

How does the Régie determine the rent ?

The legal basis of the rent control system is defined in the *Civil Code of Québec*, which stipulates that the tribunal (the Régie) determines the rent payable taking into account the standards set by the *Regulation respecting the criteria for the fixing of rent*.

Except in the case of preferential rent¹, the tribunal adjusts the rent on the basis of the income and expenses for the building that are applicable to the reference period, which is the calendar year preceding the end of the lease. Where applicable, the tribunal can take into account the quality of services or the use of an appliance or appurtenance for the building or dwelling concerned.

In accordance with the regulation, the expenses considered for fixing the rent are:

Operating expenses

The **operating expenses** are those that the landlord must assume on a regular basis, each year, to manage the building and maintain it in good condition. They are as follows:

- **Municipal and school taxes**
- **Insurance premiums**
- **Costs of electricity, gas or heating oil** (or other fuel)
- **Maintenance costs**
- **Costs of services**
- **Management costs**

For taxes and insurance premiums, the variation in actual cost in the last two years is used.

Other expenses are adjusted according to the **adjustment percentages** that are established annually under the *Regulation respecting the criteria for the fixing of rent* and are applied to the total expenses incurred in the year preceding the end of the lease.

Management costs are set at 5% of the gross annual revenue of the building. The actual costs may be considered, however, up to a maximum of 10% of that revenue.

In the case of mobile home parks, an adjustment is provided for snow removal, according to the actual variation in costs from one year to the next.

The rent determination method also includes an adjustment for the **net income of the building**, which is the difference between the building's gross income and the operating expenses. The amount obtained is adjusted according to a percentage set annually pursuant to the regulation.

¹ The regulation defines "preferential rent" as the rent for a dwelling that is less than what is usually charged for a comparable dwelling where:

- ^{1°} the tenant is the lessor's relative, associate (by marriage or a civil union) or employee;
- ^{2°} the lessor supports or has supported the tenant;
- ^{3°} the dwelling is located in a building that was inherited and the amount of the rent is attributable to bad management by the deceased;
- ^{4°} the lessor is a department or agency of the Québec Government.

Major repairs or improvements

Major repairs and renovations give rise to costs that are not part of the operating expenses regularly assumed for the building. The work may involve repairs or modifications to the main structural elements of the building (roof, plumbing, heating, insulation, windows), renovations (woodworking, cabinets) in dwellings or common areas, or the addition of new facilities (parking lot, swimming pool).

These costs are adjusted according to the **percentages established annually pursuant to the Regulation**, which are different from those applicable to maintenance expenses.

When **major work** is done, the tenants who benefit from the expense are the only ones whose rent is increased as a result. A tenant should not have a rent increase for major repairs done to his or her neighbour's dwelling.

On the other hand, when it comes to **maintenance expenses**, no distinction is made between what is done in one dwelling or another. All tenants share the resulting rent increase, regardless of the part of the building for which the expense was incurred.

EXAMPLE: A tenant is paying \$500.00 in rent. The tenant's lease is renewed on July 1, but, because the Régie has to fix the rent at the landlord's request, the tenant continues to pay the same rent pending the tribunal's decision.
On September 8, the Régie renders its decision and the rent is fixed at \$520.00.
On October 9, if the decision is not contested, the tenant must pay the landlord the arrears for July, August, September and October, that is, a total of \$80.00 (4 X \$20.00). As of November 1, the tenant must pay the new rent fixed by the tribunal, i.e. \$520.00 per month.

Contesting the decision

The tenant or the landlord may ask the **Régie du logement** to **review** a decision dealing exclusively with an application to fix the rent if the tenant or landlord is able to show that an error was committed in the **interpretation of the facts** or in the **application of the law**. The application for review must be filed within **one month** from the date of the decision.

If the application dealt not only with the fixing of rent, but also with a change in another condition of the lease, it is necessary to apply to the **Court of Québec** for **leave to appeal** the decision, within 30 days of the date of the decision.

The hearing before the Régie du logement

Upon filing an application to fix the rent, the landlord receives a form entitled *Necessary Information Regarding the Fixing of Rent*, referred to as the "RN form". The landlord must indicate the income and expenses submitted for acceptance, and return the form to, or leave it with, the Régie within 20 days.

The Régie du logement will then determine a day, time and place for hearing the parties. The Régie sets hearing dates according to the order in which duly completed RN forms are received. So, the sooner the landlord returns the form to the Régie, the sooner the application can be heard.

The landlord and the tenant receive a notice of hearing (summons to the hearing) a few weeks before the scheduled hearing date.

At the hearing, the landlord must present bills or other documents as evidence. The commissioner or the special clerk demands **originals** of bills for insurance, municipal and school taxes, heating, energy and any other expenses invoked by the landlord in support of his application. These bills are called **supporting documents**.

