STATE OF NEW YORK
DIVISION OF HOUSING AND COMMUNITY RENEWAL
OFFICE OF RENT ADMINISTRATION
GERTZ PLAZA
92-31 UNION HALL STREET
JAMAICA, NEW YORK, 11433

IN THE MATTER OF THE ADMINISTRATIVE APPEAL OF:	:	
	:	**ADMINISTRATIVE REVIEW**
	:	**DOCKET NO.: JU410025RT**
[redacted]	:	
	:	**RENT ADMINISTRATOR'S**
	:	**DOCKET NO.: IX410004B**
PETITIONER	:	

ORDER AND OPINION DENYING PETITION FOR ADMINISTRATIVE REVIEW

On September 15, 2021, the above-named petitioner-tenant timely re-filed a Petition for Administrative Review ("PAR") of an order the Rent Administrator issued on June 16, 2021(the "Order"), concerning various apartments at the housing accommodation known as 340 E. 105th Street, New York, NY, wherein the Rent Administrator granted the tenant's application for a rent reduction, finding that the janitorial services in the laundry room not maintained.

The Commissioner has reviewed all of the evidence in the record and has carefully considered that portion of the record relevant to the issues raised by the PAR.

On December 21, 2020, the petitioner-tenant filed an application for a rent reduction based upon various decreased building-wide services. Specifically, the tenant asserted that the entrance gate requires painting; the courtyard is full of litter; the shrubbery is not maintained; the lobby, including window sills and windows require cleaning; the hall mirror and door require cleaning; the sixth floor elevator call button requires a light; the elevator requires cleaning, sanitizing, and removal of graffiti and tape residue; the building downsized staff from a full time super and full-time porter to one part-time super; and the laundry room requires cleaning. The tenant subsequently submitted additional issues which could not be considered by the Rent Administrator as they were not part of the original complaint submitted to the owner.

The owner opposed the application, asserting that the building is routinely cleaned and maintained, and further, since the owner's purchase of the building in 2018, the owner has updated and upgraded various services and areas.

An Agency inspection conducted on April 19, 2021, revealed that all services were maintained save for inadequate janitorial service in the laundry room. As a result, the Rent

Administrator granted the petitioner-tenant's application for a rent reduction on June 16, 2021, under Docket Number IX410004B.

In the PAR, opposed by the owner, the tenant asserts that the Rent Administrator's order should be modified because the entrance gate remains unpainted; the courtyard is littered with debris in bushes and aisles; the lobby window frames contain dust and fingerprints; a downsizing of the maintenance workers, and the elevator contains graffiti and old tape residue.

After careful consideration of the entire evidence of record, the Commissioner is of the opinion that the petition should be denied.

Pursuant to Section 2523.4 of the Rent Stabilization Code (the "Code"), DHCR is authorized to order a rent reduction, upon application by a tenant, where it is found that an owner has failed to maintain required or essential services. Policy Statement 90-2 provides that the Rent Administrator may rely on an Agency inspection when making a determination.

Here, the inspection conducted on April 19, 2021, revealed that the gate was recently painted and further, the inspection found that janitorial services with respect to the courtyard, entrance area, hallways, hallway mirrors and doors, lobby, the lobby window frames, and elevator were adequate at the time of inspection, and that the elevator was working properly with light indications and number plates on every floor. However, the record supports that at the time of inspection, the laundry room floor contained laundry dust and required mopping.

As such, the Commissioner finds that the Administrator properly relied on the record and the petitioner has not set forth any basis to modify the Rent Administrator's order. Any new service issues claimed on appeal are beyond the scope of review for the Rent Administrator's order which is limited to those facts and evidence provided during the Rent Administrator's proceeding. The Commissioner further notes that the petitioner-tenant may file a fresh complaint if the facts so warrant.

THEREFORE, in accordance with the applicable provisions of the Rent Stabilization Law and Code, it is

ORDERED, the petition is denied, and the Rent Administrator's order is affirmed.

ISSUED: APR 1 2022

Woody Pascal
Deputy Commissioner

State of New York
Division of Housing and Community Renewal
Office of Rent Administration
Gertz Plaza, 92-31 Union Hall Street
Jamaica, NY 11433
Web Site: www.hcr.ny.gov

Right to Court Appeal

This Deputy Commissioner's order can be further appealed by either party, only by filing a proceeding in court under Article 78 of the Civil Practice Law and Rules seeking judicial review. The deadline for filing this "Article 78 proceeding" with the courts is within 60 days of the issuance date of the Deputy Commissioner's order. This 60-day deadline for appeal may be extended by executive orders at https://governor.ny.gov/executiveorders. No additional time can or will be given. In preparing your papers, please cite the Administrative Review Docket Number which appears on the front page of the attached order. If you file an Article 78 appeal, the law requires that a full copy of your appeal papers be served on each party including the Division of Housing and Community Renewal (DHCR). With respect to DHCR, your appeal must be served on DHCR Counsel's office at 641 Lexington Ave, New York, NY 10022.

Note: During the period of the current Covid-19 emergency, as a courtesy, if the Article 78 proceeding is commenced by efiling pursuant to the Court Rules service may be effectuated, as limited as follows, by forwarding the court's email indicating the assignment of the Index Number and the documents received by the court, i.e., Notice of Petition, Petition, and other efiled documents to DHCRLegalMail@nyshcr.org. Upon receipt of the complete filings, the receipt of such documents will be acknowledged by email. Only after such acknowledgement of receipt of such documents will the service by email be deemed good service on New York State Division of Housing and Community Renewal (DHCR). DHCR is not the agent for service for any other entity of the State of New York or any third party. In addition, the Attorney General must be served at 28 Liberty Street, 18th Floor, New York, NY 10005. Since Article 78 proceedings take place in the Supreme Court, it is advisable that you consult legal counsel.

There is no other method of appeal.

STATE OF NEW YORK
DIVISION OF HOUSING AND COMMUNITY RENEWAL
OFFICE OF RENT ADMINISTRATION
GERTZ PLAZA
92-31 UNION HALL STREET
JAMAICA, NEW YORK 11433

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IN THE MATTER OF THE
ADMINISTRATIVE APPEAL OF :

ADMINISTRATIVE REVIEW
DOCKET NO.: JV210006RO

Miraculous Solutions Inc. :

RENT ADMINISTRATOR'S
: DOCKET NO.: HT210010B

PETITIONER

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ORDER AND OPINION DENYING PETITION FOR ADMINISTRATIVE REVIEW

On October 4, 2021, the above-named petitioner-owner filed a petition for administrative review (PAR) against an order issued by the Rent Administrator on August 30, 2021, concerning the housing accommodations known 363 Grand Avenue, Brooklyn, Apartment [redacted] NY, wherein the Administrator granted the tenant a rent reduction and directed the restoration of services.

The Commissioner has reviewed all of the evidence in the record and has carefully considered the portion of the record relevant to the issues raised by the petition.

The owner requests a reversal of the Rent Administrator's order and contends that the Rent Administrator's order was arbitrary and capricious, and counter to considerations of equity and fair dealing by issuing a rent reduction for lack of laundry service, which is not a required service, but rather, an ancillary service that has always been provided by an independent third-party contractor; and that the elimination of the service therefore does not warrant a rent reduction.

