler distributes heat to all four apartments, so all must share in the cost. Because the apartments are not the same size, the tenants in the larger unit will pay more than the persons living in the smaller units. The calculations are as follows:

1.	<u>Total Cost of Improvement</u> \$5,000	x	<u>Amortization Factor</u> 0.1680	=	<u>Yearly Expense</u> \$840.00
2.	<u>Yearly Expense</u> \$840.00	-	<u>12 months per year</u> 12	=	<u>Monthly Expense</u> \$70.00
3.	<u>Monthly Expense</u> \$70.00	-	<u>Number of Rooms Affected</u> 17	=	<u>Monthly Expense per Room</u> \$4.12
4.	<u>Monthly Expense per Room</u> \$4.12 \$4.12 \$4.12 \$4.12	x	<u>Number of Rooms per Unit</u> 5 5 4 3	=	<u>Monthly Increase per Unit</u> \$20.60 20.60 16.48 12.36

All adjustments will be calculated for individual units based on their share of the benefits of the capital improvements.

Commercial and other exempt units in a building must bear an appropriate share of common area improvement costs. Improvements made only to commercial units, however, will not be allowed by the Board because they do not benefit the residential tenants.

b. Appeals

Both the landlord and the tenants affected by the petition have the right to request a hearing regarding the rent adjustment. A hearing request form is enclosed with the

Notice of Rent Adjustments. The landlord may dispute the expense of the capital improvement allowed by the hearing officer and request a hearing to determine why certain costs were not apportioned. Tenants may challenge the adjustment for four reasons:

1. the claimed improvement was never made;
2. the quality of the improvement is unacceptable;
3. the cost of the work was unreasonably expensive; and
4. a specific Capital Improvement was made necessary

because of:

- a) decreases in living space, services or other amenities;
- b) substantial deterioration other than as a result of ordinary wear and tear; or,
- c) failure of the owner to perform ordinary repair, replacement or maintenance.

If the capital improvement item resulted from reasons other than those set forth in a), b), or c) above, it cannot be challenged on this basis.

A tenant requesting an appeal on one of the above grounds must be able to support his/her allegations at the hearing. A request for a hearing must be received by the Board no later

than 45 days from the date of this Notice of Rent Adjustment. Pending a decision by the Board on any such hearing, the new Regulation 76 rent adjustment rents shall remain in effect. Should it be determined, after hearing, that the rent increase allowed by the Executive Director is greater than the rent increase allowed by the Rent Control Board, then the tenant may deduct the difference from future rent payments.

3. Regulation 75

A petition for rent adjustment pursuant to Regulation 75 should be used for claims of capital improvements or replacements completed any time after January 1, 1973 but prior to the twelve-month period preceding the filing of the petition. If the landlord has made capital improvements both prior to and during this twelve-month period, all these improvements may be included in the Regulation 75 application.

This type of rent adjustment and its effective date are based on the condition of the property and the expense of the capital improvements claimed. In accordance with Regulation 75, all tenants of the units affected by these improvements will be notified that this petition has been filed and advised to attend a hearing scheduled and conducted by a hearing officer.

The calculation of the rent adjustment is identical to that in the Regulation 76 process, except for the following: The factor used in the formula (amortization factor) is determined by both the useful life of the item under consideration as well as the year the improvement was made. (See the text of Board Regulation 72-10.) The table of different useful lives can be found in Board Regulation 72-10. Note: All allowed improvements, while calculated based on the year they were completed, are, nevertheless, allowed their full useful lives from the date of the Notice of Rent Adjustment.

Because the Regulation 75 process requires a hearing, the first hearing, the report, the Board hearing and the Notice of Rent Adjustment all follow the formats outlined in the Regulation 72 section above, except that neither the base year, nor past year regular operating expenses are considered.

4. Other Rent Adjustment Processes

- a. Regulation 70 - By this hearing process, a landlord may reapportion the individual rents in several units so that the separate rents change (often an exchange), but the monthly gross

income for the building remains the same. This must be done by agreement of the landlord and all tenants affected.

- b. Regulation 73 - By this process, if the landlord and tenant agree to the rent calculated by the hearing officer, the parties can waive their right to a Board hearing. This process is used in conjunction with the Regulation 72 process. Calculations are performed as usual.
- c. Regulation 77 - This process is available to owners of multifamily buildings which are being rehabilitated through programs administered by a non-profit housing rehab agency and approved by the Cambridge Community Development Department. The regulation provides a mechanism by which these owners may determine prior to the completion of capital improvements the legal maximum rents collectible upon completion of these improvements to facilitate their obtaining the necessary financing.
- d. Tenant requested decrease in rent - for standard conditions, substantial deterioration, or failure to repair and maintain -- This is

addressed under the section entitled "Tenant Complaints".

