

Chapter 277

RENT CONTROL

| | | | |
|----------|--|----------|---------------------------|
| § 277-1. | Rent leveling board. | § 277-4. | Violations and penalties. |
| § 277-2. | Rent control. | § 277-5. | General. |
| § 277-3. | Senior Citizens and Disabled Protected Tenancy Act. | | |

[HISTORY: Adopted by the Mayor and Council of the Borough of Atlantic Highlands 6-22-2016 by Ord. No. 06-2016.¹ Amendments noted where applicable.]

§ 277-1. Rent leveling board.

- A. Board established. There is hereby continued the Rent Leveling Board within the Borough of Atlantic Highlands. The Board shall consist of five members; one shall be a tenant of a multiple dwelling in Atlantic Highlands and one shall be a landlord of a multiple dwelling residing in Atlantic Highlands; and two shall be neither a tenant nor a landlord. The existing members of the Board shall continue in office. Replacements shall be appointed by the governing body, and their terms of office shall be for a period of three years each, with each member serving without compensation. Terms shall be staggered so that the terms of no more than two members expire in any year. The term of a member appointed to fill a vacancy shall be for the remaining unexpired term. **[Amended 2-9-2024 by Ord. No. 05-2024]**
- B. Powers. The Rent Leveling Board is hereby granted, and shall have and exercise, in addition to other powers herein granted, all the powers necessary and appropriate to carry out and execute the purposes of this chapter, including but not limited to the following:
- (1) To issue and promulgate such rules and regulations as it deems necessary to implement the purposes of this chapter, which rules and regulations shall have the force of law until revised, repealed or amended by the Board in the exercise of discretion, providing that such rules are filed with the Municipal Clerk.
 - (2) To supply information and assistance to landlords and tenants to help them comply with the provisions of this chapter.
 - (3) To hold hearings and adjudicate applications from landlords for hardship increases and surcharges.
 - (4) To hold hearings and adjudicate applications and complaints from tenants for reduced or improper rentals. The Board shall give both landlord and tenant reasonable opportunity to present their position before making any determination.
- C. Appeal. Both landlord and tenant may appeal in writing the findings of the Board to the governing body within 20 days from the date of the determination. The Council shall hold a hearing on the record before the Board. The appealing party should submit in writing with its appeal a written

1. Editor's Note: This ordinance also superseded former Ch. 277, Rent Control, adopted 9-11-1996 by Ord. No. 12-96. as amended.

summary and basis for its appeal and provide a copy to the other interested parties. The appealing party shall be responsible to present the record before the Board for the governing body's consideration. The other interested parties should submit a written summary of their position and basis in opposition to the appeal within 15 days of receipt of the appeal. The governing body shall consider the appeal on the record before the Board and the submissions and render a decision.

§ 277-2. Rent control.

A. Definitions. As used in this chapter:

BASE RENT — The actual legal monthly rental a tenant is paying for the apartment.

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

CURRENT RENT — The actual legal monthly rental a tenant is paying for his apartment, including any hardship increase or improvement surcharge.²

HOUSING SPACE, DWELLING OR APARTMENT — Includes the portion of a structure rented or offered for rent for living and dwelling purposes to one or more individuals or a family unit together with all privileges, services, furnishings, furniture, equipment, facilities, parking and garage facilities (whether optional or mandatory), and improvements connected with the use or occupancy of such portions of the property. Included are any building, structure, trailer, or land used as a trailer park, rented or offered for rent to one or more tenants or family units. Exempt from this chapter are commercial buildings containing two or fewer housing spaces; and housing structures of four housing spaces or fewer, and motels, hotels and similar-type buildings. Also exempt are condominiums and condominium complexes except any housing space thereof that is owned or controlled by a person or entity owning or controlling (meaning greater than 50% ownership by the same related party interests) five or more of those housing spaces that are rented or offered for rent. Not exempt from this chapter is any housing space, dwelling or apartment previously subject to the provisions of this chapter which would otherwise become exempt due to a change in the number of housing spaces owned or controlled by an individual or entity, or the number of housing spaces in a mixed-use building or housing structure, provided that the tenant leasing the housing space remains the same. **[Amended 2-9-2024 by Ord. No. 05-2024; 8-8-2024 by Ord. No. 17-2024]**

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

REAL ESTATE TAX — All real estate or property taxes paid to the Borough of Atlantic Highlands, including but not limited to municipal, county and school taxes, and any other taxes or fees listed on the annual property tax bill.

SUBSTANTIAL COMPLIANCE — That the housing space and dwelling are substantially free from all heat, hot water, elevator and all health, safety and fire violations as well as 90% qualitatively free of all other violations of the Atlantic Highlands Property Maintenance Code and/or the Multifamily Dwelling Code.

