

4216 REQUIREMENT TO MAINTAIN SUBSTANTIAL COMPLIANCE WITH HOUSING REGULATIONS

4216.1 Any petition or application for a rent adjustment under §§ 4208 or 4213 shall be filed, and any rent adjustment authorized under §§ 4204 and 4205 shall be implemented, only if each affected rental unit and the common elements of the housing accommodation are in substantial compliance with the Housing Regulations.

4216.2 For purposes of this chapter, “substantial compliance with the Housing Regulations” means the absence of any substantial violations of the Housing Regulations, including the applicable provisions of the Property Maintenance Code. A violation is substantial if its existence may endanger or materially impair the health and safety of any tenant or person occupying the property. Substantial violations shall include, but not be limited to, the following:

- (a) Frequent lack of sufficient water supply, in violation of § 505.3 of the Property Maintenance Code;
- (b) Frequent lack of hot water, in violation of § 505.4 of the Property Maintenance Code;
- (c) Frequent lack of sufficient heat between October 1 and May 1 in violation of § 602.3 of the Property Maintenance Code;
- (d) Hazardous electrical systems, including wiring, outlets, and fixtures, in violation of § 604.3 of the Property Maintenance Code;
- (e) Exposed electrical wiring or outlets not properly covered, in violation of §§ 605.1 or .2 of the Property Maintenance Code;
- (f) Leaks in the roof or walls in violation of §§ 304.6 or .7 of the Property Maintenance Code;
- (g) Defective sinks, showers or bathtubs, toilets, drains, or sewage systems, in violation of §§ 504.1 or 506.2 of the Property Maintenance Code;
- (h) Infestation of insects or rodents, in violation of § 309 of the Property Maintenance Code;
- (i) Actual or presumed lead-based paint on the interior or exterior of the structure or building that is peeling, flaking, or chipped, in violation of §§ 304.2.1 or 305.3.1 of the Property Maintenance Code, including the incorporated regulations of the District of Columbia Department of Energy and the Environment and the U.S. Environmental Protection Agency;

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- (j) Insufficient number of emergency escape openings or improper arrangement of exits from a dwelling, in violation of § 702.4 or .5 of the Property Maintenance Code;
- (k) Obstructed means of egress, in violation of § 702.1, .2, or .3 of the Property Maintenance Code;
- (l) Accumulation of garbage or rubbish in common areas, in violation of § 308.1 of the Property Maintenance Code;
- (m) Failure to provide approved garbage facilities or containers, in violation § 308.3 of the Property Maintenance Code;
- (n) Cracked or loose plaster, decayed wood, or water damage to interior surfaces, in violation of § 305.3 of the Property Maintenance Code;
- (o) Hazardous porches, decks, balconies, stairs, ramps, landings, or railings, handrails, or guards to such facilities, in violation of §§ 304.10, 305.4, or 307.1 of the Property Maintenance Code;
- (p) Floors, walls between dwelling units, or ceilings with any holes or interior walls of dwelling units with holes equal to or greater than one half inch (1/2") in width, in violation of § 305.4 of the Property Maintenance Code;
- (q) Windows, skylights, doors, and frames insufficiently tight to maintain the required temperature or to prevent excessive heat loss, in violation of § 304.13 of the Property Maintenance Code;
- (r) Doors lacking required, operative locks, in violation of § 304.15 of the Property Maintenance Code;
- (s) Absence of required, operable fire protection systems, including fire extinguishers, in violation of § 704.1 of the Property Maintenance Code;
- (t) Violation of any provision of the Property Maintenance Code where such condition constitutes a fire hazard;
- (u) Inadequate ventilation of interior bathrooms or toilet rooms, in violation of § 403.2 of the Property Maintenance Code;
- (v) Elevators not in operation, in violation of § 606.6 of the Property Maintenance Code;
- (w) Indoor mold contamination requiring professional indoor mold remediation under § 305(c) of the Air Quality Amendment Act of 2014

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(D.C. Official Code § 8-241.04(c)), regulations of the District of Columbia Department of Energy and the Environment at 20 DCMR § 3200 *et seq.*, and the applicable regulations of the U.S. Environmental Protection Agency;

- (x) Failure to provide a utility that is the responsibility of or under the control of the housing provider in the quantities needed for normal occupancy, in violation of § 600.3 of this title; and
- (z) A large number of Housing Regulations violations, each of which may be either substantial or non-substantial, the aggregate of which is substantial because of the number of violations.

