

Tenant, Occupant, Guest, Licensee, Squatter or Trespasser?



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September 24, 2024



- Navigating the definitions of inhabitants of real property in New York and the resulting rights and obligations of the owner and occupier.

This material is provided to answer general questions about the law in New York State. The information was created to assist readers with general issues and not specific situations, and, as such, does not replace the legal advice or representation of an attorney. Because of this and because of unanticipated changes in the law, the presenters make no claim that this information will achieve the results you desire. Also, the presenters disclaim any responsibility for actions taken based on this material. If you are seeking advice about a specific legal issue, you should contact an attorney licensed to practice in New York State.

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Tenant

“Tenant” Definitions

RPL: “a person occupying or entitled to occupy a residential rental premises who is either a party to the lease or rental agreement for such premises or is a statutory tenant pursuant to the emergency housing rent control law or the city rent and rehabilitation law or article seven-c of the Multiple Dwelling Law.”

RPAPL: “any person who appears as a lessee on a lease of one or more dwelling units of a residential real property that is subordinate to the mortgage on such residential real property; or who at such time is a party to an oral or implied rental agreement with the mortgagor and obligated to pay rent to the mortgagor or such mortgagor’s representative, for the use or occupancy of one or more dwelling units of a residential real property.”

“A tenant shall include an occupant of one or more rooms in a rooming house or a resident, not including a transient occupant, of one or more rooms in a hotel who has been in possession for thirty consecutive days or longer”



Tenant Additional Terms



- Co-tenant – one tenant party to a lease with one or more other tenants
- Subtenant – a lessee of a tenant whose occupancy is subject to RPL 226-b, has exclusive possession of at least a portion of the tenant’s space
- “Tenant-at-will” – tenancy for an unspecified period of time
- “Tenant-at-Sufferance” – occupant remaining in rental property after expiration of their lease

Landlord Obligations/Responsibilities to Tenant

Process to gain possession of property from Tenant:

- RPAPL 711 (1) – Holding Over
 - After a non-renewal, or
 - After a termination pursuant to lease terms
- RPAPL 711 (2) – failure to pay rent – 14-day notice
 - RPL 235- certified mail, a written notice stating the failure to receive rent payment

Duties Owed to Tenant:

- Implied Warranty of Habitability -They are to provide a dwelling unit that is fit for the permanent residency of the tenant, this being in relation to Building Code or any law, regulation, or requirement of a building pertaining to the health, safety and welfare of its occupants.
- Right to privacy and quiet enjoyment
- Maintenance and Upkeep of property pursuant to lease terms
- Any other contractual obligations
- Disclosure of lead-based paint, flood risks, known hazards
- Statutory Protections concerning security deposit



September 24, 2024

Tenant Rights and Responsibilities

“Tenant” is liable for breach of the lease provisions

- Rental Arrears
- Damage to the property by tenant or invitees of tenant
- Monetary losses of landlord pursuant to lease provisions



Tenant has exclusive possession of the premises

Tenant has right to terminate lease under DV statutes

Types of Evictions

Generally, two main types of evictions under NY Real Property Law (RPL) and NY Real Property and Proceedings Law (RPAPL)

1. Non-Payment Evictions

- Based on non-payment of rent

2. Holdover Evictions

- Based on tenant “holding over” or staying in the premises after tenancy has been terminated in some manner.

Non-payment Cases

	Non Payment	
	Notice to Pay or Quit (14 Days)	Notice provides 14 Days to Pay Rent Due or Quit the Premises – But tenants do not have to leave.
	Notice of Petition and Petition	Must be served 10-17 days before Court.
	Court	Judge reviews paperwork and decides preliminary matters.
	(Adjournment)	Must be requested. Judge must grant this when there is a triable issue of fact or law.
	Hearing/Trial	Judge hears testimony. Evidence is presented. The Judge generally makes a decision on that date.
	Warrant served. (14 Days)	Issued by the Court, provided to landlord, then served by a Marshal from the County Sheriff.
	Execution of Warrant	Marshal from Sheriff's Office returns and tenants must vacate the premises.

