

ORDINANCE NO. 3538-20

AN ORDINANCE EXTENDING CHAPTER 83A, ENTITLED "RENT CONTROL," OF THE CODE OF THE BOROUGH OF RUTHERFORD FOR TWO YEARS FROM JANUARY 1, 2021 THROUGH DECEMBER 31, 2022

BE IT ORDAINED by the Mayor and Council of the Borough of Rutherford, County of Bergen and State of New Jersey that Chapter 83A of the Code of the Borough of Rutherford Entitled "Rent Control" is hereby amended and that those portions of the Ordinance set forth below are hereby amended as follows and that those portions of the Ordinances not set forth below shall remain unchanged:

Section 1. Purpose. The purpose of this ordinance is to extend rent control in Rutherford for a period of two years through December 31, 2022. In addition, this ordinance reestablishes a rent board and removes the rent control from the governing body set forth at Ordinance number 3484-18. As such, the rent board shall have all powers of the former rent control board and shall hear and determine all contested applications under this chapter. Further, the Borough Administrator or his/her designee shall administer non-contested rent control applications under this chapter. This ordinance shall be construed consistent with these purposes.

§ 83A-1. Definitions; notice procedure.

A. As used in this chapter, the following terms shall have the meanings indicated:

BOOKS AND RECORDS — The books and records of the owner or landlord, with the ~~governing body~~ **Rent Board** having the power to subpoena such books and records without the necessity of obtaining a court order. **[Amended 12-11-2012 by Ord. No. 3278-12]**

GOVERNING BODY — ~~Rutherford's Mayor and Council. For purposes of this chapter, the governing body shall hear appeals and complaints from owners and tenants dealing with rents, leases, tax surcharges, and security deposits, and issue rulings on the same. The Mayor shall vote on rent control rulings only in cases of a tie.~~ **[Added 12-11-2012 by Ord. No. 3278-12]** **The Mayor and Council of the Borough of Rutherford.**

B. Any landlord seeking a rent increase shall notify the tenant, in writing, at least one month prior to the effective date of said increase as required by law, and

shall likewise notify the ~~governing body~~ **Rent Board**, simultaneously, in writing, of the landlord's intention to seek said increase. **[Amended 12-11-2012 by Ord. No. 3278-12]**

§ 83A-2. Rent increases.

- C. The fair rental shall be applied to each dwelling unit, rather than to the tenant thereof. It shall be unlawful for any person to demand or receive any rent in excess of the maximum rent established by the ~~governing body~~ **Rent Board** or to demand possession of the space or to evict a tenant because of failure of a tenant to pay rent in excess of the established maximum rent. The owner or other person entitled to receive said rents shall not be prevented, however, from exercising his rights to obtain possession of housing space as a tenant as a result of the tenant's violation of law or contract and the owner or other person entitled to receive said rents shall be provided reasonable grounds to obtain possession of the premises for his own personal use and occupancy or for the purpose of substantial altering, remodeling or demolishing the dwelling. In the event of substantial altering, the relocated tenant shall have the first option to the reconditioned premises. **[Amended 12-11-2012 by Ord. No. 3278-12]**
- D. No landlord may request, demand, receive or obtain any rent increase unless and until the landlord and the tenant are in receipt of a written notification to that effect, issued by the ~~governing body~~ **Rent Board**, setting forth in detail the amount of the existing fair rent, the percentage of rent increase allowed, the amount of said rent increase in dollar amounts, the new fair rental amount, including the increase, and the effective date of said increase. **[Amended 12-11-2012 by Ord. No. 3278-12]**

§ 83A-5. ~~Governing body as~~ Rent Board. [Amended 8-2-1977 by Ord. No. 2211-77; 6-27-1983 by Ord. No. 2344-83; 10-2-1990 by Ord. No. 2584-90; 12-11-2012 by Ord. No. 3278-12; 12-11-2018 by Ord. No. 3484-181]

- A. There is hereby created a **Rent Board** which shall consist of two resident homeowners or landlords, if possible, two tenants and one member of the ~~governing body~~ and two alternate members; which alternates shall act only in the absence of a quorum or in the event of the disqualification of any of the permanent members. At least one member of each membership classification must be present at each meeting of the Board during which appeals are heard or decisions rendered. Any vacancy occurring during the term of any **Rent Board** member shall be filled in the manner provided herein for the unexpired term only. The ~~governing body~~ **Rent Board** shall hear appeals from all aggrieved parties under this chapter. However, ~~governing body~~ **the Rent Board**, through the Borough Administrator or his/her designee, may make determinations in a summary manner on noncontested appeals or applications under this chapter. Landlords or tenants may seek rulings from the ~~governing body~~ **Rent Board** under this chapter.
- ~~B.~~ (Reserved) B. All members shall be appointed by the Mayor, at his/her sole discretion, and each will serve for a term of one year from the date of the

appointment. Members shall serve without compensation.