B. Except as specifically exempted, every housing space, dwelling or apartment offered for rent in the Borough of Atlantic Highlands, including first-time rentals and vacant housing, is subject to the provisions of this chapter. **[Amended 2-9-2024 by Ord. No. 05-2024]**

2. **Editor's Note: The former definition of "date that the lease is entered into in the case of the renewal of leases," which immediately followed, was repealed 2-9-2024 by Ord. No. 05-2024.**

- (1) Establishment of rents. Establishment of rents between a landlord and a tenant in any housing unit, dwelling or apartment shall hereafter be determined by the provisions of this chapter. Establishment of rent and any renewal increase in excess of that authorized by this chapter shall be void. No rental agreement or lease provision shall waive, supersede, or preclude application of this chapter or any provision thereof, and any such lease provision shall not be effective.
 - (2) Preexisting tenancies. For preexisting tenancies, the base rent during the rental year that the housing unit, dwelling or apartment becomes subject to the provisions of this chapter shall not be increased. Thereafter, annual base rent increases shall be subject to Subsection C of this section.
 - (3) New tenancies. The owner of the housing space, dwelling, or apartment being rented for the first time, or which is vacant and will be rented to a new tenant, may enter a one-year or multi-year lease, with the base rent for the first year not being controlled by the provisions of this chapter. After the first year, the housing space, dwelling or apartment shall be subject to the provisions of this chapter, and any annual base rent increase shall be limited to such increase as permitted in Subsection C of this section.
- C. Rental increases allowed. A landlord may annually increase a tenant's base rent based on the percentage increase in the most recent Consumer Price Index (CPI) as follows: a floor of 1.5% if the percentage increase in the CPI is less than 1.5%; the actual CPI percentage increase if between 1.5% and 3%; or a ceiling of 3% if the CPI percentage increase is greater than 3%; plus or minus the tax pass-through. The rent resulting from the imposition of any increase provided hereunder shall be rounded to the nearest dollar. No landlord shall request or receive more than one CPI/tax increase per year per housing space. **[Amended 2-9-2024 by Ord. No. 05-2024]**
- (1) The CPI figures to be used are those published in the fourth month prior to the month in which the lease or periodic tenancy terminates, over the CPI published in the 16th month prior to the month of termination. By way of example, a CPI base rent increase computed in accordance with the provisions of this section shall be computed as follows:

Example

Assuming a lease or periodic tenancy expires in May of 2014, and the base rent is \$1,500 per month:

- a) 254.285 CPI for January of 2014 (the fourth month preceding the month of termination);
 - b) 249.317 CPI for January of 2013 (the 16th month preceding the month of termination);
 - c) 4.968 difference in the CPI (subtract b. from a.);
 - d) 1.993% percentage change in the CPI (take c. and divide by b.);
 - e) \$29.90 permissible CPI increase (multiply the base rent by d.). Round to the nearest dollar after including any tax increase/decrease from Subsection C(2).
- (2) Whenever the base rent is increased as provided in Subsection C(1), a tax pass-through for any real estate tax reduction shall be, or any real estate tax increase may be, included in the increase calculations. A tax pass-through is calculated by taking the real estate taxes billed by the Borough for the upcoming 12 months and subtracting the amount billed for the prior 12 months (based upon the most recent and prior annual tax bills), divided by 12 months, divided by the total square footage of the building(s) and multiplied by the square footage occupied by the tenant. Any annual real estate tax increase pass-through shall be permitted only to the extent

that the real estate tax increase exceeds the permitted percentage increase provided in Subsection C(1).

- (3) No rental increase shall be allowed during any period when the apartment or dwelling occupied by the tenant is not in substantial compliance with the Multifamily Dwelling Code and the landlord is not current on all real estate taxes billed by the Borough.
- (4) Any landlord seeking a rent increase, lease renewal or agreement to extend or renew a lease shall provide notice of said action in writing to the tenant at least 60 days prior to the effective date of increase, renewal, extension or other action. This notice shall include all of the CPI/tax calculations involved in computing the increase. No tenant shall be required to sign any such lease, rent increase notice, renewal or agreement to extend or renew a lease until such tenant has had the opportunity to review the documents for a period of five business days. Failure to comply with this provision shall result in the rental continuing at the old rent until proper notice is given.
- (5) Multiple-year leases. For renewal of multi-year leases, a landlord may annually increase the tenant's current rent as provided in Subsection C(1). For multi-year leases, the annual rent increase limitations must be recalculated annually as provided in Subsection C(1). The first year's lease renewal increase may be sequentially added to subsequent years. For example, if the approved CPI increase is \$65, then the first-year renewal lease rent is calculated on the former lease's base rent plus \$65. The second year's renewal rent is calculated on the first renewal year's rent from the previous renewal year plus \$65.