- e. Parking - Parking is considered a benefit connected with the use or occupancy of a controlled rental unit. Therefore, the Rent Control Board sets limits for parking charges. If parking was a service initially given to the tenants when the apartment unit(s) became rent controlled, then parking is included in the legal maximum rent and the tenants cannot be charged an additional amount.

If the landlord wishes to provide parking not previously provided to the tenants, (s)he may apply for the additional rate. A parking rate must first be approved by the Rent Control Board prior to any tenants being charged an additional fee for this service.

In order to apply for parking as an approved additional charge, the owner should fill out and file a Regulation 76 rent adjustment petition (available at the Rent Control Board office). If the owner is about to file a rent adjustment petition with the Board, a separate petition for parking need not be submitted, because the parking charge request can be included on the same rent adjustment

petition. Otherwise, the regulation 76 petition should be used.

The necessary information the owner must provide in order for the Board to determine the appropriate parking charge follows:

- 1) Will the tenants have assigned parking spaces or not?
- 2) Are the parking spaces uncovered or covered?
- 3) Are the parking spaces paved or unpaved?
- 4) At what address are the parking spaces located?

The above criteria will be taken into account in order to determine the maximum amount that can be charged to the tenants for parking. Normally the rate for parking allowed by the Board ranges from \$20.00 - \$40.00/month depending on the area in which the parking is offered and the type of parking spaces offered, unless the Board finds that unique facts or special circumstances warrant a higher figure.

IV. TENANT COMPLAINTS

A. In General

The Rent Control Board handles four types of tenant complaints:

- 1) rent overcharges (including illegal collection of "finder's fees" or other extra charges);
- 2) reductions in rent based on a reduction of services (e.g., decreasing the amount of space originally given to the tenant, no longer providing parking or utilities, failure to maintain the property);
- 3) attempts by the landlord to force the tenant out (by harrassment, changing the locks, etc.); and
- 4) violations of the Removal Permit Ordinance (e.g., taking a rental unit off rent control rolls without a Removal Permit.)

Each of these types of complaints and possible landlord defenses is discussed below.

If you have a complaint which does not seem to fit any of these categories, however, you should discuss it with a member of the staff at Rent Control.

1. Overcharges

The landlord of a controlled rental unit cannot charge a rent in excess of the legal maximum rent as set by the Rent Control Board. (One can find out what the legal maximum is by calling the Rent Control Office.) If an overcharge is discovered and brought to the attention of the landlord and (s)he does not return to the tenant the amount which has been overpaid, the tenant can file a complaint with the Board. This rule applies even if the tenant originally agreed to pay more than the legal maximum because any such agreement which sets a rent higher than the legal maximum is void.

Other types of rent overcharge include payments for services which were originally included in the monthly rent but for which the landlord is now seeking extra money -- e.g., heat, garbage pick-up, parking space, furnishings. (Rent Control keeps a record of which services are included in each tenant's rent; this information is available on request. Note: there will sometimes be differences among tenants in the same building as to which services are included in the rent.)

The following are also considered illegal overcharges:

- a) "Finder's fees" or any other fee charged by the landlord for the opportunity to rent the apartment. However, a person, other than the landlord, who is a licensed

real estate broker, may collect a "finder's fee" not in excess of one month's rent if a tenant who is shown an apartment by the broker takes the apartment.

b) Any initial payment or deposit beyond what the law allows -- first month's and last month's rent plus a "security deposit" equal to more than one month's rent. (For more information about the Security Deposit Law, call the Attorney General's Office at 727-8400.)

Although the Board has the authority to hold a hearing based on one of the above-mentioned issues, the Board has no authority to order the repayment of any overcharge. The Board can only determine that an overcharge has occurred and the amount of the overcharge. However, the Board does have the authority to seek civil and criminal remedies in Court for overcharges. Tenants should consult an attorney to discuss the issues and to determine whether filing an action in Court will yield better results. (The Rent Control Act provides for both civil and criminal remedies through Court action.)

If a tenant does know that an overcharge has occurred and chooses not to file a tenant complaint or bring a Court action, the tenant may elect to deduct any overcharges from future rental payments. If a landlord then decides to bring

an eviction action against the tenant for failure to pay the rent, the Rent Control Board will determine the rent, if any, to which the landlord is entitled. (For example, if the Board finds that prior overpayments exceed the rent arrearage claimed by the landlord, a Certificate of Eviction will not issue.)

