

ORDINANCE NO. 3813

AN ORDINANCE AMENDING THE CODE OF THE TOWNSHIP OF FRANKLIN, COUNTY OF SOMERSET, STATE OF NEW JERSEY, CHAPTER 294, RENT LEVELING BOARD.

SUMMARY

An ordinance amending Code Chapter 294, Rent Leveling Board by creating the position of Rent Leveling Board Administrator and establishing the duties and responsibilities of said Administrator. The Administrator will process all paper work, inquiries, complaints and appeals and will render the initial decisions in these matters. Any party in interested aggrieved by any decision made by the Rent Leveling Administrator shall have the right to appeal that decision to the Rent Leveling Board. The Rent Leveling Board will be noticed and then convene to hear any appeals of the decisions of the Administrator.

BE IT ORDAINED by the Township Council of the Township of Franklin, Somerset County, New Jersey, that the Code of the Township of Franklin be and it is hereby amended as follows:

SECTION I

ARTICLE I

Rent Leveling Board

[Adopted 9-13-1973 by Ord. No. 647; amended in its entirety 12-15-1983 by Ord. No. 1155 (Ch. 193, Art. I, of the 1990 Code)]

§294-1. Definitions

For the purposes of this article, the following words and phrases shall have the meanings respectively ascribed to them by this section:

AVAILABLE FOR RENT TO TENANTS – Fit for habitation as defined by relevant Township ordinance; also occupied or unoccupied and offered for rent.

DWELLING – Any building or structure rented or offered for rent to two or more tenants or family units and containing kitchen, sleeping and sanitary facilities within the dwelling unit. [Amended 10-8-1991 by Ord. No. 1672]

DWELLING UNIT – Consists of one or more rooms which are arranged, designed or used as living quarters for one family only.

FAMILY UNIT – Any individual or more persons living together in a dwelling unit.

HOUSING SPACE – That portion of a dwelling rented offered for rent for living and dwelling purposes to one individual or family unit, together with all privileges, services, furnishings,

furniture, equipment, facilities and improvements connected with the use or occupancy of such portion of the property.

PRICE INDEX – The consumer price index (all items) for the Metropolitan New York City area, published periodically by the Bureau of Labor Statistics, United States Department of Labor.

REHABILITATED DWELLING – Dwellings offered for rent in newly rehabilitated condition for the first time after September 13, 1973, if the cost of rehabilitation exceeds 1 ½ of either the undepreciated cost of the fair market value of the dwelling prior to rehabilitation.

RENTAL INCOME – The payable rent charged and received for the housing space or dwelling over the previous twelve-month period, exclusive of any of the following: all real property taxes and any costs for utilities if the same are provided by the landlord, and any increase for major capital improvements as permitted by 294-13 and 294-14. [Amended 4-11-1989 b Ord. 1478]

UTILITIES – The minimum rated charged by the Township for water and sewer.

§294-2. Exemptions [Amended 10-8-1991 by Ord. 1672]

Exempt from this article are motels, hotels and similar type buildings; any building or structure or portion thereof rented for commercial use; single-family dwellings; and two-family dwellings in which the owner resides in one unit. Rehabilitated dwellings rented for the first time are exempted, and the initial rent can be determined by the landlord. All subsequent rents will be subject to the provisions of this article. Also exempt from this article are housing units which have been constructed and occupied on or after January 1, 1982. In this respect, the word “occupied” shall mean the issuance of a certificate of occupancy for said unit.

§294-3. Procedures for increases.