Types of Evictions: Holdover

Holdover		
Termination of a Month-to-Month Tenancy	Termination at the end of a Lease	Termination for Violation of the Lease
Notice of Termination (30/60/90)	Notice of Non-Renewal (30/60/90)	Notice of Termination (Possible Notice to Cure)
Notice of Petition and Petition	Notice of Petition and Petition	Notice of Petition and Petition
Court	Court	Court
(Adjournment) 14 Days - if "issue is joined." RPAPL 745	(Adjournment)	(Adjournment)
Hearing/Trial	Hearing/Trial	Hearing/Trial
Warrant (14 Days) Warrant Executed.	Warrant (14 Days) Warrant Executed.	Warrant (14 Days) (30 Day stay possible.)

Notice Period Required to Terminate a Month-to-Month Tenancy and Non-Renew a Lease (RPL 226-c)

- A Landlord must provide written notice if they intend to raise rent by 5% or more, if they intend not to renew a tenancy or if they are terminating a month-to-month tenancy:
 - 30 Days Notice - When a tenant has occupied the rental property for less than one year.
 - 60 Days Notice - When a tenant has occupied the rental property for one year or more, but less than 2 years, OR has a one-year lease.
 - 90 Days Notice - When a tenant had occupied the rental property for more than two years.

Occupant

Occupant Definition:

Real Property Law “Occupant” means a person, other than a tenant or a member of a tenant's immediate family, occupying a premises with the consent of the tenant or tenants. Sometimes referred to as a “roommate”.

RPAPL does not define “lawful occupant” despite referencing it

Any lease or rental agreement for residential premises entered into by one tenant shall be construed to permit:

1. occupancy by the tenant,
2. immediate family of the tenant,
3. one additional occupant, and
4. dependent children of the occupant provided that the tenant or the tenant's spouse occupies the premises as his primary residence.

Landlord Obligations/Responsibilities to Occupant

Process to gain possession of property from Occupant:

- RPAPL 713(7)
 - holdover proceeding may be maintained on the ground that the respondent is a licensee of the person entitled to possession of the property at the time of the license and that the license has expired, the licensor has revoked the license, or the licensor is no longer entitled to possession of the property.
 - Often used against roommates or other occupants remaining in possession after surrender by tenant
- May use self-help if exercised without force of violence only if occupant has occupied for less than 30 days

Occupant Rights and Responsibilities

Occupant - *with Tenant's consent*

Tenant must inform the landlord of the name of any occupant within thirty days following the commencement of occupancy by such person or within thirty days following a request by the landlord.

No occupant nor occupant's dependent child shall, without express written permission of the landlord, acquire any right to continued occupancy in the event that the tenant vacates the premises or acquire any other rights of tenancy;

A roommate may share a unit with a tenant and enjoy the same protections afforded family members under the law.

Licensee

- A licensee is one who enters upon or occupies the premises by permission, express or implied, of the owner or other person entitled to possession or under a personal, revocable, nonassignable privilege from the person entitled to possession.
- A license ... is a revocable privilege given 'to one, without interest in the lands of another, to do one or more acts of a temporary nature upon such lands.'
- Not a party to the lease

Landlord Obligations/Responsibilities to Licensee

Process to gain possession of property from Licensee:

- RPAPL 713(7)
 - holdover proceeding may be maintained on the ground that the respondent is a licensee of the person entitled to possession of the property at the time of the license and that the license has expired, the licensor has revoked the license, or the licensor is no longer entitled to possession of the property.
 - Often used against roommates or other occupants remaining in possession after surrender by tenant
- May use self-help if exercised without force of violence since licensee does not have “possession”

Duty Owed to Licensee:

- Duty to warn of known hazards and prevent willful harm
- May have some liability for inspection of common areas
- A landlord would not accept rent from a licensee, as that would suggest tenancy.
- Some building amenities, such as laundry rooms in which there is no agreement of transfer of ownership or possession of property, may make a tenant a licensee in respect to the usage of those amenities.