- ~~G.~~ (Reserved) **C. The Board may, if it chooses, prepare bylaws which will become effective after approval by the Mayor and Council; otherwise, its rules or order shall be determined by the Chair. The Board may call upon the Borough Attorney for legal advice and opinions as, from time to time, it deems necessary.**
- D. (Reserved) The Board shall organize within 30 days after the appointment of its total membership for the remainder of the then calendar year, and thereafter annually, by the election of one of its members as Chairperson and the appointment of a secretary, who need not be a member. The salary of the secretary, who may be compensated, even if a member of the Board, shall be \$250.00 per meeting(s) during which appeals are heard or decisions rendered.**
- ~~E.~~ **The governing body Rent Board shall have all powers of a rent control board and such powers as are reasonably necessary to carry out its duties and functions under this chapter.**
- ~~F.~~ **The governing body Rent Board shall hold hearings and adjudicate applications from landlords for additional rental as herein and hereinafter provided; however, the governing body Rent Board is not required to hold such hearings on noncontested applications. The Rent Board shall give both the landlord and tenant reasonable opportunity to be heard before making any determination.** Noncontested applications under this chapter may be administered by the Borough Administrator or his/her designee.
- ~~H.~~ **The governing body Rent Board shall hold hearings and adjudicate applications from tenants for reduced rental as herein and hereinafter provided. The governing body Rent Board shall give both the landlord and tenant reasonable opportunity to be heard before making any determination. However, noncontested applications by tenants for reduced rent may be administered by the Borough Administrator or his/her designee. The governing body Rent Board shall hold hearings and adjudicate applications from tenants for reduction of a tax surcharge as herein and hereinafter provided. However, noncontested applications for a reduction of a tax surcharge may be administered by the Borough Administrator or his/ her designee.**
- ~~I.~~ **The governing body Rent Board shall hold hearings and adjudicate applications from tenants for reduction of the amount of security deposits as herein and hereinafter provided. The Rent Board shall give both the landlord and tenant reasonable opportunity to be heard before making any determination.** However, noncontested applications for a reduction of a security deposit may be administered by the Borough Administrator or his/her designee.
- ~~J.~~ **The governing body Rent Board shall receive notices from the landlords or owners seeking rent, tax surcharge, and security deposit increases and shall**

act on and issue orders to tenants and landlords or owners concerning said increases. **The Rent Board shall give both the landlord and tenant reasonable opportunity to be heard before making any determination.** Where the notices are not contested, the ~~governing body~~ **Rent Board** may act through the Borough Administrator or his/her designee and need not hold hearings thereon.

- K. The ~~governing body~~ **Rent Board** has the power to analyze registration statements and pertinent data, to subpoena the production of witnesses and documents, to initiate and schedule hearings, and to make determinations as to the following: lawful rent and to order retroactive payments where excessive rents have been charged; lawful tax surcharges and to order retroactive payments where excessive tax surcharges have been charged; and lawful security deposits and to order retroactive payments where excessive security deposits have been charged. In default of appearance by any parties, the ~~governing body~~ **Rent Board** shall make determinations and issue orders as to rent, tax surcharges, and security deposits. Notices of the ~~governing body's~~ **Rent Board's** actions shall be sent to the landlord and tenant.
- L. The ~~governing body~~ **Rent Board** may refer cases involving violations or noncompliance with the provisions of this chapter to the Municipal Prosecutor for legal action.
- M. The action of the ~~governing body~~ **Rent Board** shall be deemed to be final. Appeals therefrom shall be to the courts.
- N. Nothing in this chapter shall require the ~~governing body~~ **Rent Board** to hold hearings on noncontested applications or to require monthly ~~governing body~~ **Rent Board** meetings under this chapter where there are no contested applications pending. On all noncontested applications or appeals under this chapter, the ~~governing body~~ **Rent Board** may act through the Borough Administrator or his/her designee without a hearing or meeting, whose administrative determination on noncontested issues shall be final. The Borough Administrator or his/her designee may refer noncontested applications to the ~~governing body~~ **Rent Board**.