A. Establishment of rents between a landlord and tenant to whom this article is applicable shall hereafter be determined by the following provisions. At the termination of a lease of a periodic tenant, no landlord may request or receive any increase in the rental income and additional charges for that dwelling or housing space from any tenant, new or continuing, which is greater than a combination of the following:

- (1) Any increased cost to the landlord for utilities.
- (2) An amount not to exceed 3 1/2% of the rental income for each twelve-month period for which the premises has been rented in all instances where, under the said rental, the landlord supplies the heat at no charge to the tenant and an amount not to exceed 3% the rental income for each

twelve-month period for which the premises has been rented in all instances where the heat is paid for by the tenant, either directly or through an additional charge by the landlord. **[Amended 6-9-1987 by Ord. No. 1342; 8-8-1989 by Ord. No. 1511; 3-11-1997 by Ord. No. 2005]**

- B. The landlord shall notify the Rent Leveling ~~Board~~ **Administrator** by certified mail, return receipt requested, in writing, at least 60 days prior to the effective date of the proposed increase, setting forth therein in detail the calculations involved in computing the increase. A copy of said notice shall be mailed to the tenant's residence by regular mail and by certified mail, return receipt requested. Delivery is considered to have been made upon the date of the initial certified mailing. A tenant may be notified by other than certified mail only if the landlord or his representative shall serve the tenant personally, or by leaving at the usual place of abode of the tenant with a member of the household of 14 years of age or more, the notice provided for herein, and the landlord or his representative shall certify such service by affidavit and return said affidavit in his records. **[Amended 3-11-1997 by Ord. No. 2005]**
- C. Upon receipt of said notice and where the increase sought hereunder is due to increased cost for utilities, the ~~Board~~ **Administrator** shall schedule a hearing on said increase, and the landlord shall post in the lobby in each building, or if no lobby is present in a conspicuous place in or about the premises, a notice of said hearing date at least five days prior to the proposed date of the hearing. Any increases sought based upon the increase permitted by the terms of Subsection A(2) of this section shall not require a public hearing.
- D. No landlord may request or receive any increase in rental income or additional charges or surcharges except as provided by this article and until such time as the landlord shall have obtained approval, in writing, from the Rent Leveling ~~Board~~ **Administrator** for said increase, except where said increase is pursuant to Subsection A(2) hereof, in which case no such written approval from the Rent Leveling ~~Board~~ **Administrator** shall be required.
- E. For a periodic tenant whose lease term shall be less than one year, said tenant shall not suffer or be caused to pay any rent increase in the next twelve-month period which exceeds the increase permitted herein for the preceding twelve-month period.
- F. Vacancy decontrol.
 - (1) Notwithstanding any limitations upon permissible rent increases under any other provision of this article, upon the voluntary, uncoerced vacation of any apartment for which rent increases are controlled by this article, the landlord shall have the right to fix the rent for such vacated apartment at such a sum as he deems appropriate.

- (2) In the case of a tenant moving to different premises within the same complex, the maximum permissible increase that said tenant shall be permitted to suffer shall be as set forth in Subsection A hereof.
- (a) In order for the landlord to qualify for the vacancy decontrol rent increase, the landlord shall first be required to file a written statement with the Rent Leveling ~~Board~~ **Administrator**, signed by the vacating tenant, certifying to the Board that the landlord has not, in any way, harassed or pressured the tenant into vacating the housing space unit and that the vacation of such unit was a voluntary act on the part of the tenant. Such noncoercion certification shall not be required in order for the landlord to qualify for the vacancy decontrol increase if:
- [1] The increase does not exceed the total of all permissible increases authorized by any other provisions of this article;
 - [2] The tenant has moved from the unit without notice to the landlord;
 - [3] The unit has been vacated pursuant to a judicially mandated eviction; or
 - [4] The tenant has refused to sign such certification and the landlord has certified that he has provided the tenant with:
 - [a] Notice in the lease or notice at the inception of the lease or notice by personal service within 30 days of the passage of the vacancy decontrol provisions of the tenant's rights under the vacancy decontrol provisions of this article; and
 - [b] Notice to the tenant of the tenant's rights under the vacancy decontrol provisions of this article when the tenant notifies the landlord that he is vacating the dwelling unit or 60 days prior to the termination of the lease, whichever is earlier.
- (b) The aforesaid notices shall prominently advise the tenant that if he alleges harassment or pressure, he should notify the Franklin Township Rent Leveling ~~Board~~ **Administrator**, and a hearing will be held on the allegation. A hearing pursuant to Subsection F(2)(a)[4] above shall be held before the Rent Leveling ~~Board~~ **Administrator** upon at least seven days' notice to the public and the vacating tenant. The decontrol provisions of this section shall

only apply to dwelling units which are physically vacated subsequent to the effective date of this section.