2. Reduction of Services

A landlord may not reduce a tenant's living space, storage space, access to grounds, parking area, furniture, janitorial service, or other amenities without a corresponding reduction in rent. Similarly, if the landlord has been paying for water, electricity, gas, or heat, (s)he may not stop providing those services without the Board reducing the legal maximum rent.

A complaint about reduction of services takes the form of a "Tenant Petition for Rent Adjustment," and may be filed by a tenant at any time, whether or not the violation has occurred recently. The Board will then determine the appropriate reduction of rent.

3. Attempts by the Landlord to Recover Possession

A Tenant Complaint may be filed for any conduct by the landlord which substantially interferes with the tenant's use and enjoyment of the apartment. Such conduct may range from

forcible attempts to evict the tenant (such as changing locks, removing the tenant's belongings, or cutting off utilities) to simple harassment.

If the tenant is threatened with imminent eviction or lockout or these have already occurred, the tenant should contact the Board immediately. An attorney should also be consulted in such instances since only a Court can restrain or compel a landlord, award money damages, costs, or attorney's fees, and assess criminal penalties for violations of the law.

4. Violations of the Removal Permit Ordinance (Ordinance 966)

In general terms, the Removal Permit Ordinance prohibits a landlord from taking a rent controlled unit off the rent control housing market without the approval of the Rent Control Board. A few of the situations held to be removals are:

- demolition;
- conversion of residential space to commercial space, after August 10, 1979, the effective date of Ordinance 966;
- rehabilitation in excess of that required by law, if the repairs are so extensive that they prevent reasonable residential occupancy while the work is being done;

- owner-occupancy of a condominium unit (with certain specified exceptions);
- conversion of a building to a cooperative;
- the physical combination of two or more rent controlled units by the elimination of bath or kitchen facilities or by structural changes that prevent habitability as separate units; or
- the vacancy of a controlled rental unit for 120 days or more where the owner has refused to rent or to offer for rent in good faith the unit or to restore an uninhabitable unit to habitable condition.

Therefore, unless the owner has first obtained a "Removal Permit" from the Rent Control Board, or the Board has determined that the unit was removed from the controlled rental housing market prior to August 10, 1979, the above-mentioned situations may constitute a violation of law.

The Board, or any other interested party, may initiate a complaint concerning a violation of the Removal Permit Ordinance.

A Court may assess a fine of up to \$500 per day for each violation of the Ordinance, as well as impose other criminal and civil penalties.

V. SPECIAL CASES

Special Cases are often initiated to determine the rent control status of properties. Some of the typically recurring issues will be discussed below:

A. New Construction

A landlord may claim a building or unit is exempt as "new construction" if it was

- 1) constructed on or after January 1, 1969;
- 2) substantially rehabilitated on or after January 1, 1969 and before August 10, 1979; or
- 3) substantially rehabilitated on or after August 10, 1979, provided that a Removal Permit was issued by the Rent Control Board for the work that was done.

What constitutes "new construction" cannot be reduced to a simple formula. Each claim of "new construction" will be evaluated independently. However, the following criteria are generally critical to a finding of "new construction":

Plumbing

- rough plumbing: complete replacement of feeds, wastes, and vents from the basement to the roof.
- finish plumbing: replacement of all kitchen and bath fixtures and connections

Heating

- boiler and furnace replacement
- replacement of heat feed lines, return lines, vent pipes, radiators, baseboard, and heat vents, where applicable

Electric

- complete wiring replacement
- new service
- new boxes

Gut Rehabilitation

- walls removed down to the studs, replaced and insulated
- ceilings removed and replaced
- doors, jambs, and trim replaced
- windows replaced
- roof surface replaced

The above factors will be considered for every unit for which a new construction exemption is being sought.

B. Owner Occupied Home:

Owner occupied two or three family homes are exempt from rent control. The two issues discussed below are usually the basis for disputes in this area:

1. The Number of Units

The Removal Permit Ordinance prohibits the physical combination or merger of rent controlled units subsequent to August 10, 1979 without a permit. Therefore, the number of units claimed by a property owner to currently exist, may not necessarily constitute the number for rent control purposes. For example, if a building was a four family on August 10, 1979, and the owner is now claiming the building is a three family, the Board may still treat this as a four family property, subject to rent control.