§ 83A-6. Additional rent increase. [Amended 8-7-1979 by Ord. No. 2262-79; 9-3-1980 by Ord. No. 2286-80]

- A. An owner or landlord may make application to the ~~governing body~~ **Rent Board** for a rental increase beyond that permitted herein on the following grounds: **[Amended 6-27-1983 by Ord. No. 2344-83; 12-11-2012 by Ord. No. 3278-12]**
 - (1) Capital expenditures. Increases shall be granted for any major expense incurred by the landlord which is claimed by the landlord as a capital expenditure under the Internal Revenue Code, but which is not on account of the replacement or repair of a component, furnishing, fixture or the like which was already existing on the premises. Said increase shall be apportioned among the units based upon the total number of rooms and

assessed monthly over the length of time allowed by the Internal Revenue Code for depreciating said capital expenditure on a straight-line depreciation basis. Any such increase will commence upon the later occurrence of either payment in full for the expense by the landlord or approval of the increase by the ~~governing body~~ **Rent Board**. The landlord seeking a capital expenditure increase shall appeal for the same to the ~~governing body~~ **Rent Board** upon notice to all tenants in accordance with this section, and such increases shall not be considered as rent for the purpose of rental increases under § 83A-2.

- (2) Extreme hardship. Hardship increases may be granted by the ~~governing body~~ **Rent Board** upon a finding of economic hardship to the landlord. Said increases shall be limited to those dwelling units where the operating expenses, excluding debt service and depreciation, exceed 60% of the gross rental income.

B. In support of applications for rent increases under Subsection A above, the landlord shall submit to the ~~governing body~~ **Rent Board** sworn financial statements and evidence concerning requested increases and, in addition, shall submit a copy of those portions of the landlord's latest filed federal income tax return indicating receipts and expenses concerning said multiple dwelling sworn to by the landlord as being true and accurate or, in the alternative, a financial report of income and expenses certified to by a certified public accountant. Said applications and supporting documents shall be filed with the ~~governing body~~ **Rent Board** at least 30 days prior to the date of the hearing, and the applicant shall give notice of said application to affected tenants at least 20 days prior to the date of hearing by mailing notice of said application to each tenant by regular mail and posting a copy of same in the lobby of the multiple dwelling or, if no central lobby exists, then in the landlord's rental office located at or near the premises. **[Amended 12-11-2012 by Ord. No. 3278-12]**

C. Applications for capital expense increases under Subsection A(1) above must be filed with the ~~governing body~~ **Rent Board** no later than 12 months after the completion of said improvement or the payment of same by the landlord, whichever is the earlier. **[Added 12-29-1981 by Ord. No. 2311-81; amended 12-11-2012 by Ord. No. 3278-12]**

§ 83A-10. Registration

This chapter, being considered emergency legislation, shall expire on December 31, 2018
2022.

§ 83A-13. Violations and penalties. [Amended 12-11-2012 by Ord. No. 3278-121]

- A. A willful violation of or noncompliance with any provisions of this chapter, including but not limited to the willful filing with the ~~governing body~~ **Rent Board** of any material misstatement of fact, shall be punishable by a fine of not more than \$500 or imprisonment for not more than 90 days. A violation affecting more than one leasehold shall be considered a separate violation as to each leasehold.
- B. A willful noncompliance with a determination, decision or order of the ~~governing body~~

Rent Board shall be punishable by a fine of not more than \$500 or imprisonment for not more than 90 days.