- G. Upon vacation of any apartment hereafter, the landlord shall file a statement with the Rent Leveling Board Administrator certifying to the Board:
- (1) The apartment and building numbers of such dwelling unit.
 - (2) The rent paid by the vacating tenant.
 - (3) The maximum rent increase which would be permissible under the other provisions of this article
 - (4) The rent agreed to by the new tenant for such apartment.
 - (5) That the vacation of such apartment was the voluntary act of the vacating tenant and that such vacation was not the result of landlord harassment or pressure upon such vacating tenant.

§294-4. Unauthorized increases.

Any rental income increase at a time other than the expiration of a lease or termination of a periodic lease shall be void. Any rental income increase in excess of that authorized by the provisions of this article shall be void.

§294-5. Notification of increases to tenant.

Any landlord seeking an increase in rent shall notify the tenant in detail of the calculations involved in computing the increase and shall include the allowable rental increase, the amount of rent before and after the proposed increase and the effective date of the proposed increase. The failure of the landlord to provide the tenant with this information shall make any increase void, and the tenant shall recover any increase paid.

§294-6. Tax surcharge from increase in property tax.

A landlord may seek a tax surcharge from a tenant because of an increase in municipal property taxes. The tax surcharge shall not exceed that amount authorized by the following provisions:

- A. The landlord shall divide the increase in the present property tax over the property tax of the previous year by the number of square feet in the dwelling to obtain the tax increase per square foot. The tenant shall not be liable for a tax surcharge exceeding the tax increase per square foot multiplied by the total square feet occupied by the tenant.

- B. Any landlord seeking a tax surcharge shall notify the tenant of the calculations involved in computing the tax surcharge, including the present property tax for the dwelling, the property tax for the dwelling for the previous year, the total number of square feet in the dwelling, the tax increase per square foot, the number of square feet occupied by the tenant, the maximum allowable surcharge and the effective date of the proposed increase.

The failure of the landlord to provide a tenant with this information shall make any increase void, and the tenant shall recover any increase paid.

- C. The tax surcharge for which each tenant is liable shall be paid in 12 monthly installments.
- D. The tax surcharge shall not be considered rent for purposes of computing cost-of-living rental increase.
- E. In the event of a tax appeal, the portion of a tenant's tax surcharge not being paid by the landlord to the government will be held in a separate interest-bearing account. In the event that the appeal is successful and taxes are reduced, the tenants shall receive the reduction, plus accrued interest as applied to its tax portion, after deducting all reasonable expenses incurred by the landlord in prosecuting such appeal. Payment to the tenant will be made in the form of a credit against the next monthly rental or a check payable to the tenant.

§294-7. Rent reduction from decrease in property tax.

A tenant shall be entitled to a rent reduction from a landlord because of decrease in the municipal property taxes. The tax reduction shall not exceed that amount authorized by the following provisions:

- A. The landlord shall divide the tax decrease in the present property tax over the property tax of the previous year by the number of square feet in the dwelling to obtain the tax decrease per square foot. The tenant shall not be entitled to a reduction because of a tax decrease exceeding the tax decrease per square foot multiplied by the number of square feet occupied by the tenant. The tax decrease each tenant is entitled to shall be a credit to rent in 12 monthly installments.
- B. Any tenant entitled to a rent decrease because of a reduction of municipal property taxes shall be notified by the landlord of the calculations involved in computing the reduction, including the present property tax for the dwelling, the property tax for the dwelling for the previous year, the total number of square feet in the dwelling, the tax decrease per square foot, the number of square feet occupied by the tenant, the amount of rent decrease each tenant is entitled to and the effective date of the proposed decrease.

§294-8. Rent Leveling Board established; composition; Chairperson, appointments; terms; service of attorney and secretary; compensation.