The owner expounded that the laundry service was first provided and maintained in the subject premises in September of 1993 by Gordon & Thomas Companies Inc. ("Gordon")[1]; that before the instant owner took over the subject premises, Gordon sold their laundry room rights to another independent contractor, CSC Service Works; that the owner was not aware that the laundry

[1] The owner submitted a copy of the original lease, effective October 1, 1993. Said lease indicated that the lessee would install and maintain the equipment, and service the equipment at its own cost and expense.

room service provider had changed until it received correspondence from CSC dated January 23, 2017 and that the lease agreement between the owner and CSC thereafter expired on September 30, 2018; that the owner made numerous attempts to renegotiate with CSC, but the negotiations were unsuccessful and the relationship was formally terminated in April of 2019; that the owner's diligent efforts to find a new third party independent contractor was made more difficult by the pandemic; and that laundry room service in the subject building is not a required service pursuant to Section 2520.6(r) of the Rent Stabilization Code but an ancillary service for which there is a separate charge.

The owner argued further that a service continuously provided by an independent contractor for which there is no common ownership between the operator and the owner is not subject to the provisions of the Code, citing the Matter of Gretel[2]; that in the Matter of Gresham[3], the Agency found that since the laundry room service was continuously owned, maintained and operated by an independent contractor, a rent reduction was not warranted; and that in the Matter of the Administrative Appeal of Laurelton Gardens Associates[4], the Agency revoked the challenged rent reduction order for the elimination of the laundry service, finding that "the laundry service was being provided by an independent contractor at whose discretion a modification may occur without being subject to the Rent Stabilization Code Section 2520.6(r)(4)(xi)".

Pursuant to Section 2523.4 of the Rent Stabilization Code (RSC or the Code), DHCR is authorized to order a rent reduction, upon application by a tenant, where it is found that an owner has failed to maintain required or essential services. Likewise, an owner is entitled to the restoration of rent once it is established that the required services cited in the rent reduction order have been restored.

On August 9, 2019, the tenant of apartment [redacted] of the subject premises filed a decrease in service complaint, alleging that the new owner of the subject premises had locked the laundry room, discontinued laundry service, and canceled the contract with the company that was providing laundry/repair services, with a promise to get a new company or contract; and that the laundry room services had been provided, since the inception of the building, over 20 years ago. The tenant's complaint was served on the owner on August 30, 2019.

The owner, through counsel, by a response dated January 30, 2020, stated that laundry service to the building was provided by an outside company, Gordon, who transferred their rights to CSC; that on May 3, 2018, the owner terminated the lease with CSC, effective September 30, 2018, after numerous attempts to renegotiate the lease failed; that the relationship finally ended as of April of 2019; and that the owner did not currently (at the time of the submission) intend to re-open the laundry room as the owner was yet to find a company that will provide such service that is cost effective.

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[2] Administrative Review Docket No.BG410106RO.

[3] Administrative Review Docket No. VA410051RT.

[4] Administrative Review Docket No. KL110035RO.

The Rent Administrator had requested an inspection of the laundry room at the subject premises during the proceeding below. The Agency's inspection was conducted on December 26, 2019. The inspector observed that there were two (2) washers and two (2) dryers, inoperable at the time of inspection, with the equipment unplugged and stagnant water in the washers, with evidence of roaches in the dryers.

The Commissioner notes that the DHCR longstanding policy and practice, pursuant to the applicable laws and regulations, particularly Section 2520.6(r)(4)(xi) of the Code in the instant case, has always been that services provided by an independent third-party vendor/contractor, for which there is no common ownership between the operator of such service and the owner is, not subject to the Code provisions.

The Commissioner finds, considering the specific facts of the instant case as shown below, that Section 2520.6(r) (4) (xi) of the Code is not availing to the owner. Although the owner claims that the laundry room service was provided by a third party, and that the lack of service was not the owner's fault, and that the owner had made efforts to procure another third party to provide said service, the facts here is not absolving to the owner as the record is devoid of any record showing that the third part vendor here, CSC, was unwilling to provide services prior to the owner's ending of same. In fact, the correspondence of January 23, 2017, from CSC to the owner, which the owner alluded to in its PAR, was from CSC's attorneys, contending the owner's locking out of CSC and/or the restriction of access to CSC by the owner as a material breach and unlawful constructive eviction entitling CSC to legal and equitable compensation, and demanding that the leased premises be re-opened immediately. Additionally, the record includes a letter from the owner's attorneys dated May 3, 2018, to CSC, giving the owner's intent not to renew the lease that was set to end on September 30, 2018. In said letter, the owner had requested CSC to advise of its intentions to remove the equipment from the Leased Premises so that the owner may provide appropriate notice to the tenants.

The Commissioner notes that while the Code indicates that tenants' redress to a situation where a third-party vendor/contractor unilaterally discontinued a service does not lie with the Code, a situation whereby an owner truncates a third party's lease (without a replacement in tow) is definitely not one intended or covered by this provision.

The Commissioner finds that allowing the owner's equity plea, in that the rent reduction was counter to the considerations of equity, or the plain application of Section 2520.6(r)(4)(xi) of the Code and/or the cases cited by the owner, to extricate the owner from the circumstances herein will be antithetical to the spirit and intent of the Rent Stabilization Code as the facts of the instant case dictates otherwise.

Based on the foregoing, the Commissioner finds that the owner's PAR has not established any basis to modify or revoke the Administrator's determination. Accordingly, the owner's petition is denied.

The Commissioner notes that the owner may file a rent restoration application when the laundry room service has been restored.

THEREFORE, in accordance with the applicable sections of the Rent Stabilization Law and Code, it is

ORDERED, that this petition be, and the same hereby is, denied, and that the Rent Administrator's order be, and the same hereby is, affirmed.

ISSUED: APR 7 2022

WOODY PASCAL
Deputy Commissioner

State of New York
Division of Housing and Community Renewal
Office of Rent Administration
Gertz Plaza, 92-31 Union Hall Street
Jamaica, NY 11433
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Right to Court Appeal

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92-31 UNION HALL STREET
JAMAICA, NEW YORK, 11433

IN THE MATTER OF THE ADMINISTRATIVE APPEAL OF:	:	
	:	**ADMINISTRATIVE REVIEW**
[redacted]	:	**DOCKET NO.: JV410028RT**
(TENANT)	:	
	:	**RENT ADMINISTRATOR'S**
	:	**DOCKET NO.: JS410025B**
PETITIONER	:	

ORDER AND OPINION DENYING PETITION FOR ADMINISTRATIVE REVIEW

On October 25, 2021, the above-named petitioner-tenant filed a Petition for Administrative Review ("PAR") against JS410025B, an order the Rent Administrator issued on October 7, 2021 (the "Order"), concerning the housing accommodation known as 247 W. 145th Street, Apt. [redacted] New York, NY, wherein the Rent Administrator issued an order denying the tenant's service complaint.

The Commissioner has reviewed the entire evidence of the record including that portion of the record that is relevant to the issue raised by the PAR.

In the PAR, the tenant requests that the Order be modified because the building elevator did not work on Monday, September 13, 2021, Sunday, October 10, 2021, and Sunday, October 17, 2021. The tenant, however, has not raised any issues of law or fact that challenges the decision that the Rent Administrator made in the matter below.

After careful consideration of the entire evidence of record, the Commissioner is of the opinion the petition should be denied.

Pursuant to Section 2523.4 of the Rent Stabilization Code (the "Code"), the Rent Administrator is authorized by law to direct the restoration of services and grant a rent reduction, upon application by a tenant, where it is determined that required services have not been maintained. Additionally, DHCR Policy Statement 90-2 states that the Rent Administrator may rely on an Agency inspection when making the determination in a matter.