Guest

- Guest is an informal non-legal description, which may be defined the same as a licensee, or a temporary visitor, or even a lawful occupant under 735-f of the roommate law. By virtue of having a Tenant's permission to enter the property they would not be a squatter or trespasser. Time limitation may be the key, guest remains for shorter time periods than occupant.
- Can be difficult for a landlord to prove status, e.g. how long has someone been in a unit.



Changes in Law Relating to Squatters

- **Changes to RPAPL 711 defining tenants, and lawful occupants, now includes a definition of squatters, effective as of April 20, 2024:**
 - **The law used to only define tenants and lawful occupants:**
 - A **tenant** shall include an occupant of one or more rooms in a rooming house or a resident, not including a transient occupant, of one or more rooms in a hotel **who has been in possession for thirty consecutive days or longer.** No tenant or lawful occupant of a dwelling or housing accommodation shall be removed from possession except in a special proceeding.



Changes in Law Relating to Squatters

- **Changes to RPAPL 711 now includes a definition of squatters:**
 - A tenant shall not include a squatter. For the purposes of this section, a **squatter** is a person who enters onto or intrudes upon real property **without the permission** of the person entitled to possession,
AND
 - continues to occupy the property without title, right or permission of the owner or owner's agent or a person entitled to possession.

Squatters v. Other Laws

▶ Burglary and Criminal Trespassing

- Entering a building without permission.

▶ Squatters

- Someone who moves into someone else's property without permission, usually property that is empty, vacant or abandoned.

▶ Adverse Possession

- Someone who has been openly and notoriously using property as if it was their own for at least 10 years.