2. Whether the Building Is Owner Occupied

Owner occupancy has been defined by the Courts as actual residence on a day-to-day basis. For example, simply having a mailbox on a door is not sufficient to constitute owner-occupancy. In addition, ownership has been defined by the courts as beneficial ownership. Beneficial ownership generally means that one shares in both the profits and expenses. The percentage of beneficial ownership required to exempt an owner-occupied two or three family is set out in Regulation 13-01 (available at the Rent Control office).

C. Owner-Occupancy of a Condominium Unit

In general, Ordinance 966 prohibits owners of condominium units from occupying any unit they own. There are specified exemptions from this rule as follows:

- (1) A Certificate of Exemption (or Removal Permit) has previously been issued for the unit.
- (2) A unit deed for the unit was recorded in the Middlesex Registry of Deeds prior to August 10, 1979.
- (3) A purchase and sale agreement was entered into prior to August 10, 1979.
- (4) The property is not subject to rent control.
- (5) The original purchaser of the unit was a tenant in the unit on August 10, 1979, occupied the unit continuously until the time of purchase, and intended to or did in fact occupy the unit indefinitely after the purchase.

Any condominium unit owner who believes (s)he is exempt from the Ordinance should file an Affidavit of Exemption with the Rent Control Board. The Affidavit will be reviewed and, if accurate, will result in the issuance of a Certificate of Exemption.

Any buyer of a condominium unit in the City of Cambridge is strongly advised to require the seller to produce a Certificate of Exemption prior to taking title if the purpose of the purchase is owner-occupancy.

It is important to note that a Certificate of Exemption does not remove the unit from the provisions of the Rent Control Act but only from the provisions of the Removal Permit

Ordinance. For example, a condominium unit may be legally owner-occupied by a purchaser if it is exempt from the Ordinance, but if the owner rents the unit, the owner cannot legally charge in excess of the legal maximum rent; once rented, the unit becomes subject to Rent Control.

D. Failure to Register

The Rent Control Act provides few exceptions from the jurisdiction of Rent Control. (For more detailed information, copies of the Act are available at the Rent Control Office.) Unless a rental unit is deemed exempt from the Act, the unit must be registered with the Rent Control Board. If an owner fails to register his/her property, a special case may be commenced to determine 1) whether the property is exempt, and 2) if not, whether the failure to register was excusable.

Failure to register a property may subject an owner to civil and/or criminal penalties as set forth in the Act. The Board may also impose administrative sanctions such as delaying the issuance of Certificates of Eviction, Removal Permits and rent adjustments; refusing to grant a city-wide general adjustment; and reducing the legal maximum rent by 10%. (These sanctions are set forth in Rent Control Regulations 21-02, 21-03, 21-04 and 21-05.)

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CITY OF CAMBRIDGE

639 MASSACHUSETTS AVENUE

CAMBRIDGE, MASSACHUSETTS 02139

TEL 498-9077

RENT CONTROL BOARD

ROGER MERVIS, EXECUTIVE DIRECTOR

M E M O R A N D U M

TO: City Manager and City Councillors
FROM: Roger Mervis *RM*
RE: Handbook
DATE: February 21, 1985

Attached you will find a copy of a handbook for landlords and tenants of controlled rental housing property in Cambridge. This handbook represents the first comprehensive and easily-understood description of the rights and responsibilities of Cambridge landlords and tenants under 1) the Rent Control Act, 2) the Removal Permit Ordinance, 3) the Board's regulations, and 4) the Board's policies. I believe that this handbook will prove to be a useful and informative tool for those utilizing the services of the Board, particularly so for landlords and tenants who are unable to obtain effective representation.

In conjunction with the issuance of the handbook, the staff is developing plans for a two-part training program especially for landlords of controlled rental property containing 10 units and under. We expect this program to be held in the late spring or early summer. In addition to posting the usual public notices, we will be communicating directly with such landlords to notify them of the availability of such training.

We would appreciate anything you can do to publicize the availability of this handbook at the Rent Control Board.

FEB 21 11 14 AM '05



CITY OF CAMBRIDGE

CAMBRIDGE, MASSACHUSETTS 02139
Tel. 498-9011

EXECUTIVE DEPARTMENT
ROBERT W. HEALY
City Manager

February 25, 1985

To the Honorable, the City Council:

Enclosed please find copy of a communication from Roger Mervis,
Director of Rent Control, and a copy of a handbook for landlords and
tenants of controlled rental housing property in Cambridge.

Very truly yours,

Robert W. Healy
City Manager

RWH/mbf
Encs.

Agenda Item No. 8

Re: enclosed handbook for landlords & tenants of controlled rental housing property in Cambridge.

S-131

In City Council,

February 25, 1985

Placed

on

File