In the proceeding below, the tenant filed a complaint on July 19, 2021, alleging a decrease in services including, in relevant part, a decrease in elevator service. The owner was served with the notice of the tenant's complaint (the "Initial Notice") on August 11, 2021. The Agency records indicate that the owner did not respond to the Initial Notice. Thereafter, on September 8, 2021, the Rent Administrator requested an Agency inspection that was based on the emergency condition with the elevator. On September 28, 2021, an inspection of the elevator was conducted. During the inspection, the neutral DHCR inspector observed that the elevator was working properly.

Based on the foregoing details, the Rent Administrator issued an order denying the tenant's service complaint.

The Commissioner notes the tenant's contention herein that the elevator did not work on Monday, September 13, 2021, Sunday, October 10, 2021, and Sunday, October 17, 2021. However, a review of the matter below shows that the Agency inspection from September 28, 2021 revealed that the elevator was properly working at the time of the inspection. Therefore, the Commissioner finds that the Rent Administrator properly relied upon the Agency inspection when making the determination in this case.

The Commissioner also notes that the tenant raises issues with the elevator that happened after the Rent Administrator issued the subject Order on October 7, 2021. Section 2529.6 of the Rent Stabilization Code says that in a PAR, review is limited to the facts or evidence before a Rent Administrator as raised in the petition. Accordingly, the tenant's claims that postdate the Rent Administrator's Order are beyond the scope of review for this PAR.

Based on the foregoing, the Commissioner finds that the Rent Administrator correctly denied the tenant's service complaint; the tenant's PAR has not established any basis to modify or revoke the Rent Administrator's determination. The tenant is advised that she may file a new service complaint with the Agency if the facts so warrant.

THEREFORE, in accordance with the applicable provisions of the Rent Stabilization Law and Code, it is

ORDERED, the petition is denied, and the Rent Administrator's order is affirmed.

ISSUED: APR 7 2022

Woody Pascal
Deputy Commissioner

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OFFICE OF RENT ADMINISTRATION
GERTZ PLAZA
92-31 UNION HALL STREET
JAMAICA, NEW YORK 11433

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IN THE MATTER OF THE ADMINISTRATIVE APPEAL OF	ADMINISTRATIVE REVIEW DOCKET NO.: JT610011RO
JHB II HDFC	
PETITIONER	RENT ADMINISTRATOR'S DOCKET NO.: IV610016B

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ORDER AND OPINION DENYING PETITION FOR ADMINISTRATIVE REVIEW

On August 9, 2021, the above-named petitioner-owner filed a Petition for Administrative Review ("PAR") against an order the Rent Administrator issued on July 7, 2021 (the "order"), concerning the housing accommodation known as 1316 Boston Road, Bronx, New York, wherein the Rent Administrator issued an order reducing the rent for the subject accommodations based upon a finding of a decrease in building-wide intercom-buzzer service.

The Commissioner has reviewed the entire evidence of the record including that portion of the record that is relevant to the issues raised by the PAR.

The owner, by counsel, seeks a reversal of the Rent Administrator's order asserting the intercom service provided never allowed the tenants to "buzz in" guests. The owner further claims that a court of competent jurisdiction held in 2009 that the service does not include a tenant-controlled bell/buzzer as the court found the intercom service "does not permit residents to unlock the vestibule door from their SRO room, and that the 24/7 security guard in the lobby of the Premises provided greater protection to the residents than the bell/buzzer sought" by the resident. The owner submits a June 10, 2009 decision rendered in Kirby v. JHB Housing Inc., et al. to support their claims and asserts the residents herein are barred under the doctrines of res judicata and collateral estoppel from re-arguing this issue (Ct. Index. No. 570839/07, Appellate Term of the Supreme Court of New York, First Dept.).

The tenants have not filed an answer to the owner's PAR.

After careful consideration of the entire evidence of record, the Commissioner is of the opinion that the petition should be denied.

Pursuant to Section 2523.4 of the Rent Stabilization Code ("RSC or the Code"), DHCR is authorized to order a rent reduction, upon application by a tenant, where it is found that an owner has failed to maintain required or essential services. In facilitating the resolution of the complaint, the Agency may request an inspection of the conditions the tenant complained of and Policy Statement 90-2 permits the Rent Administrator to rely on an Agency inspection when making a determination. New York Courts have consistently upheld the reliability of Agency inspections. Sections 2520.6(r) and 2522.4(d) of the Code require an owner to provide and maintain all required services, provided on the applicable base date, unless and until an owner files an application to decrease such services and an order permitting such decrease has been issued. RSC Section 2522.4 provides that no such decrease in services, or modification or substitution of required services shall take place prior to the approval of the owner's application by DHCR. The Commissioner notes that Section 2522.4(d) and (e) of the Code further provides that such decrease, modification or substitution must not be inconsistent with the Rent Stabilization Law or Code.

In the proceeding below, on October 21, 2020, the tenants, through their representative, filed a building-wide service complaint claiming the intercom service is defective as tenants are unable to release the locking mechanism "in violation of NYS MDL." The tenants' submitted an undated letter addressed to the owner advising the owner that the owner was not in compliance with New York State Multiple Dwelling Law 50-a ("MDL 50-a") because the tenants "must be able to release the locking mechanism from the apartment to which as of this date no one in the building has this option" as it has been disconnected "many years ago." On December 2, 2020, the owner was afforded an opportunity to respond to the tenants' application (the "Initial Notice"). A review of the record reveals the owner did not file an answer to the tenants' complaint.

Subsequently the Rent Administrator requested an Agency inspection. On February 25, 2021, the Agency inspector conducted an inspection of the subject premises and present at the inspection were David Moralez, Superintendent, and [redacted] tenants' representative who resides in apartment [redacted]. The inspector took time and date stamped photographs and found the following:

1. The building is equipped with an intercom system and the intercom is operational/working, except for Apt [redacted]
2. There is a buzzer system with the intercom which is located outside at the main entry door.
3. The tenants of this complaint cannot unlock/release the building entrance door(s) from their apartments. The tenants of this complaint, with the exception of the tenant in Apt [redacted] can communicate with visitors via the intercom and then the tenants have to call the 24/7 front desk personnel/attendant who unlocks/releases the door for the visitors.
4. The intercom in Apt [redacted] is not working. When the intercom bell button for Apt [redacted] is pressed, the intercom screen shows an error message "denied." The Superintendent stated that the intercom for Apt [redacted] has not been fixed because the tenant has not given access in order to fix the intercom; and

5. The tenant from Apt [redacted], Mr. [redacted] stated that he does not want the intercom to be fixed the way the other tenants in the building have it (audio communication only). Mr. [redacted] stated that he wants to be able to unlock/release the door from his apartment as well.

On March 8, 2021, the Rent Administrator requested the tenants provide additional information as the inspector reported that the tenants cannot unlock/release the building entrance door(s) from their apartments; and they can communicate with visitors via intercom but have to call the 24/7 front desk personnel/attendant who unlocks/releases the door for the visitors. The Administrator requested responses to the following:

1. Is this a new intercom system?
2. If yes, when was it installed? and
3. What type of intercom system was provided prior to the current one?

In the tenants' response dated March 29, 2021, the tenants' responded:

1. The system was new.
2. It was installed on or before April 17, 2017; and
3. The current intercom system is like the original whereby the release locking mechanism is not active, and the tenants are required to call building staff to release the door as outlined in the enclosed written house rules, but which is "highly restrictive in nature and in violation of MDL 50a."

