

# New Protections for NY State Renters

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On June 14th, 2019, the Governor of NY signed into law a bill that provides new tenant protections. The bill is called the [Housing Stability and Tenant Protection act of 2019](#). It was passed to address some long-standing issues facing tenants. The changes took effect over a period of several months throughout the summer and fall of 2019. Renter protections before and after move-in have been strengthened. The bill also includes major changes to eviction court proceedings designed to preserve tenancies with more balanced rights between landlords and tenants. This blog post explains key aspects of the new law for Upstate NY renters.

## **Before move-in**

For many renters, upfront costs as a condition of move-in are an enormous financial burden. For some, these costs prevent them from finding an affordable place to live.

Application fees are now prohibited and the cost of credit or background checks has been capped at \$20. Tenants can get a copy of the reports in exchange for the fee. Landlords must accept a tenant-provided background or credit check. The tenant-provided report must be no more than 30 days old. Landlords cannot charge more than one month's rent for the security deposit, nor can they demand first and last month's rent as a condition of occupancy.

In the past, landlords could deny an applicant based on their involvement in an eviction action. Court records and eviction databases could be used to "black list" tenants regardless of whether the eviction action had a legitimate basis. This practice is now forbidden and carries penalties up to \$1,000 -- enforced only by the NYS Attorney General. Landlords must give another reason for denying an application. In addition, court records relating to an eviction from a foreclosed property must be sealed and remain confidential. The use of such information is

prohibited. Please note that an eviction judgment can affect a credit report. Tenants can still be denied housing based on bad credit.

Tenants are now entitled to inspect their apartment after signing the lease. They now have the opportunity to document the condition of the apartment before move-in. They are entitled to a signed written agreement detailing the conditions of the property and specifically noting any existing defects or damages. This document is signed by both the tenant and the property owner. It can then be used by the tenant as evidence in an action in Small Claims Court against their landlord for the return of their security deposit.

For more information about apartment inspections, and for a checklist of items to check during the inspection, see [Security Deposits](#).

### **During Occupancy**

Additional protections under the new law protect tenants during occupancy. Under the old law, extreme and illegal measures to remove people late in their rent from the property carried civil penalties that did not discourage these behaviors. Examples of these measures include removing doors, changing locks and removing furniture. An effort to use these and other tactics to unlawfully remove a tenant is now a Class A Misdemeanor, a crime. Law enforcement officials can charge landlords with a crime who try to remove tenants without first going to court.

For more detailed information about illegal evictions, see [Illegal Evictions](#).

Tenants can ask for a receipt for rent payment. If rent is paid in person by cash or money order, the tenant is entitled to an immediate rent receipt. If rent is paid in any other manner than in person, the landlord must give the requested written receipt of payment within 15 days. If rent is paid by check, the tenant is entitled to a receipt if they ask for it.

If the landlord wants to raise rent by 5% or more or not renew the lease, they must let the tenant know further in advance:

- If the tenant has occupied the unit for less than one year and does not have a lease term of at least one year, the landlord must give at least thirty days' notice.

- If the tenant has occupied the unit for more than one year but less than two years, or has a lease term of at least one year but less than two years, the landlord must give at least sixty days' notice.
- If the tenant has occupied the unit for more than two years or has a lease term of at least two years, the landlord must give at least ninety days' notice.

If the landlord fails to give proper notice, tenancy continues under the existing lease or rental agreement. The required notice period must pass before the rent increase or non-renewal of tenancy takes effect. These rules apply despite what the lease or rental agreement says.

The same rules do not apply if a tenant decides not to renew their lease or rental agreement. A tenant who decides not to renew at the end of a fixed term lease need not give any notice. A tenant with a month to month tenancy must tell the landlord they are not renewing one month in advance.

The new law adds some protections for tenants who move out before the lease or rental agreement ends. Landlords are now expected to try to re-rent the apartment before going after their former tenant for the rest of the rent. This is called "mitigating damages." In the past, landlords were not expected to mitigate damages. Tenants who vacated the apartment would have been responsible for the remaining rent payments under threat of lawsuit. Now, the landlord may have to prove that they tried to re-rent the apartment to someone else before recovering the full amount of unpaid rent.

The 2019 law also deals with late payment of rent. Previously, if a tenant missed a rent payment, they were sent a 3-day notice of late payment. Now, if rent is not paid within 5 days of when it is due, the landlord must tell the tenant in writing sent by certified mail. The tenant may raise as an affirmative defense the failure of the landlord to give notice by certified mail.