- A. There is hereby created a Rent Leveling Board within the Township of Franklin.
- B. The Board shall consist of five members and two alternate members. Not more than one of the members shall be a landlord, or, if no landlord shall be willing to be so appointed, then, in such event, the Council may appoint a person who is employed in some capacity by a landlord. Further, not more than one tenant shall serve as a regular member of said Board. **[Amended 5-24-1984 by Ord. No. 1169]**
- C. The Chairperson shall be chosen by the membership from among the members.
- D. All members shall be appointed by the Township Council.
- E. Terms.
 - (1) The initial terms shall be as follows:
 - (a) Two members shall be appointed to three-year terms.
 - (b) Two members shall be appointed to two-year terms.
 - (c) One member shall be appointed to a one-year term.
 - (2) The alternate members shall be appointed for terms of one year.
 - (3) Any subsequent appointment shall be for a three-year term, except for alternate members, who shall serve for one-year terms.
 - (4) **Members shall serve their respective terms and until their successors are thereafter appointed and qualified.**
- F. No member shall hold any other elective office or position in the Township.
- G. The Board shall have the services of an attorney, who shall be appointed by the Township Council for a one-year term ending June 30 of each year, and the services of a secretary.
- H. The members of the Board shall serve without compensation, but the salary of the attorney shall be fixed by resolution of the Township Council.

§294-8a. Rent Leveling Board Administrator established.

- A. **There is hereby established a Rent Leveling Administrator within the Township of Franklin. The Rent Leveling Administrator shall be appointed by the Town Manager, to serve in this position and under the direction of the Rent Leveling**

Board, shall have the powers set forth in this chapter, including but not limited to the following:

- (1) To supply information and assistance to landlords and tenants and to bring together tenants and landlords in informal conferences and suggest resolutions of conflicts between them, in order to help them comply with the provisions of this chapter.
- (2) To remedy violations of this chapter by ordering rebates and increases and bringing appropriate legal charges as provided in this chapter.
- (3) To accept, process and render decisions regarding:
 - (a) Complaints from tenants of illegal rental increases.
 - (b) Applications from landlords for rental increases
 - (1) Any rebate ordered by the Rent Leveling Administrator shall be considered a penalty against the landlord if said rebate is not made to the tenant within 30 days of the service of a final determination by the Administrator. The Administrator may authorize a reduction in rent until such time as the overpayment is reimbursed. The tenant may bring an action in the Municipal Court for the collection of this penalty after the time allowed.
 - (2) In case of failure by a tenant to pay rents as determined by the Administrator or the Board, the landlord may resort to the appropriate legal remedies for nonpayment of rent.
- (4) Obtain, keep and maintain all available records, data and information necessary to the enforcement, construction and application of this article.
- (5) Exercise all powers necessary and appropriate, to the maximum extent permitted by law to carry out and execute the purposes of this article.
- (6) Decisions of the Rent Leveling Administrator shall be final unless, within 30 days of the decision, an aggrieved party appeals to the Rent Leveling Board.

§294-9. Powers of the Board.

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 article, ~~including but not limited to the following:~~ **However the Board shall have no jurisdiction to consider any matter not expressly set forth in this article. The powers of the Board shall include but shall not be limited to the**

- A. To hold hearings and adjudicate applications from tenants for reduced rentals as hereinafter provided.

§294-10. Hearings.

The hearings of the Rent Leveling Board shall be opened to the public and shall not be held before 7:00 p.m. prevailing time. Upon receipt of an ~~application for relief or complaint~~ **appeal for a hearing regarding a decision of the Rent Leveling Administrator** pursuant to this article, the Secretary of the Board shall furnish copies thereof to each Board member and set a hearing date. The ~~applicant or complainant~~ **appellant** shall give 10 days' written notice of such hearing to all interested parties, including all landlords and tenants affected by said ~~application or complaint~~, **appeal** and shall file proof of service of notice with the Board. Said hearing will be conducted at the earliest regularly scheduled meeting or at a special date to be fixed by the Board. The Chairman of the Rent Leveling Board or, in his absence, the Acting Chairman shall have the power to issue subpoenas to any parties in dispute for the attendance of witnesses and the production of records and may administer oaths and take testimony with regard to any dispute brought before and heard by the Board. Failure to respond to a subpoena issued or the failure to produce records when so demanded shall constitute a violation of the provision of this article. The Rent Leveling Board shall hold a hearing within 30 days of the receipt of notice required herein from a landlord or tenant. The Board shall render its decision within 30 days after the close of all such hearings. The decision of the Rent Leveling Board shall be final.