On July 7, 2021, the Rent Administrator granted the tenants' rent reduction application finding that the intercom/buzzer system was defective as the tenants could not buzz guests in. The record discloses that the Rent Administrator's determination was predicated upon the report of the physical inspection which confirmed the intercom/buzzer system complaint raised by the tenants as the tenants were not able to buzz their guests in directly as the system required the tenants to call the front desk first before guests were let in. The Administrator noted that DHCR records indicated that the owner had not obtained Agency approval prior to modifying the intercom/buzzer system by removing the buzzer function, and that the rent reduction order is applicable only to Apartment [redacted] as rent reduction orders were in effect for the other complaining tenants.

The Commissioner has carefully reviewed all the facts as presented and concludes that the Rent Administrator's order is correct as issued, and that the Rent Administrator's reliance on the Agency records and inspector's training and experience in the area of building inspections as well as his impartiality in conducting the inspection and taking the photographs was reasonable.

The Commissioner notes the owner's contention that a rent reduction is not required as the bell/buzzer feature of the intercom service was never functioning. However, the Commissioner finds that the owner's contention is merely self-serving and is without merit. Section 2523.4 of the RSC requires owners to maintain required services, which in this case includes the intercom system's bell/buzzer function. While the bell/buzzer may not have been functioning previously as the owner claims, it was part of the system as evidenced by previous rent reduction orders and Agency inspections (see Docket No. CN610064S wherein on January

8, 2015 the intercom/buzzer was found inoperative and that there was no system between the doorman and the apartment to notify the tenant that there was a visitor, see also Docket Nos. IU620057S, IU620060S, IR610041S, and IU620059S). Therefore, the Commissioner finds the lack of a functioning bell/buzzer warranted a rent reduction in this case.

With regard to the owner's claim that a rent reduction is not warranted as the intercom system as it is presently operating was held to be in compliance with MDL 50-a by a New York State Appellate Court, the Commissioner finds that this claim is meritless. Although the Court may have found that the intercom was operating in accordance with MDL 50-a, pursuant to the RSC, an owner is to maintain required services until an application to decrease or modify same has been filed, and an order permitting such has been issued by this Agency. Further, Agency policy provides that in order for an owner to modify an intercom system that removes the bell/buzzer function capability, an owner must first apply for such modification of service with the Agency. Here, there is no evidence on record that the owner applied for and was granted approval by the Agency prior to installation of the new intercom system as required by Sections 2522.4 (d) and (e) of the RSC.

Based on the foregoing, the Commissioner finds that the Rent Administrator's order is correct as issued as the Administrator properly relied on the inspection report when making her decision and on the records of the Agency. The owner's PAR has not set forth any basis to modify or revoke the Rent Administrator's order.

The owner is advised to file a modification of service application with the Agency for the new intercom system.

The owner is also advised that it may file an "Owner's Application to Restore Rent," if the facts so warrant.

THEREFORE, in accordance with the relevant Rent Regulatory Laws and Regulations, it is

ORDERED, that the owner's petition be, and the same hereby is denied, and the Rent Administrator's order is affirmed.

ISSUED: APR 15 2022

Woody Pascal
Deputy Commissioner

State of New York
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There is no other method of appeal.

STATE OF NEW YORK
DIVISION OF HOUSING AND COMMUNITY RENEWAL
OFFICE OF RENT ADMINISTRATION
GERTZ PLAZA
92-31 UNION HALL STREET
JAMAICA, NEW YORK 11433

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IN THE MATTER OF THE ADMINISTRATIVE APPEAL OF

JAVIND 95TH STREET APARTMENTS

PETITIONER

ADMINISTRATIVE REVIEW DOCKET NO.: JW410006RO

RENT ADMINISTRATOR'S DOCKET NO.: IM410012B

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ORDER AND OPINION DENYING PETITION FOR ADMINISTRATIVE REVIEW

On November 2, 2021, the above-named Petitioner-owner filed a Petition for Administrative Review ("PAR") against IM410012B, an order the Rent Administrator issued on October 7, 2021 (the "order"), concerning the housing accommodations known as 305 East 95th Street, Apartment [redacted] New York, New York, wherein the Rent Administrator granted the tenant a rent reduction and determined that the backyard space was modified without a prior approval from the Agency as required under the Rent Stabilization Code and Law.

The Commissioner has reviewed the entire evidence of the record including that portion of the record that is relevant to the issues raised by the PAR.

In the PAR, the owner, through counsel, requests a reversal of the Rent Administrator's order and substantively contends that: (1) the tenant's lease which the owner provided specifically prohibits the use of the lawn/gardens, as a result, the tenant's claim that they have been using the lawn/gardens for over two decades should be disregarded because the tenant did so without the owner's permission, and moreover, the lawn/garden was not registered with the DHCR as an essential service and in any event, it is a *de minimis* condition; (2) the DHCR incorrectly determined that the lease had no specific rider restricting the tenant's access to the backyard as the use of the phrase "lawn/garden" in the tenant's lease is the backyard; (3) assuming the lease did not contain any specific rider restricting the tenant's access to the backyard, there is also no rider specifically authorizing the tenant's use of the backyard in the lease; (4) an emergency egress is available to the tenant through a portion of the backyard, however "it is impossible for

the owner to now grant" the tenant full access and such access "cannot be restored"; and (5) although in Meirowitz v. New York State Division of Housing & Community Renewal, 28 A.D.3d 350, 814 N.Y.S.2d 56 (1st Dept. 2006), the tenant was specifically instructed not to use the backyard, and therefore access to the backyard was not a required service, the owner in the instant matter could not have given such instruction as the owner was "not aware" of the tenant's use of the backyard in breach of their lease.

In response to the owner's appeal, the tenant, through their representative, rebuts the owner's contentions, averring, inter alia, that the backyard cannot be considered a "garden or lawn" as contemplated by the lease, but rather as a backyard space directly connected to the tenant's subject apartment, and that the interpretation and intent of the parties can be deduced from their conduct over the decades given that the previous owners provided access to the backyard as part of the tenant's tenancy.

After careful consideration of the entire evidence of record, the Commissioner is of the opinion that the petition should be denied.

Pursuant to Section 2523.4 of the Rent Stabilization Code ("RSC" or the "Code"), the Rent Administrator is authorized by law to direct the restoration of services and grant a rent reduction. upon application by a tenant where it is determined that required services have not been maintained. Section 2520.6 (r) of the Code states that the owner is required to provide those services which the owner was maintaining or was required to maintain on the applicable base dates, and any additional services provided or required to be provided thereafter by applicable law. Required services also include ancillary services which are defined under Section 2520.6 (r)(3) as that space and those required services not contained within the individual housing accommodation which the owner was providing on the applicable base dates..., and any additional space and services provided or required to be provided thereafter by applicable law, including recreational facilities.

Furthermore, under the Rent Stabilization Law and Code and long-standing Agency policy, an owner may not unilaterally eliminate a required service without Agency permission. Section 2522.4 (d) and (e) states that an owner is required to file an application to decrease or modify required services, prior to doing so, provided that doing so would not be inconsistent with the Rent Stabilization Law and Code

A review of the record reveals that the underlying proceeding was commenced by the tenant on January 8, 2020, wherein the tenant alleged, in pertinent part, that the backyard access was revoked after twenty years of use by the tenant. The tenant complained that the owner asked the tenant to move all of her belongings out of the backyard in order for the owner to do construction, and that after the construction was completed, the tenant discovered that the owner subdivided the backyard into three separate areas for the other three non-regulated tenants, thereby restricting the subject tenant's access to the backyard. The tenant's complaint was served on the owner on January 29, 2020.

