

B21-0880 and B21-0884

Rent Concession and Rent Ceiling Abolition Clarification Amendment Act of 2016 Rental Housing Affordability Stabilization Amendment Act of 2016

Comments

These two bills do a lot of things, but these comments are only about one of them: the avoidance of rent stabilization by large landlords when they use the device of concession leases. The purpose of Rent Stabilization (as opposed to rent control) is to provide covered tenants with the protection of stable and predictable rent increases instead of sudden, unforeseen jumps that force them out of their apartments.

Rent Ceilings

Rent ceilings are a maximum amount that landlords can charge for an apartment and are set on an apartment by apartment basis. The existing law allows that cap to grow by many methods. Two of the most often used, because they do not require a review, are:

- (i) An annual *cost of living adjustment* that for most units that is the CPI plus 2%.

This allows the cap to grow above the actual inflation by a compounded amount of 2% per year.¹ Under this provision after ten years, the ceiling rate would be 22% above the competitive market rate.²

- (ii) The *vacancy adjustment* that occurs every time the unit becomes vacant. That rate is a minimum of 10% and a maximum of 30%.³ It provides an incentive for landlords to not care if tenants leave.

In 2006 the Council passed the Rent Control Reform Amendment Act of 2006⁴ that tried to eliminate rent ceilings. Although it removed the term "rent ceiling" from many spots, it

¹ The CPI has rent as a major component and, over time, it should reflect the actual rise in rent in DC.

² The landlord can only rent units to new tenants at a competitive market rate. This is currently well under the ceiling rate. In the author's case, the ceiling rate is about 50% higher than the actual rent paid.

³ The limit increases to up to 30% to match the rate of any comparable apartment in the building. Note that the decision of what is a comparable apartment is up to the landlord, and that there is no process to review this increase unless the next tenant complains. There is no incentive for the next tenant to complain because if the price is too high, she just looks elsewhere.

⁴ That act is found at <https://beta.code.dccouncil.us/dc/council/laws/docs/16-145.pdf>. Code § 42-3502.06 now reads: "Rent ceilings abolished"

left a loophole when it said that the landlord could charge whatever it could charge in the past plus any subsequent permitted increases.⁵ That is, the old ceiling as adjusted in the old ways. This loophole allowed rent ceilings to continue while avoiding the term through the use of "concession leases".

These two bills (as introduced) would do nothing about rent ceilings so long as the landlord raised the fictitious rent each year to the maximum ceiling while adjusting the concession. This is the current practice.

The Rental Housing Commission and the Office of the Tenant Advocate have taken the position that because rent ceilings were abolished, the old regulations are moot and should be ignored. However, rent ceilings are the basis for concession leases.

Concession Leases

Concession leases are the current way around the Rent Stabilization Act. The Act says that rents would be stabilized by controlling increases so that there would be no sudden and unfair increases in rents for an existing tenant. In general, annual increases were limited to the change in the CPI plus 2%. When the 2006 amendments went into effect (to abolish ceiling rents) all of the large landlords immediately raised their rents for new tenants (and those signing renewal leases) to the ceiling rent and granted them a concession (adjustment in the actual rent paid) so that they were paying market rent. This created two problems for the tenants:

- (i) The second year the landlord would simply *shrink the size of the concession* (unregulated) rather than raising the rent (regulated). The tenant is typically presented with a new rent with zero concessions (on his RAD form 8⁶) that is far

⁵ "Except to the extent provided in subsections (b) and (c) of this section, no housing provider of any rental unit subject to this chapter may charge or collect rent for the rental unit in excess of the amount computed by adding to the base rent not more than all rent increases authorized after April 30, 1985, for the rental unit by this chapter, by prior rent control laws and any administrative decision under those laws, and by a court of competent jurisdiction. Code § 42-3502.06 (a)
<https://beta.code.dccouncil.us/dc/council/code/sections/42-3502.06.html>

⁶ Form 8 is a required notice to a tenant of his rent increase. For most people it looks like an official notice from the City of an allowed rent increase although it is never seen by the Rental Housing Commission.

above market and is expected to negotiate it down toward market rent⁷. It either results in the tenant paying a rate above the market rate to avoid the inconvenience (and cost) of moving or being forced out of the apartment because of the high price⁸.