§ 83A-16. Vacancy decontrol. [Added 8-2-1977 by Ord. No. 2211-771

- A. Notwithstanding any limitations upon permissible rent increases under any other provision of this chapter of the Code, upon the voluntary, uncoerced vacation of any apartment then controlled by this chapter, the landlord shall have the right to fix the rent for such vacated apartment at such a sum as he deems appropriate; subject, however, to the provisions of this section.
- B. In order for a landlord to qualify for the vacancy decontrol rent increase, the landlord shall first be required to file with the ~~governing body~~ **Rent Board** a written statement, signed by the vacating tenant, certifying to the ~~governing body~~ **Rent Board** that the landlord has not, in any way, harassed or pressured the tenant into vacating the dwelling 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 either: **[Amended 12-11-2012 by Ord. No. 3278-12]**
- (1) The increase does not exceed the total of all permissible increases authorized by any other provision of this chapter;
 - (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, upon appeal by the landlord, the ~~governing body~~ **Rent Board** has found that such refusal was unwarranted and that there was in fact no coercion exerted by the landlord upon the vacating tenant.
- A hearing pursuant to Subsection B(4) shall be held before the ~~governing body~~ **Rent Board** upon at least seven days' notice to the vacating tenant.
- C. The decontrol provisions of this section shall apply only to dwelling units which are physically vacated subsequent to the effective date of this section.
- D. Upon vacation of any apartment hereafter, the landlord shall file a statement with the ~~governing body~~ **Rent Board** certifying to the ~~governing body~~ **Rent Board**: **[Amended 12-11-2012 by Ord. No. 3278-12]**
- (1) The apartment number and address.
 - (2) The rent paid by the vacating tenant.
 - (3) The maximum rent increase which would be permissible under the other provisions of this chapter.
 - (4) The number of days such apartment remains vacant.
 - (5) The rent agreed to by the new tenant for such apartment.
 - (6) That the vacation of the 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.

- E. The ~~governing body~~ **Rent Board** shall submit quarterly reports to the Mayor and Council summarizing the number of apartments vacated during each such quarter and the differences, if any, between the permissible rent increases under the other provisions of this chapter as compared to the increases in rent due to the application of this section. Such quarterly report shall also include a statement of the number of complaints received by the ~~governing body~~ **Rent Board** with respect to any alleged coercion by landlords for the purpose of forcing tenants to vacate apartments. **[Amended 12-11-2012 by Ord. No. 3278-12]**

§ 83A-18. Rent decreases authorized. [Added 11-16-1982 by Ord. No. 2332-82]

- A. During the term of this chapter, rental decreases may be granted by the ~~governing body~~ **Rent Board** for any decrease in housing space, services, furniture, furnishings or equipment. Such rent decreases may be granted after hearing in accordance with this chapter upon petition of a tenant or group of tenants to the ~~governing body~~ **Rent Board**. **[Amended 12-11-2012 by Ord. No. 3278-12]**

§ 83A-19. Procedure for rent decreases. [Added 11-16-1982 by Ord. No. 2332-82]

- A. Petitions for rent decreases shall be filed with the ~~governing body~~ **Rent Board** on forms provided by the ~~governing body~~ **Rent Board** and shall contain the petitioner's name, the rental unit and landlord involved, the type and duration of the alleged service deficiency, the date, time and form of notice of deficiency provided to the landlord and the authorized base monthly rental during the time of the deficiency. **[Amended 12-11-2012 by Ord. No. 3278-12]**
- B. Within 10 days of the receipt of a petition, the ~~governing body~~ **Rent Board** shall affix thereon a notice and date for hearing of said petition before the ~~governing body~~ **Rent Board** (to be within 60 days of filing) and give notice of said hearing by mailing a copy of the notice and petition to the landlord and petitioner. **[Amended 12-11-2012 by Ord. No. 3278-12]**
- C. At said hearing the ~~governing body~~ **Rent Board** shall entertain such written and oral evidence presented by the petitioner, including, if available, any written or oral reports from municipal code officials or others. **[Amended 12-11-2012 by Ord. No. 3278-12]**
- D. Any written evidence to be used at the hearing must be submitted to the ~~governing body~~ **Rent Board** no less than 10 days prior to the hearing date and be available for inspection by any party at the ~~governing body~~ **Rent Board** office. **[Amended 12-11-2012 by Ord. No. 3278-12]**

Section 2: Repealer. All prior ordinances that are inconsistent with this ordinance are repealed; any inconsistent portions of the Rutherford Code outside Chapter 83A are hereby amended to be consistent with this ordinance.

Section 3: Two Year Extension. Chapter 83A-11 is amended to extend this ordinance through December 31, 2022.

Section 4: Savings and Construction. This ordinance shall be construed consistent with the purpose stated in Section 1 hereof. Any ambiguities in this ordinance shall be construed consistent with this purpose. If any part of this ordinance is invalidated by a court of competent jurisdiction, the remainder of this ordinance shall be saved to the full extent.

ATTEST:

BOROUGH OF RUTHERFORD

Margaret M. Scanlon

Margaret M. Scanlon, Borough Clerk

Frank Nunziato

Frank Nunziato, Mayor

I hereby certify the foregoing to be a true copy of an ordinance adopted by the Mayor and Council at a meeting held **November 23, 2020**.

Margaret M. Scanlon

Margaret M. Scanlon, Borough Clerk