The owner, through counsel, answered the tenant's complaint by correspondence received February 10, 2020. The owner contended that the subject backyard was not registered with the

DHCR as an essential service, and no clause in the tenant's lease permits the tenant's use of the backyard, and that the tenant's initial lease specifically states that the tenant "will not disturb, plant or use in any manner the gardens or lawns under any circumstances whatsoever", and that even if the backyard was considered a "required services", it would be a *de minimis* condition that does not affect the tenant's use and enjoyment of the premises. Annexed to the owner's answer was a lease dated November 15, 1992 between the owner and the subject tenant.

In a follow up response received by the Agency on March 29, 2021, the owner asserted that the pictures that the tenant provided to the Rent Administrator depicting the tenant and her use in the backyard area should be discounted, and that in any event, the tenant's presence in the backyard is "irrelevant" as the lease prohibited the tenant's use as the terms "garden or lawn" in the lease includes the backyard area.

An Agency inspection was conducted at the subject premises on May 3, 2021 by the Division's impartial inspector. The inspector reported that the tenant in apartment [redacted] did not have access to the backyard area patios. At the time of the inspection, the backyard was divided into three locked sections which restricted access for the subject tenant's apartment [redacted], but apartments [redacted] and [redacted] had access to the backyard. The inspector also observed that the subject tenant's fire door opened to the backyard walkway, and the three apartments who had access to the patios were duplex units located on the same level floor as the subject tenant.

Based upon a complete review of the record and all the supporting submissions from the tenant and owner, including the inspection report from May 3, 2021, the Rent Administrator on October 7, 2021, found that the backyard access for the subject apartment was restricted and that the owner has not obtained Agency approval prior to eliminating the tenant's access to the backyard area.

In light of the foregoing, the Commissioner finds that the Rent Administrator properly granted the tenant a rent reduction as the facts established that the tenant's backyard access was restricted without prior Agency approval.

The Commissioner finds that the owner's contentions are without merit and are self-serving in this case. The Commissioner notes that the rent regulation laws require owners to maintain, inter alia, the required services, including required ancillary services, until an application to decrease or modify same has been filed, and an order permitting such has been issued by the Rent Administrator. Accordingly, a unilateral modification of a required service without the Agency's permission to so do constitutes a decrease in service under Section 2523.4 of the RSC.

In this case, it is undisputed that the tenant was provided with unrestricted access to the backyard. The owner in their submissions to the Rent Administrator failed to object to the tenant's claim that the tenant used the backyard space prior to the owner's newly constructed patios that restricted the tenant's use. Accordingly, the tenant was previously provided with access to the backyard, and as evidenced by the inspector's report, the tenant was no longer provided with access and was in fact restricted from accessing the backyard upon the owner's construction. Therefore, the Commissioner finds that the Rent Administrator properly granted the tenant a rent reduction as the tenant was previously provided with backyard access, and

therefore the owner was required to maintain such required service until an application to decrease or modify same had been approved by this Agency. As previously noted, the record shows that the owner did not submit an application to decrease or modify such required service prior to restricting the tenant's access to the backyard as is required under Section 2522.4 (d) and (e) of the RSC. *See* Docket No. HX410028RO (239 Elizabeth Realty LLC v State Div. of Hous. & Community Renewal, 2022 NY Slip Op 30595[U] [Sup Ct, NY County 2022]).

Furthermore, with respect to the owner's contention that the subject backyard space is not considered a required service because the owner did not register it with the DHCR as an essential service is unavailing in light of Section 2520.6 (r) of the Code and Agency policy and practice. Additionally, the case the owner cites to, Matter of Meirowitz, is not applicable to the facts herein as in the Matter of Meirowitz, the tenant was "repeatedly instructed not to use the backyard" and the only access to the backyard was through a window which "belied the inference that such access was a service affirmatively provided by the landlord". Here, there is no evidence that the tenant was ever restricted access to the backyard except after the owner's construction that provided sole access to the backyard for three other tenants located on the same floor as the tenant. Moreover, the tenant in this case has a door that opens out to the backyard walkway, thereby providing direct access to the backyard. The Commissioner also notes that under the rent stabilization scheme, a purchaser of a building steps into the shoes of its predecessor in interest, and therefore the owner's claim that they were unaware of the tenant's use is meritless.

Based on the foregoing, the Commissioner finds that the Rent Administrator correctly granted the tenant a rent reduction, and the owner's PAR has not established any basis to modify or revoke the Rent Administrator's determination.

The Commissioner notes that the owner may commence a proceeding pursuant to Section 2522.4 (d) and (e) of the RSC to modify or substitute required services.

The owner is advised to file an "Owner's Application to Restore Rent," if the facts so warrant.

THEREFORE, in accordance with the relevant Rent Regulatory Laws and Regulations, it is

ORDERED, that this petition is denied and that the Rent Administrator's order is affirmed.

ISSUED: APR 29 2022

Woody Pascal
Deputy Commissioner

State of New York
Division of Housing and Community Renewal
Office of Rent Administration
Gertz Plaza, 92-31 Union Hall Street
Jamaica, NY 11433
Web Site: www.hcr.ny.gov

Right to Court Appeal

This Deputy Commissioner's order can be further appealed by either party, only by filing a proceeding in court under Article 78 of the Civil Practice Law and Rules seeking judicial review. The deadline for filing this "Article 78 proceeding" with the courts is within 60 days of the issuance date of the Deputy Commissioner's order. This 60-day deadline for appeal may be extended by executive orders at https://governor.ny.gov/executiveorders. No additional time can or will be given. In preparing your papers, please cite the Administrative Review Docket Number which appears on the front page of the attached order. If you file an Article 78 appeal, the law requires that a full copy of your appeal papers be served on each party including the Division of Housing and Community Renewal (DHCR). With respect to DHCR, your appeal must be served on DHCR Counsel's office at 641 Lexington Ave, New York, NY 10022.

Note: During the period of the current Covid-19 emergency, as a courtesy, if the Article 78 proceeding is commenced by efiling pursuant to the Court Rules service may be effectuated, as limited as follows, by forwarding the court's email indicating the assignment of the Index Number and the documents received by the court, i.e., Notice of Petition, Petition, and other efiled documents to DHCRLegalMail@nyshcr.org. Upon receipt of the complete filings, the receipt of such documents will be acknowledged by email. Only after such acknowledgement of receipt of such documents will the service by email be deemed good service on New York State Division of Housing and Community Renewal (DHCR). DHCR is not the agent for service for any other entity of the State of New York or any third party. In addition, the Attorney General must be served at 28 Liberty Street, 18th Floor, New York, NY 10005. Since Article 78 proceedings take place in the Supreme Court, it is advisable that you consult legal counsel.

There is no other method of appeal.

STATE OF NEW YORK
DIVISION OF HOUSING AND COMMUNITY RENEWAL
OFFICE OF RENT ADMINISTRATION
GERTZ PLAZA
92-31 UNION HALL STREET
JAMAICA, NEW YORK 11433

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IN THE MATTER OF THE
ADMINISTRATIVE APPEAL OF :

ADMINISTRATIVE REVIEW
DOCKET NO.: JT410010RO

WE Audubon 100 LLC :

RENT ADMINISTRATOR'S
: DOCKET NO.: HP410015B

PETITIONER

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ORDER AND OPINION DENYING PETITION FOR ADMINISTRATIVE REVIEW

On August 5, 2021, the above-named petitioner-owner filed a petition for administrative review (PAR) against an order issued by the Rent Administrator on July 2, 2021, concerning the housing accommodations known as 551 West 170th Street, Various Apartments, New York, NY, wherein the Administrator granted the tenants a rent reduction and directed the restoration of services.