D. Accumulation of CPI/tax increases not permitted.

- (1) Any landlord who does not raise the rent in a particular lease year the amount permitted by the CPI/tax increase in Subsection C shall not have the right to accumulate this increase and/or impose this increase upon a tenant in a subsequent year, in addition to the permissible increase for that subsequent year.

E. Tax appeal; tenant credit.

- (1) In the event a real estate tax appeal is taken by the landlord and the tax is reduced, after deducting all expenses incurred by the landlord in prosecuting the appeal, the landlord shall remit and tenant(s) shall receive 50% of the reduction for the portion of the tax year during which the tenant has paid rent, in the form of a credit on the next lease renewal. **[Amended 2-9-2024 by Ord. No. 05-2024]**
- (2) The property tax shall be calculated by dividing the assessed taxes by the number of square feet of all housing space in the dwelling. The tax shall be proportionate to the number of square feet occupied by the tenant. The landlord shall provide the Board in writing with a detailed list of the items of expense incurred by him in prosecuting the tax appeal. If the above tax reduction is partially based upon property changes or alterations, the allocation of the percentage of the reduction remitted to tenants shall be determined by the Board.

F. ³Appeal by landlord: hardship or capital improvement increases. **[Amended 2-9-2024 by Ord. No. 05-2024]**

- (1) In the event that a landlord cannot receive a fair return after having received the increase

3. Editor's Note: Former Subsection F, regarding the decontrolling of first-time rentals, was repealed 2-9-2024 by Ord. No. 05-2024. This ordinance also redesignated former Subsections G through L as Subsections F through K, respectively.

provided in Subsection C, he or she may appeal to the Rent Leveling Board for increased rental for up to five years. The Board may grant a hardship rent increase to meet this requirement. For the period of the requested increase and two years before and after or other period as determined by the Board, the landlord must provide evidence according to the standards recognized at law for determining fair return. The Board will rely upon the recognized standard that a landlord should receive a net operating income of at least 40% of the gross annual income after deducting reasonable and necessary operating expenses, including depreciation of capitalized repairs and replacements computed on a straight line basis as per IRS guidelines, unless there is an adequate showing that utilization of this standard will result in an unfair return to the landlord. Gross annual income will be calculated using the occupancy for the past 12 months, the average occupancy rate for the county, or 90%, whichever is greater. Operating expenses shall not include mortgage principal or interest payments or amortization. Any hardship increase granted by the Board will be in addition to the annual CPI/tax increase and shall be equally prorated to all units within the structure 30 days after the decision of the Rent Leveling Board, provided that no increase shall take effect with regard to any tenant who has a written lease until the expiration of the lease, unless the lease provides otherwise.

- (2) A landlord may seek surcharges for major capital improvements or services proposed or completed within the past three years. To qualify for a major improvement surcharge, a claimant must show a benefit to the tenant, in the form of improved lifestyle, convenience, ease and/or security, and that the improvement satisfies the IRS standards for capital improvements. Expenditures classified as capital by the IRS for items requiring periodic repair or replacement, such as heating systems, windows, roofs, etc., are to be considered operational expenses unless there is a significant benefit to tenants. The landlord must notify each tenant of the total costs of the completed capital improvement or service, the number of years of useful life of the improvement as claimed by the landlord for purposes of depreciation for income tax purposes, the cost of the improvement, the total number of square feet to the dwelling or garden apartment complex, the total square feet occupied by the tenant and the capital improvement surcharge he or she is seeking from each tenant. The landlord seeking a capital improvement or service surcharge shall appeal for the surcharge to the Rent Leveling Board, who shall determine if the improvement is a qualified major improvement and, if so, may permit such increase to take place and may direct that the increase shall be collected in equal monthly payments spread over the useful life of the capital improvement. If the increase is granted, it shall not be considered part of the base rental nor calculated in future CPI increases. No increase authorized by this section shall exceed 15% of the tenant's base rent. No surcharge shall begin until the capital improvement or service is completed; no surcharge shall be allowed or collected during any period that the improvement or service is not maintained or provided.
 - (3) Prior to the hearing before the Board on any such appeal provided for in Subsection F(1) and (2), a landlord must post in the lobby of each building, or, if no lobby is present, in a conspicuous place in and about the premises, a notice of the appeal setting forth, in detail, the basis for the appeal. This notice must be posted for at least 20 days prior to the proposed date of the appeal hearing. The landlord shall also send by mail or deliver personally a copy of this notice to each tenant at least 20 days prior to the proposed date of the hearing. The landlord must also submit to the Board a certification from the Code Officer of Atlantic Highlands that the building and grounds are in substantial compliance with the Multifamily Dwelling Code.
- G. Standards of service. During the term of this chapter, the landlord shall maintain the same standards of service, maintenance, furniture, furnishings and equipment in the housing space and dwelling as he or she provided or was required to do by law or lease at the date the lease was entered into. If a

landlord fails to provide the above standards of service for more than 30 days, or for a shorter period considering the circumstances, a tenant may appeal to the Rent Leveling Board for a rent reduction. The Board may order the landlord to reduce the tenant's monthly rent beginning the month the change or defects began, and until the month after all changes or defects are corrected, as confirmed by the Multifamily Dwelling Inspector. In determining any appropriate reduction, the Board may consider the loss of use of the affected area as well as the overall impact upon the tenant. Any rent reduction is in addition to any other penalties provided for in this chapter. **[Amended 2-9-2024 by Ord. No. 05-2024]**