- (ii) The law also allowed a tenant to go to a *month to month lease* after her first year.⁹ Although purporting to still allow this to happen, the landlords give no concession in such a case and charge far above the market rate. This perverts an important part of the Act that now only protects a few knowledgeable long term tenants that have never been coerced into signing concession leases.

One would think that these problems would have been corrected by the Rental Housing Commission, but it has not happened. Instead, the Office of Administrative Hearings has held that concession leases are perfectly legal and that the rents can be based on the ceiling amount.¹⁰

We need a legislative solution that clearly outlaws these practices that subvert the core intent of the law.

Remedies

Both bills define a new term of "rent charged" as "the maximum amount of monthly rent that the landlord may demand or receive, which shall be no greater than the amount of rent that the tenant is currently obligated to pay...." Unfortunately, this is exactly what landlords claim that they do with concession leases. That is, they demand the ceiling rent and claim that the tenant is obligated to pay that amount, but they give a

⁷ Tenants negotiate rent once a year and the landlord negotiates rents every day. It is not a balanced negotiation. Note that most buildings only negotiate the rent amount and in our building the landlord forces you to sign an electronic document with no negotiation of the terms and conditions allowed.

⁸ In our building, one tenant could not negotiate the rent down to what similar units in the building were advertised for and moved to another unit at the substantially lower price (but still higher than what he had been paying), only to see his old unit was immediately advertised for much less than his new unit.

⁹ The [Valentine case](#) 490 A.2d 1165 (1985) (found at <http://law.justia.com/cases/district-of-columbia/court-of-appeals/1985/83-250-3.html>) held that tenants who continue to pay their rent cannot be evicted except for a small number of enumerated things.

¹⁰ [Pope v Equity Residential Management](#) - Final Order dated 3-25-2016 (found at http://3003vn.org/docs/Rent/Pope_v_Equity_Residential_Management_-_Final_Order_dated_3-25-2016.pdf).

concession and accept less. A much better definition gets away from decisions under the landlord's control (such as his demand) and instead just deals with objective facts.

"Rent charged" means the monthly rent actually charged by the housing provider for a rental unit that, when paid in full for a month, is the amount of rent that the tenant is obligated to pay per month after any discounts or other reductions.

That is, the rent after any discount or concession or what is needed to keep from being evicted. With this one minor change **B21-0884** becomes a great bill that is easy to support. It immediately outlaws the application of concession leases to raise rents and evade the law, and it limits the growth of rent ceilings over the longer term.

Bill **B21-0880** needs more work. It also tries to deal with the 'good' rent concession¹¹ but in ways that could legitimize all of the concession leases by the large landlords. In addition to the definition above, it needs to be clear that a temporary rent concession is actually a reduction in rent from the real rent actually paid in the last rental term and not a reduction from the phony ceiling rent in the current concession leases.

"Temporarily reduced rent" means an amount of monthly rent that is less than the rent charged in the proceeding rental term.

That is, we must get away from the legal phrase of 'rent charged or demanded' that is under the control of the landlord.

Conclusions

Both Bills are intended to keep landlords from using the loophole in the current law that allows for concession leases to make rent stabilization ineffective. The definitions are critical and must not open new loopholes. Other comments are being given to the staff drafting changes to the legislation.

¹¹ A 'good' rent concession (sometimes called the grandmother concession) is where the landlord decides to lower the rent for a good tenant, either for a month or two (during a misfortune for the tenant) or for life for a tenant for whom he has great affection. We have never heard of anything like that at our building.