The Commissioner has reviewed all of the evidence in the record and has carefully considered the portion of the record relevant to the issues raised by the petition.

The owner argues that the tenants' complaint lacked specificity as the tenants failed to provide details of the alleged conditions; that in the owner's answer to the tenants' complaint, on July 5, 2019, the owner contended that the tenants failed to specify the conditions that they alleged as not maintained, in that the tenant failed to describe: a) the condition which existed, or the equipment or service which was not being maintained, and b) the specific area in the building where the condition existed, regarding the following items: paint and plaster walls and ceiling, crack floor (sic), and repair -windowpane, frames and sills.

The owner argues further that the tenants intentionally omitted the specifics so that the Agency can find any condition(s); that it should not be the Agency or the owner's job to find conditions in need of repair; that the "Repair window pane, frames and sills" condition was maintained and that the finding of cracked/chipped/peeling paint and plaster around the 3rd floor window sill is outside the gambit of the tenants' complaint for repairs.

Pursuant to Section 2523.4 of the Rent Stabilization Code (RSC or the Code), DHCR is authorized to order a rent reduction, upon application by a tenant, where it is found that an owner has failed to maintain required or essential services. Likewise, an owner is entitled to the restoration of rent once it is established that the required services cited in the rent reduction order have been restored.

After careful consideration of the entire evidence of record, the Commissioner is of the opinion that the petition should be denied.

On April 4, 2019, the tenants commenced the proceeding below, wherein the tenants alleged a diminution in various building-wide services. In the tenants' services complaint, the tenants asserted, in pertinent part, that the entrance, lobby, halls, and staircase windowpane, frames and sills were in need of repair. The complaint was served on the owner on May 6, 2019.

By response dated July 5, 2019, the owner, through counsel, responded that all alleged items of the tenants' complaint had been corrected, and that the certain tenants' complaint lacked specificity as contended in the owner's PAR herein.

Accordingly, the Rent Administrator thereafter requested inspections of the subject premises and at the time of the Agency inspection on September 13, 2019, there was evidence of a defective window/sash/frame/sill on the 3rd floor window by the left side of the staircase, and at the time of the re-inspection on January 27, 2021, the impartial inspectors reported that there was evidence of cracked/chipped/peeling paint around the 3rd floor windowsill. Based on the Agency inspections, the Rent Administrator, on July 2, 2021, granted the tenants' a rent reduction for the window frame/sill on the 3rd floor.

Pursuant to Policy Statement 90-2, where there is a dispute as to whether required services have been provided or are properly being maintained, the Rent Administrator may rely on the results of an agency inspection by the Agency's impartial inspector who is not a party to the proceeding.

The record below indicates that the Rent Administrator requested an Agency's inspection of the conditions complained about by the tenants. Specifically in this case, the tenants alleged defective windowpanes, frames, and sills in the hall and staircases, prompting the Rent Administrator request for Agency inspections to verify the tenants' complaint regarding the windows in the premises. Pursuant to the Agency's inspection of September 13, 2019, the inspector found a decrease in service thus: evidence of defective window/sash/frame/sill on the 3rd floor window and evidence of vermin in the public area; and on January 27, 2021, the inspector still found defects to the 3rd floor window, in that there was evidence of cracked/chipped/peeling paint around 3rd floor windowsill.

The Commissioner finds that the owner's contention regarding the lack of specificity with respect to the window condition is rejected as being merely self-serving. Two Agency inspections conducted several months apart found defective window conditions on the same floor, which confirmed the tenants' service complaint filed on May 6, 2019.

The records indicate that the owner has filed a rent restoration application, Docket No. **JU410020OR**, which is pending.

Based on the foregoing, the Commissioner finds that the Administrator finding was proper, and that the owner's PAR did not establish any error of law or fact warranting a modification or the revocation of the Administrator's order. Accordingly, the owner's petition is denied.

THEREFORE, in accordance with the applicable sections of the Rent Stabilization Law and Code, it is

ORDERED, that this petition be, and the same hereby is, denied, and that the Rent Administrator's order be, and the same hereby is, affirmed.

ISSUED: APR 29 2022

WOODY PASCAL
Deputy Commissioner

State of New York
Division of Housing and Community Renewal
Office of Rent Administration
Gertz Plaza, 92-31 Union Hall Street
Jamaica, NY 11433
Web Site: www.hcr.ny.gov

Right to Court Appeal

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92-31 UNION HALL STREET
JAMAICA, NEW YORK 11433

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IN THE MATTER OF THE ADMINISTRATIVE APPEAL OF

TAYLOR AVE ESTATES LLC

PETITIONER

ADMINISTRATIVE REVIEW DOCKET NO.: KN610015RO

RENT ADMINISTRATOR'S DOCKET NO.: JU610005B

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ORDER AND OPINION DENYING PETITION FOR ADMINISTRATIVE REVIEW

On February 25, 2022, the above-named Petitioner-owner filed a Petition for Administrative Review ("PAR") against JU610005B, an order the Rent Administrator issued on February 1, 2022 (the "order"), concerning the housing accommodations known as 1450 Taylor Avenue, Apartment [redacted] Bronx, New York, wherein the Rent Administrator granted the tenant a rent reduction and directed the restoration of services based on a finding that the janitorial services in the building were not maintained at the time of the DHCR inspection on December 7, 2021.

The Commissioner has reviewed the entire evidence of the record including that portion of the record that is relevant to the issues raised by the PAR.

In the PAR, the Petitioner-owner requests a reversal of the Rent Administrator's order and claims that: (1) the order shows the sole condition at issue was janitorial service building-wide; evidence of furniture stored in the hallway outside apartment [redacted] and evidence of furniture stored under the first floor staircase, and given that the tenant's complaint is specifically about the building being dirty, the inspector's finding of furniture being stored in the hallway outside of apartment [redacted] and under the first floor staircase is therefore outside the ambit of the complaint, and that the inspector found the actual janitorial services with respect to cleaning and mopping of the common areas maintained; (2) the janitorial services are provided, and the building properly maintained, and this was the sole basis of the tenant's complaint; and (3) the furniture outside apartment [redacted] was not "stored" but was in the hallway temporarily as the tenant in apartment [redacted] was

getting furniture delivery on the day of the inspection, and the furniture was temporarily moved to the hallway to accommodate the incoming furniture to the apartment.

The tenant responded and opposed the owner's petition stating that the furniture was not temporarily "stored" to accommodate a tenant's delivery for that day as claimed by the owner, and that a violation was issued for such condition, and that the tenant previously complained about the situation to the management and that the management failed to correct the condition.

After careful consideration of the entire evidence of record, the Commissioner is of the opinion that the petition should be denied.

Pursuant to Section 2523.4 of the Rent Stabilization Code (the "Code"), the Rent Administrator is authorized by law to order a rent reduction upon application by a tenant when it is found that an owner has failed to maintain required or essential services. Policy Statement 90-2 permits the Rent Administrator to rely on an Agency inspection when making a determination. Furthermore, New York Courts have consistently upheld the reliability of the DHCR inspections.

The tenant commenced the proceeding below on September 1, 2021, by filing a complaint, alleging the uncleanliness of various areas such as the entrance door, the building floors, the hallway, the staircase, and under the staircase by the mailboxes on the 1st floor. The tenant attached copies of letters reporting the service issues to the owner dated April 12, 2021, August 27, 2021, and August 30, 2021, and a photograph with a handwritten text purporting to indicate a mattress was left outside their door and furniture in the hallway on August 19, 2021. Specifically, the tenant asserted that the hallways should be "clean and clear" in the tenant's letter dated August 27, 2022, and from August 19, 2021, that the "furniture loose in the hallway is a violation for sure this has to stop", and again in the August 30, 2021 letter, the tenant requests that management needs to keep the building clean with "no furniture, garbage in the halls or outside any apartment on any floor."