- H. Posting required. All landlords shall be required to include the following verbiage in all renewal leases of current tenants which are subject to the provisions of this chapter:

"This lease is subject to the provisions of Ordinance No. ____-2024 of the Borough of Atlantic Highlands, which outlines your rights and remedies pertaining to rent control, including the right to seek relief from the Rent Control Board. A copy of the ordinance is obtainable from the Municipal Clerk of the Borough of Atlantic Highlands." **[Amended 2-9-2024 by Ord. No. 05-2024]**

- I. Request for information. When the Rent Leveling Board shall request of any landlord any information with respect to any rental unit or the landlord's property or operation, such information shall be provided to the Rent Leveling Board within 20 days of such request.
- J. Tenant complaint against landlord. Any tenant filing a complaint with the Rent Leveling Board against the landlord shall be required to fill out and execute the complaint form as promulgated by the Board and provide supporting documentation, and serve upon the landlord a copy of the complaint form and documentation personally or by certified mail. The landlord shall be entitled to submit a written response to the complaint to the Rent Leveling Board within 15 days of receipt. The Board may review the complaint and landlord response and, if the documentation is deemed sufficient by the Board, the Board may make a written determination as to the complaint and notify the parties of its decision. In the alternative, the Board may schedule a hearing and notify the parties, and each party shall be entitled to appear and present its position. The Board will thereafter render a decision. Either party may appeal the Board decision to the governing body as per § 277-1C. The tenant shall be responsible to continue to pay the uncontested portion of the rent during the complaint process.
- K. Precedence of ordinance. Should a lease, or any provision of a lease, entered into between the landlord and tenant be in conflict with this chapter, this chapter shall control and apply.

§ 277-3. Senior Citizens and Disabled Protected Tenancy Act.

- A. Established. The Rent Leveling Board has been authorized and instructed to administer the provisions of the Senior Citizens and Disabled Protected Tenancy Act, N.J.S.A. 2A:18-61.22 et seq. The Rent Leveling Board will periodically report to the Mayor and Council its recommendations as to the fees which should be charged to owners seeking to convert properties to condominiums or cooperatives as provided in N.J.S.A. 2A:18-61.35.
- B. Fees. The following fee structure is provided to cover the costs of the services to be provided by the Borough under the provisions of the Senior Citizens and Disabled Protected Tenancy Act and are to be paid by the owners of properties sought to be converted to condominiums or cooperatives at the time such owners take steps to invoke the services of the Borough under the Senior Citizens and Disabled Protected Tenancy Act.
- (1) Two thousand dollars per unit for the application for conversion of structures; and **[Amended 2-9-2024 by Ord. No. 05-2024]**

- (2) Two hundred dollars for each unit.

§ 277-4. Violations and penalties.

A willful violation of this chapter, including, but not limited to, the willful filing with the Rent Leveling Board of any material misstatement of fact, or the failure to comply with a final administrative determination of the Board and/or the Mayor and Council, shall be subject to complaint in Municipal Court and shall be punishable by a fine of not more than \$500 and shall be considered a separate violation as to each leasehold. A complaint may be signed by an affected tenant or by the appropriate Borough official.

§ 277-5. General.

- A. Purpose. This chapter being necessary for the welfare of the Borough and its inhabitants shall be liberally construed to effectuate the purposes thereof.
- B. Fees for complaints/appeals. In order to partially defray the costs incurred for conducting Board proceedings and any professional assistance that may be required, the following fee schedule for complaints/appeals is applicable.
- (1) Hardship increase appeal by landlord: \$300.
- (2) Capital improvement surcharge appeal by landlord: \$350.
- (3) Complaint by tenant challenging rent increase or rent: \$50. If the tenant's rent appeal is successful, the appeal fee will be refunded to the tenant. **[Amended 2-9-2024 by Ord. No. 05-2024]**
- C. ⁴When effective. This chapter supersedes the existing Chapter 277 and shall take effect immediately upon its final passage and publication as required by law.

4. Editor's Note: Former Subsection C, which established a termination date for this chapter, which immediately followed, was repealed 2-9-2024 by Ord. No. 05-2024. This ordinance also redesignated former Subsection D as Subsection C.