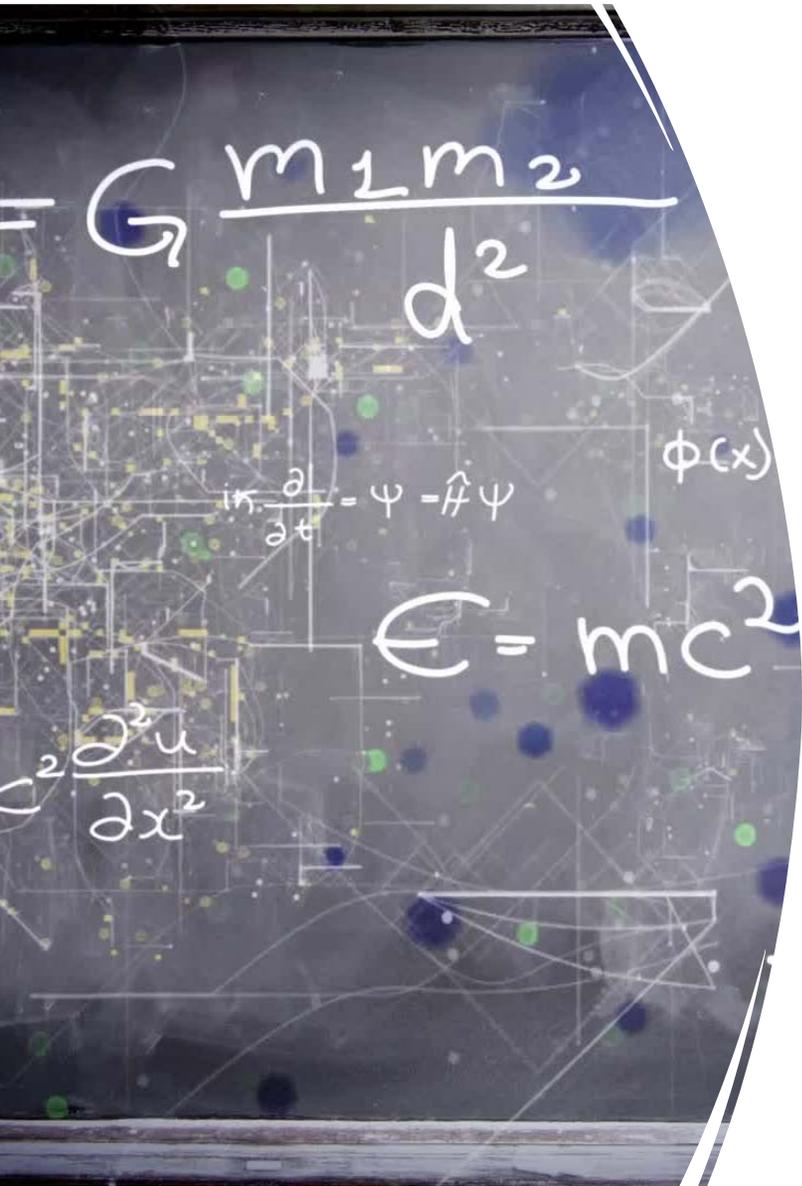


Changes in Law Relating to Squatters

Real Property and Proceedings Law (RPAPL) 713(3) has addressed provided an avenue for evicting squatters for many decades:

A special proceeding may be maintained under this article after a ten-day notice to quit has been served upon the respondent in the manner prescribed in [section 735](#), upon the following grounds:

(3). He or the person to whom he has succeeded has intruded into or squatted upon the property **without the permission** of the person entitled to possession **AND** the occupancy has **continued** without permission or permission has been revoked and notice of the revocation given to the person to be removed. (Emphasis added)



Changes in Law Relating to Squatters

So what do these changes to RPAPL 711 and references to RPAPL 713(3) mean?

Not too much.

The **new** definition of squatters in 711 is substantially similar to the existing definition found in RPAPL 713(3).

This definition is also functionally the same as courts have been interpreting it long before the passage of these changes.

Changes in Law Relating to Squatters Caselaw

“A squatter proceeding can be maintained only if the occupant never had permission, from the landlord or other person entitled to possession, to be on the premises.”

Goffe v Goffe, 14 Misc 3d 130(A)
(App Term 2007).

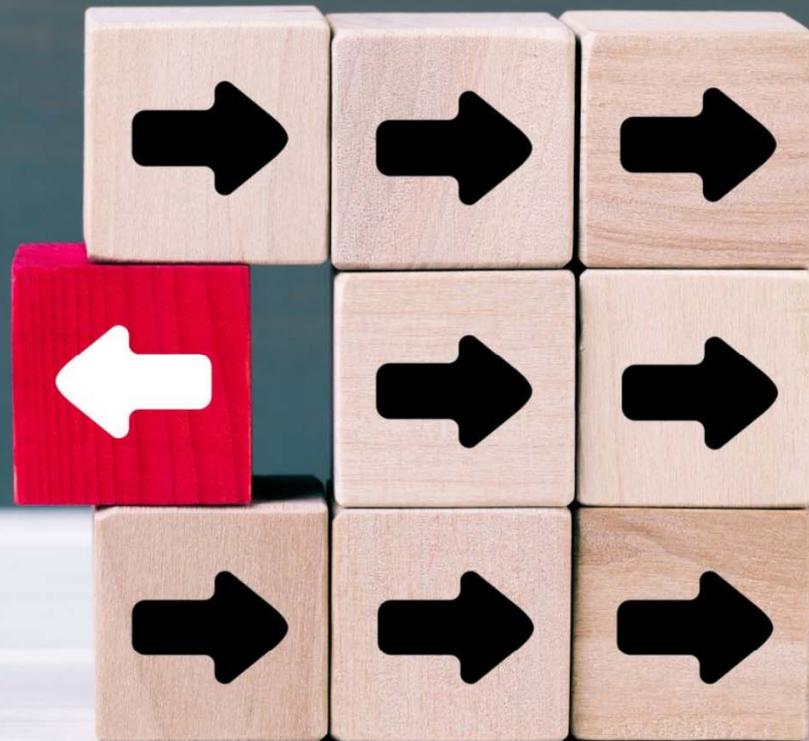
“In a squatter proceeding ‘[t]he touchstone is a nonpermissive entry followed by the absence of any acts, primarily on the part of the owner . . . which would ripen the possession into any form of tenancy.’”

