



De Minimis Conditions in Building-Wide or Individual Apartment Areas

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Certain conditions complained of as constituting a decrease in a required service may have only a minimal impact on tenants, do not affect the use and enjoyment of the premises, and may exist despite regular maintenance of services. Such conditions, which are *de minimis* in nature, do not rise to the level of a failure to maintain a required service.

The following schedule sets forth conditions that will generally not constitute a failure to maintain a required service. However, this schedule is not intended to be exclusive, and is not determinative in all cases and under all circumstances. Therefore, it does not include all conditions that may be considered *de minimis*, and there may be circumstances where a condition, although included on the schedule, will nevertheless be found to constitute a decrease in a required service.

In determining whether a condition is *de minimis*, the DHCR may consider the passage of time during which a disputed service was not provided, and during which no complaint was filed by any tenant alleging failure to maintain such disputed service, as evidencing that such service condition is *de minimis*, and does not constitute a failure to maintain a required service. Therefore, the passage of four years or more will be considered presumptive evidence that the condition is *de minimis*, with such four-year period to be measured without reference to any changes in building ownership or the tenancy of the subject housing accommodation.

It should be noted, however, that services required

to be provided by laws or regulations other than the Rent Laws shall not be treated as *de minimis*.

SCHEDULE OF *DE MINIMIS* BUILDING-WIDE CONDITIONS

1. Air Conditioning:

Failure to provide in lobby, hallways, stairwells, and other non-enclosed public areas.

2. Building Entrance Door:

Removal of canopy over unlocked door leading to vestibule; changes in door-locking devices, where security or access is not otherwise compromised.

3. Carpeting:

Change in color or quality under certain circumstances; isolated stains on otherwise clean carpets; frayed areas which do not create a tripping hazard.

4. Clotheslines:

Removal of, whether or not dryers are provided.

5. Cracks:

Sidewalk cracks which do not create a tripping hazard; hairline cracks in walls and ceilings.

6. Decorative Amenities:

Modification (e.g., fountain replaced with rock garden); removal of some or all for aesthetic reasons.

7. Elevator:

Failure to post elevator inspection certificates; failure to provide or maintain amenities (e.g., ashtray, fan, recorded music).

8. Floors:

Failure to wax floors; discrete areas in need of cleaning or dusting, where there is evidence that janitorial services are being regularly provided and most areas are clean (See JANITORIAL SERVICES, item 12).

9. Garage:

Any condition that does not interfere with the use of the garage or an assigned parking space (e.g., peeling paint where there is no water leak).

10. Graffiti:

Minor graffiti inside the building; any graffiti outside the building where the owner submits an "affidavit of on-going maintenance" indicating a reasonable time period when the specific condition will be next addressed.

11. Landscaping:

Modification; failure to maintain a particular aspect of landscaping where the grounds are generally maintained.

12. Janitorial Services:

Failure to clean or dust discrete areas, where there is evidence that janitorial services are being regularly provided because most areas are, in fact, clean.

13. Lighting in Public Areas:

Missing light bulbs where the lighting is otherwise adequate.

14. Lobby or Hallways:

Discontinuance of fresh cut flowers; removal of fireplace andirons; modification of furniture; removal of some furnishings (determined on a case by case basis); removal of decorative mirrors; reduction in lobby space where reasonable access to tenant areas are maintained; elimination of public area door mat; failure to maintain a lobby directory that is not associated with a building intercom; removal or replacement of window coverings (See DECORATIVE AMENITIES, item 6).

15. Mail Distribution:

Elimination of door-to-door or other methods of

mail distribution where mailboxes are installed in a manner approved by the US Postal Service.

16. Masonry:

Minor deterioration; failure to point exterior bricks where there is no interior leak damage.

17. Painting:

Change in color in public areas under certain circumstances (e.g., not in violation of the New York City Housing Maintenance Code); replacement of wallpaper or stenciling with paint in the public areas; isolated or minor areas where paint or plaster is peeling, or other similarly minor areas requiring repainting, provided there are no active water leaks; any painting condition in basement or cellar areas not usually meant for or used by tenants; any painting condition that is limited to the top floor bulkhead area provided there is no active water leak in such area.

18. Recreational Facilities:

Modifications, such as reasonable substitution of equipment, combination of areas, or reduction in the number of items of certain equipment where overall facilities are maintained (See ROOF, item 19).

19. Roof:

Discontinuance of recreational use (e.g., sunbathing) unless a lease clause provides for such service, or formal facilities (e.g., solarium) are provided by the owner; lack of repairs where water does not leak into the building or the condition is not dangerous.

20. Sinks:

Failure to provide or maintain in compactor rooms or laundry rooms.

21. Storage Space:

Removal or reduction of, unless storage space service is provided for in a specific rider to the lease (not a general clause in a standard form residential lease), or unless the owner has provided formal storage boxes or bins to tenants within three years of the filing of a tenant's complaint alleging an elimination or a reduction in

storage space service.

22. Superintendent/Maintenance Staff/Management:

Decrease in the number of staff, other than security, provided there is no decrease in janitorial services; elimination of on-site management office; failure to provide an on-site superintendent, provided there is no decrease in janitorial services.

23. Television:

Replacement of individual antennas with master antenna; visible cable; television wires; or other technologies.

24. Toilet in Public Areas:

Removal of (except in buildings containing Class B units).

25. Windows:

Sealed, vented, basement or crawl space windows, other than in areas used by tenants (e.g. laundry rooms); cracked fire-rated windows; peeling paint or other non-hazardous condition of exterior window frames.

SCHEDULE OF *DE MINIMIS* INDIVIDUAL APARTMENT CONDITIONS

1. Appliances and Fixtures:

Chips on appliances, counter tops, fixtures or tile surfaces; color-matching of appliances, fixtures or tiles.

2. Cracks:

Hairline cracks; minor wall cracks, provided there is no missing plaster, or no active water leak.

3. Doors:

Lack of alignment, provided condition does not prevent proper locking of entrance door or closing of interior door.

4. Floor:

Failure to provide refinishing or shellacking.

5. Noise:

Caused by another tenant.

6. Window Furnishings:

Failure to re-tape or re-cord venetian blinds.



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To visit a Borough Rent Office, by appointment only, please contact:

QUEENS

92-31 Union Hall Street
6th Floor
Jamaica, NY 11433
718-482-4041

BROOKLYN

55 Hanson Place
6th Floor
Brooklyn, NY 11217
718-722-4778

UPPER MANHATTAN

163 W. 125th Street
5th Floor
New York, NY 10027
212-961-8930

LOWER MANHATTAN

25 Beaver Street
New York, NY 10004
212-480-6238

BRONX

1 Fordham Plaza
4th Floor
Bronx, NY 10458
718-430-0880

WESTCHESTER

75 South Broadway
3rd Floor
White Plains, NY 10601
914-948-4434