§294-11. Appeal to Board Administrator.

Any tenant may appeal to the Rent Leveling ~~Board~~ **Administrator** any computation by the landlord under the provisions of this article.

§294-12. Enforcement agencies.

The power of enforcement of the provisions of this article shall be vested in the Rent Leveling ~~Board~~ **Administrator** and the ~~Division of Code Enforcement~~ Department of Community Development shall be responsible for the administration and coordination with the Rent Leveling Board.

§294-13. Hardship rent increase.

A landlord may apply to the Rent Leveling ~~Board~~ **Administrator** for an increase in rent due to hardship, and the Rent Leveling ~~Board~~ **Administrator** may, cause on such application

§294-14. Capital improvement surcharge.

- A. A landlord may seek a capital improvement surcharge for any completed major capital improvement. The landlord shall notify such tenant of the total cost of the completed capital improvement, the number of years of useful life of the

improvement as claimed by the landlord for purpose of depreciation for income tax purposes, the average annual cost of the improvement, the need for such improvement, the benefit to the tenant and the effective date of the proposed increase.

- B. In calculating the capital improvement surcharge, the cost of the capital improvement shall be divided by the number of years of useful life of such improvement to determine the average annual cost of such improvement. The landlord shall divide the average annual cost of such improvement by the total square feet of the dwelling to determine the capital improvement surcharge per square foot, if applicable. The tenant shall not be liable for a capital improvement surcharge exceeding the surcharge increase per square foot multiplied by the total square feet occupied by the tenant, if applicable. The capital improvement surcharge applicable to each tenant shall not exceed 10% of his rental, unless such improvement is mandated by local ordinance, and shall be payable in 12 monthly installments.
- C. Any capital improvement surcharge of any hardship rental increase, as provided in this article, shall not be considered rent for the purposes of computing cost-of-living rental increases unless so specified by the Rent Leveling Board Administrator.

§294-15. Landlord to maintain standards.

- A. During the term of this article, the landlord shall maintain the same standards of service, maintenance, furniture, furnishings or equipment in the housing space and swellings as he provided or was required to do by law or lease at the date the lease was entered into.
- B. A tenant or tenants who are not receiving substantially the same standards of service, maintenance, furniture, furnishings or equipment may have the Rent Leveling Board determine the reasonable rental value of the housing space or dwelling in view of this deficiency after first notifying the landlord of their intention to do so.

§294-16. Voiding of lease.

In the event that a tenant cannot meet his monthly rental during a term of any lease entered into after September 13, 1973, because of an adverse change in his financial condition, he may appeal to the Rent Leveling Board Administrator to have his lease voided at the discretion of the Board Administrator and have 50% of any deposit or escrow refunded.

§294-17. Initial rent for new or rehabilitated housing space.

The owner of a newly constructed housing space, rehabilitated dwelling or dwelling being rented for the first time after adoption of this article shall not be restricted in the initial rent he charges. Any subsequent re-rental or rental increases, however, shall be subject to the provisions of this article.

§294-18. Waiver of provisions.

Any provision of a lease or other agreement whereby any provision of this article is waived shall be deemed against public policy and shall be void.

§294-19. Inspection of landlord's supporting documentation.

Any tenant may question a rent increase or increase of sums other than rental and has the right to see the landlord's supporting documentation. This right also extends to the Rent Leveling Board Administrator.

§294-20. Retaliatory action against tenant.

A landlord shall not take retaliatory action against any tenant who exercises any rights conferred on him under this article. "Retaliatory action" means action taken by the landlord, including undue or unusual inconvenience, violations of privacy, harassment, reduction in quality or quantity of services or any form of threat or coercion. This information must be contained in all increase notices. Failure of the landlord to provide this information may make such notice void.