Upon service of the complaint on the owner on October 22, 2021, the owner, through their counsel responded by correspondence dated November 5, 2021, claiming that the building was properly maintained and cleaned and that the superintendent swept the building and mopped every Monday, Wednesday, and Friday. Pictures purporting to be of various common areas of the building taken by the owner were provided.

Thereafter, the Rent Administrator requested an inspection, and an Agency inspection was conducted at the subject apartment on December 7, 2021. The inspector's inspection report, substantiated by time and date stamped photographs, indicated that there was evidence of furniture stored in the hallway outside apartment [redacted] and under the first-floor staircase at the time of inspection. On February 1, 2022, the Rent Administrator granted the tenant a rent reduction, finding the janitorial services were not maintained based on the Agency inspection.

The Commissioner notes the Petitioner's claim that the janitorial services in the building are properly maintained and that the Petitioner-owner's claim corroborates the inspector's finding that the common areas were mopped/swept at the time of the DHCR inspection. However, the Commissioner finds that the janitorial condition of the subject building is not limited to sweeping

and mopping of the common areas, but in this case encompasses all janitorial concerns as raised by the tenant in their complaint. As noted above, the tenant claimed that the hallways were not "clear", and that furniture was left in the hallways on various occasions. The Rent Administrator properly and reasonably relied on the inspector's training and experience in the area of building inspections as well as the inspector's impartiality in conducting the inspection in finding that furniture was being stored in the hallways. Also, the Commissioner notes that the inspector's photographs do not show merely furniture in the hallways, but also cleaning supplies under the staircase. As such, the Commissioner finds that the Rent Administrator correctly granted the tenant a rent reduction in accordance with Section 2523.4 of the RSC and DHCR Policy Statement 90-2.

Based on the foregoing, the Commissioner finds that the Rent Administrator's order is in compliance with the Agency's established policies and procedures. The Petitioner-owner has not established any basis to modify or revoke the Rent Administrator's determination.

The Commissioner notes that the owner has filed an "Owner's Application to Restore Rent," which is currently pending under Docket No. KN610094OR.

THEREFORE, in accordance with the relevant Rent Regulatory Laws and Regulations, it is

ORDERED, that this petition is denied and that the Rent Administrator's order is affirmed.

ISSUED: MAY 19 2022

Woody Pascal
Deputy Commissioner

State of New York
Division of Housing and Community Renewal
Office of Rent Administration
Gertz Plaza, 92-31 Union Hall Street
Jamaica, NY 11433
Web Site: www.hcr.ny.gov

Right to Court Appeal

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STATE OF NEW YORK
DIVISION OF HOUSING AND COMMUNITY RENEWAL
OFFICE OF RENT ADMINISTRATION
GERTZ PLAZA
92-31 UNION HALL STREET
JAMAICA, NEW YORK 11433

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IN THE MATTER OF THE ADMINISTRATIVE APPEAL OF	ADMINISTRATIVE REVIEW DOCKET NO.: KM110031RO
152-09 88TH OWNER LLC	
PETITIONER	RENT ADMINISTRATOR'S DOCKET NO.: HN110027B

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ORDER AND OPINION DENYING PETITION FOR ADMINISTRATIVE REVIEW

On January 26, 2022, the above-named Petitioner-owner timely re-filed a Petition for Administrative Review ("PAR") against HN110027B, an order the Rent Administrator issued on December 10, 2021 (the "order"), concerning the housing accommodations known as 152-09 88th Avenue, Various Apartments, Jamaica, New York, wherein the Rent Administrator granted the tenants a rent reduction for services found unmaintained at the time of the Agency inspections on July 22, 2019 and April 29, 2021.

The Commissioner has reviewed the entire evidence of the record including that portion of the record that is relevant to the issues raised by the PAR.

In the PAR, the owner, through their representative, requests a modification of the Rent Administrator's order and contends that the Rent Administrator's order was issued as a result of illegality or irregularity in a vital matter, and that by virtue of Section 2527.8 of the Rent Stabilization Code, the Agency is required to reopen such a case. The Petitioner-owner challenges the order and claims that the Rent Administrator admitted the owner's submissions and dismissed the issue of bike/storage because the tenants' representative failed to respond to the notice regarding the owner's claim that access to the bike/storage room was available to the tenants upon request, but that the same Rent Administrator's order lists the "Tenant Storage Area" as a service not maintained. The owner further claims that the "Tenant Storage Area" is actually an "owner's closet where they store construction material".

After careful consideration of the entire evidence of record, the Commissioner is of the opinion that the petition should be denied.

Pursuant to Section 2523.4 of the Rent Stabilization Code (the "Code"), the Rent Administrator is authorized by law to order a rent reduction upon application by a tenant when it is found that an owner has failed to maintain required or essential services. Policy Statement 90-2 states that the Rent Administrator may rely on an Agency inspection when making a determination.

On February 11, 2019, various tenants of the subject premises filed a decrease in service complaint, alleging that the owner had failed to maintain services relating to the building entry key fob, the janitorial services in various public areas, the laundry services, the lounge area pool table, the lounge area refrigerator, the lounge bathroom soap, the lounge bathroom paper towels, the lounge area ice machine, the lobby, the hall, the staircase, the parking garage, the security cameras, the maintenance portal, and the bicycle storage/tenant storage room. In pertinent part, the tenants specifically claimed that there was a "tenant storage room" that was no longer provided from at least September 2018, and that some tenants never had access. The tenants' complaint was served on the owner on March 26, 2019.

The owner's response dated April 8, 2019, was received by the Agency on April 10, 2019. The owner claimed that all services were maintained, specifying that the fob system, the lobby, the hall, the staircase/fire extinguisher, the laundry room services, and the security cameras were maintained; and that the tenants store their bikes in the bike room; that the janitorial services, the maintenance portal, and the lounge area were also maintained.

In response to the owner's answer, the tenants' representative disputed the owner's claims on July 9, 2019, and asserted, in pertinent part, that the bike room where the tenants store their bikes was not accessible to most tenants, and that "there is also a tenant storage room" that was inaccessible as well. The tenants' representative further refuted the owner's claims regarding the laundry services, the hall, the lounge area, the janitorial services, the maintenance portal system, and the parking space.

In the owner's further response dated July 15, 2021, the owner rebutted the tenants' assertions and stated specifically that for security reasons, only the tenants that use bike and storage space have key access to the room. The owner also reiterated their claim that all services were maintained.

The Commissioner notes that a review of the record indicates that on October 4, 2021, the Agency sent the owner's response to the tenants and asked the tenants whether the tenants have a key to the storage/bike room and if so, which tenants have a key, and also which tenant's do not have a key but want access, and whether these tenants contacted the owner. There is no evidence that the tenants' representative responded to this request.

In order to facilitate the resolution of the complaints, the Rent Administrator requested an Agency inspection of the subject premises. The Agency's physical inspections were conducted on July 22, 2019 and April 29, 2021.

The July 22, 2019 inspection as reported by the impartial inspector found, at the time of inspection, that the tenants did not have access to laundry service; the lounge area ice maker was not operating properly and was leaking; the lounge area pool table had loose pockets; the lounge area refrigerator was not operating properly as it had condensation build up and was dripping; and soap, paper towels and a towel dispenser were not provided at the lounge room bathroom.

