

## HOW LANDLORDS CAN LEGALLY RAISE RENT

Landlords can increase a tenant's rent, but exactly when and how much varies quite a bit.



By: Aly J. Yale - September 28, 2022

With inflation high, the cost of just about everything is rising – utilities, landscaping, home maintenance and virtually all the expenses that come with owning a property. For landlords, this can cause quite the financial strain.

Is raising a tenant's rent an option for offsetting these higher expenses? It might be – but it depends on a number of factors, namely the terms of the lease agreement and the state where the property is located.

If you're a landlord eyeing a rent increase, here's what you need to know.

### A Pecking Order

Understanding when a rent increase is legal – and just how much that increase can be – can often be confusing, as it depends on multiple factors, all of which vary from one property to the next.

"It used to be a somewhat straightforward process for a landlord to raise rent, but it has become increasingly nuanced with new rent control restrictions and tenant protection acts," says Zachary D. Schorr, lead real estate attorney at Schorr Law in Los Angeles. "These restrictions can prevent rent increases, allow a certain percentage of increases and even restrict how often the landlord can raise rent. Moreover, with COVID, we learned that the government flexed its emergency powers and often placed additional restrictions on rent increases and evictions."

To determine when you can legally increase rents on your property, you have to follow a pecking order of sorts. First, read your lease terms. Then, if those are unclear or you don't have a lease in place, you'll default to the state's laws or any mandates in your municipality. You will also need to look to your state's laws for guidance on how much you can increase rents, the notice you need to give and other

details.

"We always look first to the terms of the lease agreement," says Richard Ricciardi, partner at Powell, Jackman, Stevens & Ricciardi in Fort Myers, Florida. "If there is no lease, we will look to state statute."

### Your Lease Holds the Key

The lease is your first source of information when looking to increase your rents. Does it explicitly say that rate increases can occur midlease?

"A landlord cannot increase the rent during the lease term unless such an increase is agreed to – and set forth – in the terms of the lease," says Joshua Kopelowitz, a partner at Fox Rothschild in New York. If the lease does not allow for midlease rent increases, then, Kopelowitz says, "Rental rates can only be increased upon the entry of a new lease or a renewal."

With tenants on month-to-month leases, raising the rent can often be easier than with full-year tenants. On these leases, renewal happens on a monthly basis, so you'd only need to wait until the next month to increase rents provided you offer the proper notice mandated by your state.

"If you are a landlord, the best and safest action to take is to enter into a short-term or month-to-month lease agreement with the tenant," Ricciardi says. "That way you can increase rent rates in a changing economic environment or even terminate the lease agreement if you have a bad tenant."

It's important to note that rent increases can't be retaliatory or an attempt to oust a tenant midlease.

As Hillary Johns, a licensed trial lawyer in California, Montana, New York and Washington, D.C., explains, "In Montana, if a tenant files a complaint as to discrimination or any other type of illegal activity (by the landlord), and a rent increase within six months after that complaint is filed, that would be considered retaliatory."

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### Laws Vary by State

Your lease is the first stop for guidance regarding rent increases. After that, it's state and local law, which can limit your options considerably.

States often have varying laws regarding:

How much notice you have to give before increasing rents (between 30 to 90 days is common).

The amount of the rent increase (this usually caps the increase to a percentage of the current rent).

How often you can raise rents on a single tenant in a lease term.

How landlords must communicate an upcoming rent increase (written, via a notice on the door, etc.).

Rent control policies can also play a role, too.

"The District of Columbia requires a 30-day written notice for most tenants," Johns says. "For rent-controlled rentals, a landlord is limited by the D.C. Department of Consumer and Regulatory Affairs – currently at about 5.9%. For non-rent-controlled rentals, the 30 days' written notice applies, but the amount just has to be 'reasonable.'"

Finally, some states still have pandemic-related restrictions in place. These and other state-of-emergency orders can impact your rent increase options as well. In Los Angeles County, for example, rent increases are frozen on rent-controlled properties until at least Dec. 31, 2022.

### Consult an Attorney

If you're not sure a rent increase you're attempting is legal, or you need help determining how much you can raise rents, how you must communicate that increase or when you must alert your tenant, consult an attorney in your state. They'll have guidance that can help you make the best decision for your property.