The 5-day notice simply tells the tenant that the rent is late. If rent is not paid on time, the landlord may serve a written demand to pay rent within 14 days or an eviction will be filed. This document must be served in the same way as official court papers.

## **Court Proceedings**

If rent has not been paid by the date on the 14-day notice, the landlord may serve two documents: a Notice of Petition and a Petition. The Notice of Petition states the details of when and where the Court Appearance will be and what will happen if the tenant doesn't come to court. Usually, not showing up to court results in a default eviction. The Petition explains the basis for the eviction proceeding. In the case of rent that hasn't been paid, it explains that the tenant is being taken to court because they owe money. These documents are served together. Both must be served no later than 10 days before the court date that's written on the Petition. If rent is paid in full at any point before the court date, the landlord must accept the payment and stop the eviction.

The 2019 law gives tenants facing an eviction more time to gather a defense. A tenant can ask to postpone the hearing for at least 14 days if there are facts in dispute. This is called an Adjournment of Hearing. The tenant has an opportunity to ask for an Adjournment of Hearing once. The court should grant the 14 day adjournment request as a right.

There are new protections for tenants who are facing eviction after complaining about bad conditions. Now, proof that a tenant made a complaint about conditions within a year of an eviction being filed creates a presumption that the eviction is in retaliation for the complaint. That evidence can be used as a defense in court at an eviction proceeding. The new law covers tenants who complained directly to the landlord or their agent as well as complaints to government agencies. Tenants who take part in a tenants' organization may also raise retaliation as a defense.

It is good practice to document all complaints whether to the landlord or otherwise. This helps the tenant to assert their rights in court. See [Communicating with your Landlord](#) for more information.

If the court rules in favor of the landlord, the presiding judge can issue a Warrant of Eviction. This is a formal court order that gives the Sheriff, Constable, or Marshal the authority to remove the tenant and their belongings. After the day of service, at least 14 days must pass before the Warrant can be executed. Before, the Warrant could be executed 3 days after the day of service. Warrants can only be executed on business days during daylight hours. The court must say on the Warrant the earliest date of execution. If the tenant pays the Court the full amount owed before the Warrant is executed, the Warrant should be vacated.

If the Courts find that an imminent eviction would cause extreme hardship, a Warrant of Eviction can be delayed for up to 1 year. The Court may weigh such factors as children's enrollment in a local school, the lack of affordable rentals or whether an eviction would significantly exacerbate an ongoing health condition when deciding whether to stay a Warrant of Eviction. The Court must also consider whether their ruling would cause undue harm to the landlord. Stays are not issued if the Court finds that the tenant engaged in objectionable conduct that resulted in a notice of non-renewal.

In addition, legislation amending the Multiple Residency Law was signed in November, 2019. See the bill [here](#). This change is independent of the Housing Stability and Tenant Protection act of 2019. The Law requires landlords to have a certificate of occupancy to collect rent or evict tenants for non-payment of rent. A certificate of occupancy is a document that proves that the building is reasonably safe and clean. This rule applies to buildings that have three or more units built after 1952.

For more detailed information about eviction proceedings, see [General Eviction Information for New York - LawNY](#).

## **Move-Out**

Shortly after the tenant says they are planning on moving out, the landlord must give a written notice of a tenants' right to an inspection. If the tenant asks for an inspection, the landlord must then give at least a 48-hour written notice with information about the date and time of the inspection. This allows the tenant to be present during the inspection. The inspection must be conducted between 1 and 2 weeks before move-out. Afterwards, the landlord must give the tenant a list of repairs or cleaning that needs to be done. The list cannot include damages related to normal wear and tear. The tenant can "cure" any issue discovered during the inspection. Anything on the list that the tenant doesn't fix can be deducted from their security deposit. Within 14 days of move-out, the landlord must return the balance of the security deposit or an itemized list of deductions from the deposit.

The landlord must be able to justify keeping all or part of the security deposit. If the tenant believes the deposit should have been returned, and the landlord fails to do so, the tenant may be able to file a claim in small claims court asking for the deposit to be returned. Failure to follow the correct procedure for security deposits may

result in punitive damages. Also, the Attorney General has a [security deposit mediation program](#).

For more information about security deposits, see [Security Deposits](#).

We hope you found this information useful. Visit [lawny.org/findlegalinformation](http://lawny.org/findlegalinformation) for important updates for NY state renters.

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