

LANDLORDS, BE AWARE OF RENT CONTROL PITFALLS

by Neil Molyneux

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Landlords considering the purchase or letting of investment accommodation should, as part of their due diligence process, consider if the property is rent-controlled.

Numerous Bermuda properties have been subject to rent control for many years. Currently, residential accommodation with an annual rental value ("ARV") of \$22,800, or less, falls under rent control.

The main exceptions to rent control are:

- accommodation with an ARV over \$22,800;
- employer-owned accommodation, provided under an employment contract;
- licenced tourist accommodation;
- accommodation normally occupied by a landlord, who is away from Bermuda, for less than 12 months;
- boarding or lodging house accommodation; or
- if the tenant is what is known as a "life tenant".

Over time, with ARV revaluations and changing rent control thresholds, accommodation can easily fall into and out of rent control. Prior to 1 January 2016, the ARV threshold for rent control was set at \$27,000 or less. On that date, the ARV threshold for rent control was lowered to the current level of \$22,800. Consequently, additional accommodation escaped rent control from that day forward.

In particular, beware rent set by a previous landlord in breach of rent control. A past breach, even without the knowledge of a current landlord, may subject a current landlord to financial liabilities.

Rent control legislation not only restricts rent, but also provides security of tenure to rent-controlled tenants. This means a court order is required to evict a rent-controlled tenant; but take care as other kinds of tenant also require a court order, before eviction.

Additionally a deposit paid by a tenant, with respect to rent-controlled accommodation, should not exceed the higher of \$100.00, or the equivalent of two weeks' rent.

Contact the Rent Commissioner's office by telephone or email, to ask if accommodation is, or has ever been rent-controlled. The Rent Commissioner's website, with forms and FAQs can be found at www.gov.bm/rent-increase-information-tenants-and-landlords.

Even if otherwise falling under rent control, accommodation not previously let (e.g. a newly-constructed unit), may first be rented at any level of rent. However, any subsequent rent increase, whether to the same or to a different tenant, is restricted.

Rent should not be higher than the rent charged to the first tenant of a rent-controlled property (even if by a previous landlord) unless:

- the landlord and tenant have agreed an increase, following which (a) the landlord has lodged notice with the Rent Commissioner; and (b) the landlord is in possession of a copy of such notice, duly endorsed by the Rent Commissioner; or
- the landlord has received the Rent Commissioner's determination, approving an increase.

If a landlord applies to the Rent Commissioner for an increase, the Rent Commissioner firstly consults with the tenant. If there is no tenant, no such consultation is required. The Rent Commissioner then determines the rent.

If a landlord or a tenant is dissatisfied with a Rent Commissioner determination, either may apply for a review. The Rent Commissioner then consults the Rent Increases Advisory Panel, before final determination. After a final determination, there is a right of appeal to the Magistrates' Court.

A prospective tenant cannot agree a rent increase to a rent-controlled property. Instead, a landlord should lodge an application for increase, with the Rent Commissioner.

Contravention of rent control can result in criminal prosecution and/or a tenant claim against the landlord, for up to two years of rent paid in excess of controlled rent (even if paid to a previous landlord of the accommodation in question). Additionally, a seller of rent-controlled property, may have to make concessions to a purchaser, if a purchaser cannot be satisfied rent control has been observed.

In summary the status of investment accommodation should be investigated and once known and if appropriate, steps can be considered to correct, or mitigate potential disadvantage.

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