Smiley v Williams, 26 Misc 3d 170,
174 (Civ Ct 2009).



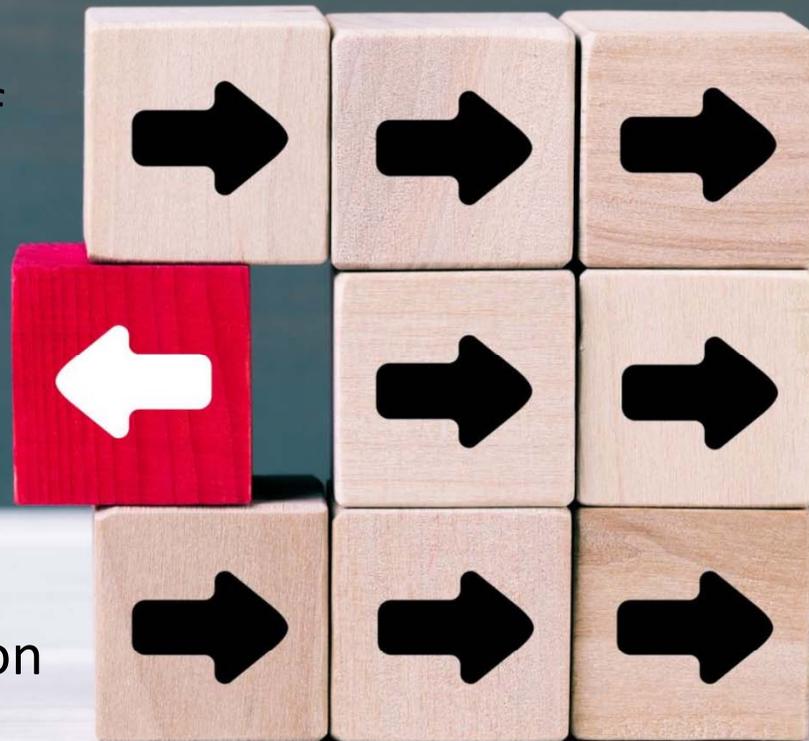
Trespasser

NY Penal Law Section 140.05:
Person who knowingly enter
or remain on another person's
property without permission



Landlord Obligations/Responsibilities to Trespasser

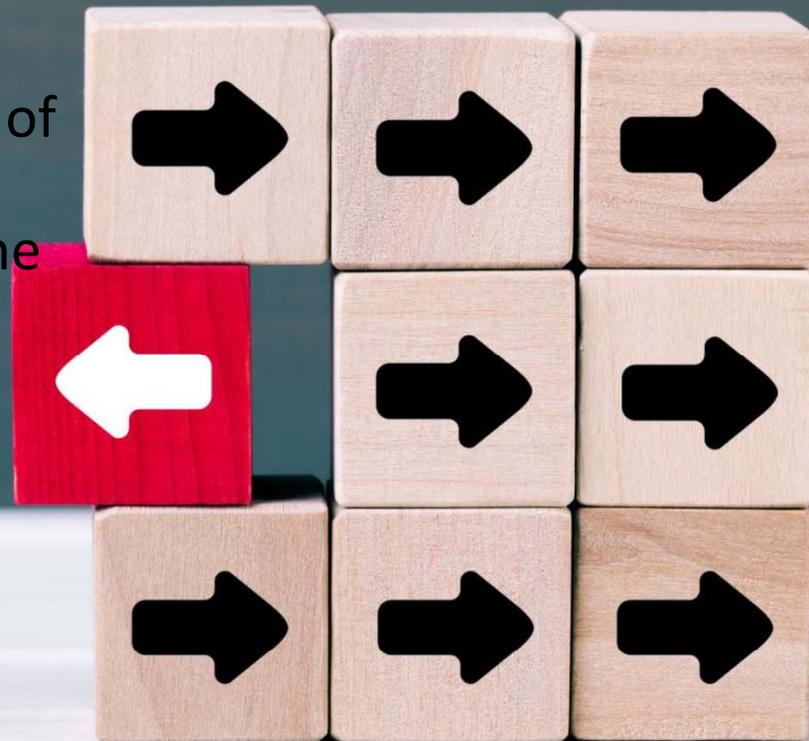
Process to gain possession of property from trespasser:
Call police