§294-21. Recovery of delayed increases.

A landlord who makes proper notice of an increase to a tenant and it subsequently delayed by the Rent Leveling Board Administrator or governing body from effecting such increase on the date stipulated in the notice shall be entitled to recover the sum he was entitled to as if the increase became effective as stipulated in the notice.

§294-22. Recovery of void increases.

A tenant who has paid an increase that is subsequently determined to be void shall be entitled to recover such sums paid. Such sum can be returned as a credit to the tenant's rent or paid by check.

§294-23. Decisions of Department of Housing and Urban Development.

In the event that the Department of Housing and Urban Development, pursuant to any regulations duly adopted by said Department, shall determine that this decision of the Rent Leveling Board Administrator jeopardizes the Department's economic interest in a project and thereby asserts exclusive jurisdiction over the regular of rents of such project, the

Department and/or landlord shall submit to the Rent Leveling Board Administrator copies of all financial data supplied to the Department by the landlord and upon which date such decision of the Department was based.

§294-24. Violations and penalties; lien for unpaid fines. [Amended 3-11-1997 by Ord. No. 2005]

- A. A violation of any provision of this article shall be punishable by a fine not to exceed \$500.00 and for each subsequent offence in any calendar year by a fine not to exceed \$1,000.00.
- B. If after 30 days' notice to the landlord, which notice shall be given to the landlord by regular mail and certified mail, return receipt requested, to the last known address of the owner, any fine shall remain unpaid, the fine so charged shall forthwith become a lien upon the property and shall become and form part of the taxes then next to be assessed upon the property and shall be collected and enforced according to law.

§294-25. Construal.

This article, being necessary for the welfare of the Township and its inhabitants, shall be liberally construed to effectuate the purposes thereof. It shall not apply to housing units which have been constructed and occupied on or after January 1, 1982.

§294-26. Duration; recommendations for revision. [Amended 4-11-1989 by Ord. No. 1478; 2-13-1990 by Ord. No. 1547; 12-12-1995 by Ord. 1929; 4-9-1996 by Ord. No. 1950; 12-12-2000 by Ord. No. 3170]

This article is to take effect ~~immediately~~ in accordance with the applicable law and shall remain in full force and effect until December 31, 2005. On September 30 of each year, the Rent Leveling Board Administrator shall forward a written report to the Township Council with recommendations for revisions and/or extension of this article, including recommendations for revision to the provisions of §294-3A. At that time, the Township Council shall review said report and take such action as it deems appropriate.

§294-27. Excess increases.

Any rent increases as imposed after June 30, 1976, in excess of the increase as permitted under the terms of this article are hereby declared to be null and void as of the effective date of this article.

§294-28. Enclosure of tenant's possessions during eviction.

During the course of the lawful eviction of any tenant of any dwelling unit from such dwelling unit, no landlord shall cause, suffer or permit, either himself or by the actions of any servant and/or employee or any person effectuating an order of eviction, the personal

property, including but not limited to furniture, clothing and appliances, of any tenant being so evicted to be placed or caused to be placed in an area not enclosed by a structure for loading on a vehicle or vehicles which are present at the dwelling unit at such time of removal and available for said property to be immediately loaded therein.

SECTION II

Each clause, section or subsection of this ordinance shall be deemed a separate provision to the intent that if any such clause, section or subsection should be declared invalid, the remainder of the ordinance shall not be affected.

SECTION III

All such ordinances or parts of ordinances inconsistent with this ordinance are hereby repealed as to the extent of such inconsistency.

SECTION IV

This ordinance shall take effect immediately upon adoption and publication according to law.

Ordinance No. 3813

This is a true and correct copy of any ordinance adopted by the Township Council, Township of Franklin, Somerset County, New Jersey.

Introduced: January 27, 2009

Public Hearing: February 24, 2009

Adoption:

Notice of Adoption:

Effective Date:

Ann Marie McCarthy, Township Clerk