

WHAT DO I CURRENTLY NEED TO KNOW ABOUT THE RENT PRICE CAP?

PART 1

WHAT TO DO BY TIME THE LAW ENTERS INTO FORCE IN SPRING 2020:

The current situation

With its decision on 22.10.2019, the Berlin Senate paved the way for a law on the capping of rents called the "Law on the New Regulation of Legal Provisions Pertaining to the Limitation of Rents".

However, the law has not yet entered into force.

www.berlin.de/rbmskzl/aktuelles/pressemitteilungen/2019/pressemitteilung.856545.php

In all likelihood, it will only do so in Spring 2020 after having been approved in the House of Representatives - the Berlin Parliament - after the beginning of January 2020. It is impossible to predict whether the parliament will make any changes to the current draft. **More on the draft law in Part 2.**



What should I do in the event of „normal“ rent increases that have been, or will be, effectively agreed after 18th June 2019 and prior to the entry into force of the rent price cap law?

Rent increases are currently to be assessed exclusively in accordance with the applicable provisions of the Civil Code, so it must be examined whether the annual blocking period and the capping limit (a maximum of 15% over three years) have been complied with and whether the local comparison rent (rent index) has not been exceeded.

More details here: www.berliner-mieterverein.de/aktuell/aktion-mietpreisueberpruefung-mietpreisbremse-nutzen-bei-neuem-mietvertrag.htm

To the extent that a compulsory obligation to approve the rent increase arises, the appropriate declaration must be made and the higher rent will have to be paid. If further examination shows there is no obligation to offer approval or if tenants only agree to such in part, tenants may, as before, not pay the increased rent at all or only pay such in part.

Rent increases from scale and index rent agreements must also be checked in accordance with applicable law. If, in accordance with the current legal situation, demands of the landlord are to be met, such payments shall **not be** made subject to reservation. After the entry into force of the rent price cap law, it will then be possible to check whether reimbursement claims exist for all rent increases that were effectively agreed upon after 18th June 2019 and prior to the entry into force of the law.

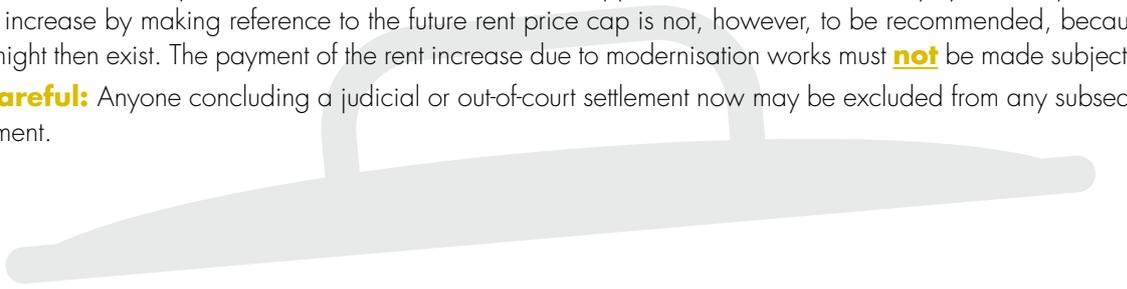
But be careful: Anyone concluding a judicial or out-of-court settlement now may be excluded from any subsequent claims for reimbursement.



What to do in the case of rent increase demands for modernisation works received after 18th June 2019 but prior to the entry into force of the rent price cap law?

Even if tenants have received a rent increase following modernisation works after 18th June 2019 and prior to the entry into force of the law, which must be paid in accordance with the thus far applicable law, a claim for repayment may exist. Non-payment of the rent increase by making reference to the future rent price cap is not, however, to be recommended, because a risk of termination might then exist. The payment of the rent increase due to modernisation works must **not** be made subject to reservation.

But be careful: Anyone concluding a judicial or out-of-court settlement now may be excluded from any subsequent claims for reimbursement.



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What has been, or is being agreed, for the amount of rent for new rental agreements (re-letting) concluded after 18th June 2019 but prior to the entry into force of the rent price cap law?

If tenants have concluded a new rental agreement after 18th June 2019 and prior to the entry into force of the law, they should initially assert the rights arising from the rent price brake. If the rent demanded exceeds the normal local comparison rent by more than 10%, tenants should, as a precaution, make a complaint to the landlord about the amount of rent. **More details here.** www.berliner-mieterverein.de/recht/infoblaetter/info-169-die-mietpreisbremse-bei-wiedervermietung.htm



Before filing a complaint, it should however be investigated whether such action might not result in material disadvantages with regard to the claims arising from the rent price cap.

It will only be possible to clarify whether further repayment claims under the rent price cap law will be possible beyond the rent brake at the beginning of 2020 once the law has been published. Until then, the rent demanded and, possibly amended by means of the rent brake, must be paid. The payment of the rent must **not** be made subject to reservation. Not paying the rent demanded by making reference to the future rent price cap will lead to rent arrears and thus to the risk of a termination due to late payment.

But be careful: Anyone concluding a judicial or out-of-court settlement now may be excluded from any subsequent claims for reimbursement.



What about rents which already exceeded the upper values arising from the rent table of the rent price cap law prior to 18th June 2019?

In such cases, there will be no need for action until the law enters into force unless 18th June 2019 was followed by a rent increase. The above test procedure would then also apply. The draft rent price cap law provides for the possibility of a capping (possibility of reduction) of excessive rents, which must be applied for at the responsible senate administration. It is not yet clear how exactly the application procedure will operate and what the validity of this regulation only 9 months after its entry into force will mean. The only thing that is certain is that no applications for the reduction of rents can be made prior to the entry into force of the law.

A rent will then be deemed excessive if the upper limits of the rent table, taking into account the residential location and modernisation-related flat rates for rent increases, are exceeded by more than 20%.

Once the law has entered into force, tenants should contact the Berlin Tenants' Association (Berliner Mieterverein) to clarify how to proceed further.

What apartments will the rent price cap actually cover?

The rent price cap will exclude newly-built homes that were ready to move into after 2014, publicly-funded social housing and apartments that have been modernised out of the public purse and for which rents have been fixed. It is expected that a total of 1.5 million households in Berlin will be able to benefit from the rent price cap. These include tenants in one- and two-family houses, but not residents of residential facilities or in so-called "support apartments" ('Trägerwohnungen') provided by welfare care.

The rent price cap will alter nothing with regard to operating costs (advance payments + settlements). Tests will have to take place just as has always been the case.



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