Duties Owed to trespasser:
Simply to avoid willful, wanton or reckless conduct (creation of dangers)

Rights and Responsibilities of Trespasser

Squatting for certain periods of time could lead to claims of adverse possession in extreme circumstances



Housing Security and Tenant Protection Act of 2019 (HSTPA)

UNLAWFUL LOCKOUTS

- The unlawful eviction of a tenant (without a valid court order) by a landlord or their agent is now a Class A misdemeanor which could result in civil penalties of between \$1,000 to \$10,000 per violation.
RPAPL § 768
- This includes utility shut-offs, changing the locks or removing a tenant's belongings from the rented premises.
- This may have critical application during the pandemic, during which landlords are unable to file evictions, and an unlawful lockout may result in an increased risk of exposure to the locked out tenants.

This letter from the NYS Attorney General to Law Enforcement provides guidance on how the new unlawful lockout laws should be applied.



STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL

LETITIA JAMES
ATTORNEY GENERAL

DIVISION OF SOCIAL JUSTICE
HOUSING PROTECTION UNIT

To: New York State Law Enforcement Departments

From: New York State Office of the Attorney General

Date: May 4, 2020

Re: Unlawful Evictions under RPAPL § 768

UNLAWFUL EVICTIONS (RPAPL § 768)

New York's Housing Stability and Tenant Protection Act of 2019 created new protections for tenants, including a new provision that makes it a Class A misdemeanor for a person to either evict an occupant from their home without a court order, or to fail to restore an occupant who was evicted without court order. (RPAPL § 768)

Unlawful evictions are now **criminal** matters and law enforcement should play an active role in enforcing the law.

This memorandum is intended to provide guidance to law enforcement departments throughout New York State in handling claims that someone has been illegally removed from their home. Ultimately, the goal of any intervention by law enforcement should be to have the person returned to their home, if legally warranted. Swift action on the part of law enforcement will help ensure that people are not removed from their homes without due process.

Good Cause

New York has passed a “Good Cause Law” in the NYS FY25 Budget.

Applies to

- NYC
- Other cities in New York state have the freedom to Opt-in but it is not mandatory.
 - Albany and Rochester are opting in.





Good Cause

- The Good Cause law does not make procedural changes to the eviction process.
- Good Cause defenses would be available in lease terminations, including non-renewal and month to month leases.
- Tenants may not waive their rights to Good Cause protections in their lease.
- New leases or lease renewals must indicate whether the good cause eviction law applies to a tenant's specific unit.

Good Cause

- There are Exceptions to Good Cause:
 - Small landlords, as defined in the local law
 - Owner occupied buildings with fewer than 10 units
 - Built after 2009 for 30 years
 - High rent exception, as defined in the local law



- **Even More Exceptions to Good Cause:**

- **Sublets**
- **Job related tenancies**
- **Already rent-regulated, incl HUD, LIHTC, PHAs**
- **Coops and Condos**
- **Short term rentals/vacation rentals**
- **Hospital housing incl adult care, retirement and assisted living**
- **Mobile home tenancies**
- **Hotel rooms and transient housing**
- **Dorms and college housing**
- **Religious institution housing**





"Good Cause" Reasons for Eviction

- Non-payment of rent, unless the rent is “unreasonable”;
- Violation of a substantial obligation of the tenancy;
- Nuisance;
- Malicious or grossly negligent substantial damage to the premises or building;
- Occupancy is in violation of law and an order to vacate has been issued, unless the condition is created by the landlord, through neglect or otherwise;
- Illegal use of the premises;
- Unreasonable refusal of access for necessary repairs;
- Owner occupancy as principal residence;
- Demolition;
- Withdrawal from the rental housing market; and
- Failure to agree to reasonable changes to a lease.