The tribunal's decision and its consequences

The tribunal renders its decision **in writing** and sends it to the parties. The new rent and the arrears due since the beginning of the term of the renewed lease must be paid upon the expiry of a period of **one month** from the date of the decision. ▼

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Régie
du logement

Québec



Renewing the lease of a dwelling

The Régie du logement informs you about the renewal and modification of a lease and about rent increases

A rent increase? A modification of the lease?

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Under Québec law, the lease of a dwelling is **renewed automatically**: there is no obligation for an exchange of notices between landlord and tenant.¹ The renewal of the lease arises from the tenant's **right to maintain occupancy**, a right recognized by the *Civil Code of Québec*, which, in practice, cannot be exercised without some form of rent control in certain circumstances. The reason for rent control is to protect the tenant from an abusive increase that would in effect evict him. The system in place seeks to afford tenants this protection and, at the same time, foster the preservation and improvement of the stock of dwellings.

When a lease is renewed, the landlord may increase the rent or modify another condition of the lease (heating, parking, etc.). To do so, the landlord must comply with the rules provided for by law.



¹ There is one exception: to be entitled to maintain occupancy, a student who rents a dwelling from an educational institution where he is registered full time must give one month's notice, before the end of the lease, of his intention to renew the lease.

Québec

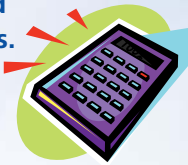


1 Step one: The notice to the tenant

In order to change the lease, the landlord must first give a **written notice to the tenant** informing him of the proposed modifications¹. The notice cannot be given at just any time: **there are notice periods to be complied with**, which depend on the type of lease and the term of the lease. The table below gives the notice periods.

Table of Notice Periods

Type of lease	Notice period
Lease with a fixed term of 12 months or more	3 to 6 months before the end of the lease
Lease with a fixed term of less than 12 months	1 to 2 months before the end of the lease
Lease with an indeterminate term	1 to 2 months before the proposed modification
Lease of a room	10 to 20 days before the end of the lease or the proposed modification



The increase in rent

An increase in rent may be expressed in various ways. For example, let's say the tenant is paying \$500.00 and the landlord wishes to increase that amount by \$25.00. By law, the landlord has three options for expressing the increase:

- THE PROPOSED RENT, IN DOLLARS**
Example: "Your new rent will be **\$525.00** per month."
or
- THE INCREASE, IN DOLLARS**
Example: "Your rent will be increased by **\$25.00** per month."
or
- A PERCENTAGE OF THE CURRENT RENT**
Example: "Your rent will be increased by **5%**."

Proof of delivery

It is recommended to give the notice:

- by registered mail
or
- by hand with an **acknowledgment of receipt**
or
- by any other means that provides for a valid **acknowledgment of receipt**.

What has to be in the notice

The notice **must be in writing** and must clearly indicate **the modifications** proposed upon renewal of the lease, whether they involve the rent or other conditions of the lease, such as, for instance, the term of the lease or the cancellation of entitlement to use the yard or parking area.

The notice must also indicate **the time the tenant has to refuse** the proposed modification(s), i.e. 1 month from the date of receipt of the notice.

The notice must be **dated and signed** by the landlord (or the landlord's mandatary).

If the Régie du logement is already processing an application to fix or to review the rent and the new rent is still unknown, the landlord can indicate **the percentage** of increase he plans to add to the rent still to be determined by the tribunal.

Example: "Your rent will be increased by **5%** of the rent to be determined by the tribunal."



A "Notice" without modification of the lease . . .
As we have seen, the sending of a notice regarding the renewal of the lease is not required by law unless a modification of the lease is desired. That is why, from a legal standpoint, a letter that simply asks the tenant whether or not he wishes to "stay for another year" does not constitute a notice of modification. Therefore, the tenant is under no obligation to reply.

A notice for each tenant

In the case of a lease signed by several tenants, the landlord is well advised to give the notice of modification of lease to each tenant **individually**.

¹ A model of **Notice of Rent Increase and Modification of Another Condition of the Lease** and a model of **Tenant's Reply to a Notice of Rent Increase and Modification of Another Condition of the Lease** are available in the Régie du logement's offices and on the Web site.

2 Step two: The tenant's reply

Can the tenant refuse the modifications?

The tenant can reply in any of three ways:

- I accept the renewal of the lease and its new conditions.
or
- I will not be renewing my lease and will vacate the dwelling upon termination of the lease.
or
- I refuse the proposed modifications and I renew my lease.

If the tenant refuses the proposed increase or modification, it does not mean that he has to leave the dwelling, for his intention to leave **must be clearly expressed**. The lease will be renewed anyway, the only point in dispute being the increase in rent or the modification proposed for the next term of lease. The tenant cannot turn back the clock and avoid renewal of the lease unless he makes an agreement with the landlord in that regard.