4216.3 In reviewing a housing provider's petition or application for a rent adjustment for which prior administrative approval is required, there shall be a rebuttable presumption of substantial compliance with the Housing Regulations for each rental unit and the common elements of a housing accommodation, if:

- (a) All rental units in the housing accommodation have been inspected at the housing provider's request by the Department of Buildings ("DOB") within thirty (30) days immediately preceding the date of filing of the petition or application; and
- (b) If the inspection performed in accordance with paragraph (a), or any subsequent inspection while the petition or application is pending, results in a citation by DOB for a substantial violation of the Housing Regulations in a rental unit proposed to be affected by the petition or in the common areas of the housing accommodation, abatement of each substantial violation:
 - (1) Has occurred within forty-five (45) days of issuance of the citation, or such other time period as DOB may have required in the citation;
 - (2) Has been certified by DOB, or by the housing provider or by each tenant affected by the violation and supporting evidence has been presented to substantiate the certification; and
 - (3) Each tenant proposed to be affected by the rent adjustment has been given notice of the certification and ten (10) days, from the date the housing provider submits certification of abatement to the Office of Administrative Hearings, in which to submit objections to the certification of abatement.

4216.4 Where a petition or application for a rent adjustment for which prior administrative approval is required is contested on the grounds that it has been

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filed while an affected rental unit or housing accommodation is not in substantial compliance with the Housing Regulations, in violation of § 4216.1, the rent adjustment shall not be approved unless the non-compliance has been abated at the time of an evidentiary hearing on the petition.

- 4216.5 Evidence of substantial violations of the Housing Regulations may be presented at a hearing by notices of violations issued by any District or federal agency with jurisdiction over the particular violation or by the testimony of witnesses.
- 4216.6 Witness testimony may be supported by photographs or other documentary evidence, written government-issued violation notice(s), or the testimony of a government official who has personally inspected the rental property.
- 4216.7 Testimony and other supporting evidence of violations of the Housing Regulations shall be as detailed as necessary so that the Administrative Law Judge can make findings of fact that identify:
- (a) The specific violation and that it is substantial;
 - (b) The location and duration of the condition alleged to be a violation, and whether it has been abated; and
 - (c) Whether and when the housing provider had actual or constructive notice of the specific condition alleged to be a violation.
- 4216.8 A finding of excessive and prolonged Housing Regulations violations pursuant to § 208(a)(2) of the Act (D.C. Official Code § 42-3502.08(a)(2)) shall be based upon findings as provided in § 4216.7; provided, that a rent rollback authorized by § 208(a)(2) shall not be ordered if the violations have been abated.
- 4216.9 Unsuccessful efforts by a housing provider to abate a substantial violation of the Housing Regulations shall not constitute a defense to a claim based on the existence of the violation.
- 4216.10 In addition to § 4216.1, a housing provider's failure to promptly abate a substantial violation of the Housing Regulations, where the violation is not the result of tenant neglect or misconduct, shall also constitute a reduction in related services under § 211 of the Act (D.C. Official Code § 42-3502.11) and § 4211 of this chapter.

SOURCE: Notice of Final Rulemaking published at 33 DCR 1336, 1415 (March 7, 1986); as amended by Notice of Final Rulemaking published at 33 DCR 2656, 2669 (May 2, 1986); as amended by Final Rulemaking published at 68 DCR 012634 (December 3, 2021); as amended by Final Rulemaking published at 70 DCR 001710 (February 3, 2023).