Good Cause

Limits on Rent Increases are included in the Good Cause Law

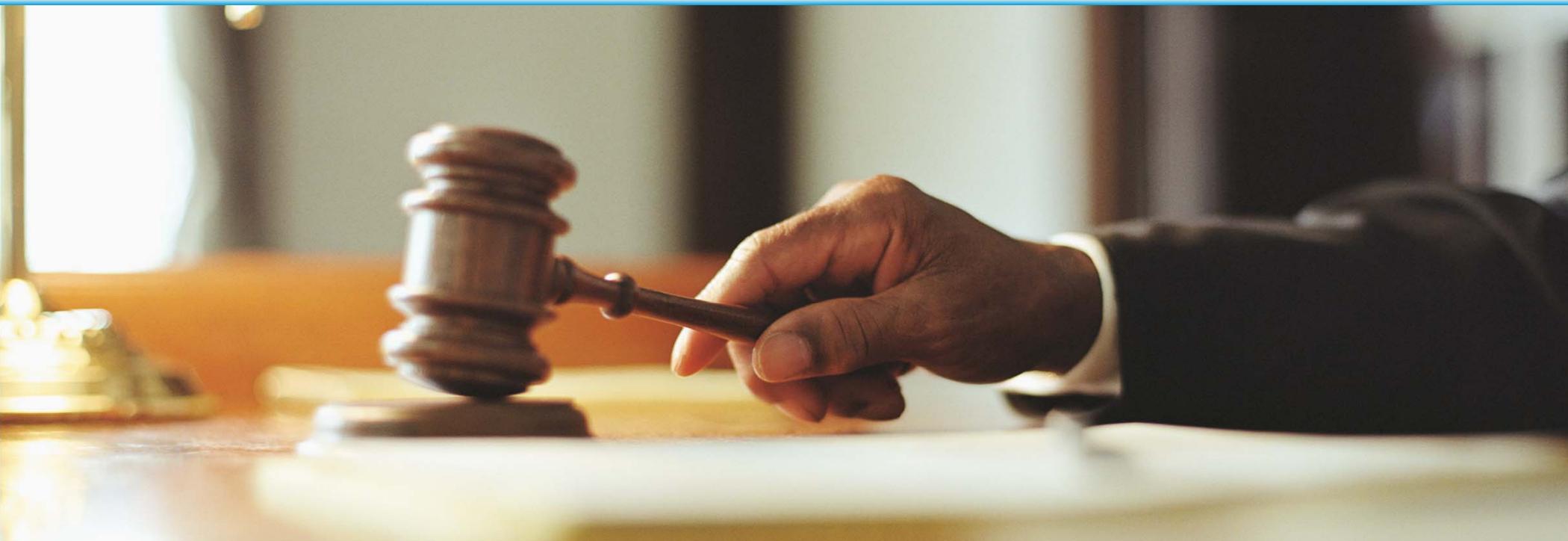
- Rebuttable presumption that rent increases above CPI + 5% with a cap of 10% are unreasonable.
- But Landlords can prove the need for an increase in a court proceeding. Courts must consider:
 - Property tax increases
 - Significant repairs
 - Replacement or substantial modification of structural, m electrical, plumbing, or mechanical systems or abatement of hazardous materials.
 - Significant changes in fuel, utility, insurance, and/or maintenance costs.



Domestic Violence Break-lease Law

- Where a tenant is a victim of domestic violence and reasonably fears remaining in the leased premises because of potential further domestic violence, the tenant is permitted to terminate the lease. RPL 227-C.
- What is required:
 - Thirty (30) days notice to the landlord;
 - A statement by the tenant regarding the domestic violence and reasonable fear of further domestic violence (there is a sample form statement in the law itself);
 - Documentation that the tenant has been a victim of domestic violence, which could be:
 - An order of protection,
 - A record or complaint form from a law enforcement agency, OR
 - A written verification from any other **qualified third party** to whom the tenant, or a member of the tenant's household reported the domestic violence.

QUESTIONS



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