There are exceptions, however, when the lease mentions (in section F) that the dwelling is located:

- in a newly constructed building or one that has been "recycled"** (an old school, for instance), for a maximum period of 5 years after the end of the work.
- in a cooperative** of which the tenant is a **member**.

In these two cases, a tenant who refuses the increase or modification requested **must leave the premises at the end of the lease**.

Does the tenant have to reply to the notice?

The tenant must reply if he **refuses the rent increase** or the proposed modification, or if he **wishes to leave the dwelling** at the end of the lease.

When to reply?

In both these cases, the tenant must reply to the landlord within one month of the date of receipt of the notice.

Example : A tenant who receives a notice of modification of the lease on January 15 has until February 15 to reply.

After this date, the lease will be renewed under the new conditions and with the new rent.

What if the tenant does not reply?

Not replying to a notice of modification of the lease within one month of receiving it is equivalent to **renewing the lease with all the modifications proposed** by the landlord, including the rent increase.

When the landlord does not give any notice . . .

When the tenant does not receive any notice of a rent increase or other modification of the lease given within the notice period and wishes to leave the dwelling at the end of his lease, he must notify the landlord within the period indicated in the Table of Notice Periods.

Useful information

The Régie du logement supports landlords and tenants in their efforts to agree on a rent increase that is reasonable and freely negotiated.

To help the parties negotiate, each year in late January, the Régie prepares scenarios of rent variations—commonly called "rate increases". **Use with caution! These variations are only estimated averages for the situations presented.** The rent increase for each dwelling is always calculated on the basis of the **actual** revenue and expenses of the building in which the dwelling is located, not according to the estimated averages which distinguish between unheated dwellings, and those heated by oil, gas or electricity.

If the landlord has done major repairs or renovations, or has to pay more in taxes and insurance, **then the increase can be greater** than the percentages suggest. This is when the **calculation form "How to Agree on the Rent"**, shown opposite, can really come in handy.

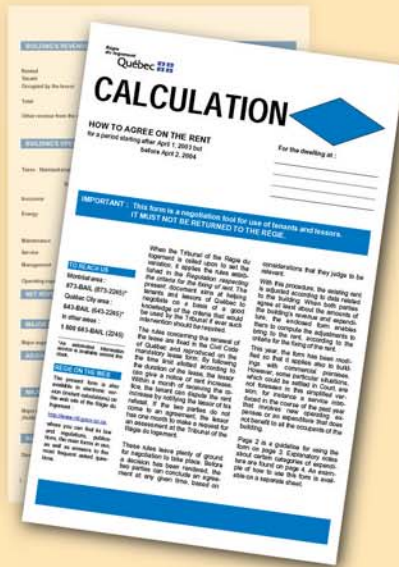
This form provides a particularly good way of calculating the increase likely to be authorized by the Régie du logement. A landlord who has received a refusal from a tenant can use the form and present the resulting calculation to the tenant in an effort to negotiate a reasonable increase on the basis of the objective data in the form.

The simplest way to complete the calculation form is on-line, on the Régie du logement's Web site at www.rdl.gouv.qc.ca.

All the landlord has to do is fill in the spaces on the form directly on the screen. Calculations are made as the landlord goes along, and the final result appears automatically.

The last step is to print the document. Once that is done, everything is ready for a frank discussion with the tenant.

The form is also available at all Régie du logement offices and can be mailed to you upon request.



www.rdl.gouv.qc.ca

FOR LEASES RUNNING FROM JULY 1 TO JUNE 30

Some people think that a tenant can always wait until the end of March to reply to the landlord. **Wrong!** In all cases, a reply to the notice of modification must be sent to the landlord within one month of when it was received.

3 Step three: The application to fix the rent filed with the Régie du logement

The application to modify the lease, commonly called an *application to fix the rent*, is the recourse open to the landlord if the tenant agrees to renew the lease but refuses the rent increase or the proposed modifications.

The landlord has one month from the date of receipt of the tenant's reply to file with the Régie du logement an application to fix the rent or rule on the proposed modifications.

To decide on the amount of the rent increase, the commissioner or special clerk applies the *Regulation respecting the criteria for the fixing of rent*.

At this stage, the landlord is no longer bound by the amount requested in the notice of rent increase, and can ask the tribunal for the increase provided for by the criteria in the Regulation. This means that the increase may be greater than that mentioned in the notice of rent increase.

Nevertheless, the parties can continue to negotiate at all times—even during the hearing before the tribunal—in order to arrive at an amicable settlement.

If the landlord does not file an application with the Régie du logement within one month of receiving the reply from the tenant, **the lease is renewed under the same conditions as before.**