A re-inspection of the subject premises was conducted on April 29, 2021. The inspector reported that at the time of inspection, the following services were found decreased: (1) the lounge area ice machine, the ice machine was disconnected so the condition of the machine could not be ascertained; and (2) the tenant storage room, the tenants had access to the tenant storage room in the basement, but the space was disorganized and construction materials were stored there (the inspector attached a picture depicting a sign next to the storage room door that was partially covered up and states "Tenant Stora").

On December 10, 2021, based on the aforementioned defects to the lounge area ice machine and the tenants' storage room, the Rent Administrator issued an order under Docket No. HN110027B, granting the tenants' service complaint. The Rent Administrator however noted that the owner indicated that the parking and bike/storage room was available to the tenants and that they must contact the owner for access, and that such owner's response was sent to the tenants' representative on October 4, 2021, however, the tenants' representative failed to respond, and therefore the owner's submission in regard to the parking and bike storage room was deemed admitted.

The Commissioner notes the Petitioner-owner's contention herein that the Rent Administrator's order is based on illegality and irregularity because the Rent Administrator dismissed the issue of bike/storage room and then found the tenants' storage room unmaintained. However, upon a diligent review of the Rent Administrator's proceeding in its entirety, including the owner's, and the tenants' submissions below and the two inspections from July 22, 2019 and April 29, 2021, the Commissioner finds that the owner's argument lacks merit. The July 9, 2019 tenants' representative's response to the owner's answer clearly stated that there was a bike/storage room as well as the tenants' storage room. Further, the owner in their response dated July 15, 2021 refers to both a "bike and storage space". Also, the inspection reports reveal that there was a bike storage space, separate from the tenants' storage area that was filled with construction material during the April 29, 2021 inspection. Accordingly, the owner's claim that the "storage area" is actually an owner's closet is merely self-serving and is without merit.

Moreover, the Commissioner further finds that where there is a dispute as to whether required services have been provided or maintained, the Rent Administrator may rely on the results of an Agency inspection in accordance with Policy Statement 90-2. See also Matter of 113-117 Realty, LLC v. DHCR, 2021 N.Y. Slip. Op. 06432 [1st Dept. 2021] citing to Matter of Sherman v. DHCR, 210 AD2d 486 [2nd Dept. 1994]. Additionally, any observable condition reported by the Agency's impartial inspector for which no alternative expertise is required may be properly relied upon by the Agency. As such, in accordance with Section 2523.4 of the RSC and DHCR Policy Statement 90-2, the Rent Administrator properly relied on the Agency inspections conducted on July 22, 2019 and April 29, 2021 which confirmed the tenants' lounge area ice machine and the tenants' storage room were not maintained at the time of the Agency

inspections. Accordingly, the Rent Administrator's order is in compliance with the Agency's established policies and procedures.

Based on the foregoing, the Commissioner finds that the Rent Administrator correctly granted the tenants a rent reduction, and that the Rent Administrator's order is within the scope of the complaint, and the owner's PAR has not established any basis to modify or revoke the Rent Administrator's determination.

The Commissioner notes that an owner's rent restoration application was granted under Docket No. JX110049OR on March 30, 2022 for the lounge area ice machine and the tenant storage area.

THEREFORE, in accordance with the relevant Rent Regulatory Laws and Regulations, it is

ORDERED, that this petition is denied and that the Rent Administrator's order is affirmed.

ISSUED: MAY 19 2022

Woody Pascal
Deputy Commissioner

State of New York
Division of Housing and Community Renewal
Office of Rent Administration
Gertz Plaza, 92-31 Union Hall Street
Jamaica, NY 11433
Web Site: www.hcr.ny.gov

Right to Court Appeal

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There is no other method of appeal.

STATE OF NEW YORK
DIVISION OF HOUSING AND COMMUNITY RENEWAL
OFFICE OF RENT ADMINISTRATION
GERTZ PLAZA
92-31 UNION HALL STREET
JAMAICA, NEW YORK 11433

IN THE MATTER OF THE ADMINISTRATIVE APPEAL OF	
711 Realty Associates, LLC	ADMINISTRATIVE REVIEW DOCKET NO.: JS210045RO
PETITIONER	RENT ADMINISTRATOR'S DOCKET NO.: IT210003B

ORDER AND OPINION DENYING PETITION FOR ADMINISTRATIVE REVIEW

On July 23, 2021, the above-named petitioner-owner filed a petition for administrative review ("PAR") against an order issued on June 23, 2021, by the Rent Administrator concerning the housing accommodations known as 711 Brightwater Court, Various Apartments, Brooklyn, NY, wherein the Administrator granted the tenants a rent reduction and directed the restoration of services.

The Commissioner has reviewed all of the evidence in the record and has carefully considered the portion of the record relevant to the issues raised by the petition.

The owner, requesting a reversal of the Rent Administrator's order, contends that the lapse of the use of laundry washers and dryers in the subject premises was beyond the owner's control as it was the result of malfeasance perpetrated by third parties, not under the owner's control; that the owner does not, and has not directly operated the laundry equipment in the laundry room; that the operator, CSC Service Works, Inc. ("CSC"), leased the laundry room from the owner, and CSC owed the obligation for its operation; that under the terms of the lease, CSC was to install and operate the laundry room equipment in accordance with local laws, including the Department of Buildings ("DOB"), *inter alia*; that the owner received violations from the DOB based on improper installation of the laundry equipment and the operation of the laundry room; that pursuant to the violations, the owner retained counsel and commenced legal proceedings against CSC for immediate correction of the violations, and that when CSC failed to address the conditions, the owner sent CSC a Notice of Termination; and the owner started a hold-over proceeding against CSC at the Civil Court, Kings County, but CSC did not vacate the premises until December 31, 2019 pursuant to a Stipulation of Settlement.

The owner claimed further that during the pendency of the litigation with CSC, the owner made considerable efforts, and entered into negotiations with Hercules Corp., to ensure a new laundry room, with a lease prepared for execution in early March of 2020, but the pandemic forestalled the final execution of the lease; that CRC Plumbing and Heating Corp. ("CRC") was consulted to do the necessary plumbing work, and that CRC contacted an architect, Philip Toscano, to work together on the project, whose affidavit the owner submitted for the first time with the PAR filing; that in narrow circumstances, the DHCR may allow a petitioner to submit with the petition certain facts or evidence established that it could not reasonably have been offered or included in the prior proceeding; that the affidavit of Mr. Toscano could not be submitted before the Rent Administrator as he had not been retained at the time; that Mr. Toscano had advised that the plans submitted by the company retained to bring the operation of the laundry room into DOB compliance were incomplete on their face and that they did not address the three violations that resulted in the shutting down of the laundry room, the washing machine and the dryers; and that counsel had advised the owner that the DHCR cannot properly hold the owner culpable for the conditions that have resulted in the rent reduction, as such holding would be a violation of the owner's due process rights, citing the Matter of Regina Metropolitan Co., LLC v New York State DHCR, 35 N.Y.3d 332 [2020].

The tenants' attorneys, by submission dated October 26, 2021, contend that not all the tenants received DHCR notice of PAR dated September 16, 2021; arguing in response to the owner's PAR, essentially, *inter alia*, as follows: that the Agency's inspection of February 25, 2021 confirmed that the laundry room washers and the dryers were not functional at the time of the Agency's inspection; that they had not been functional for almost two years; that new evidence, on PAR, is generally not permitted, and that in the event that the owner's new submission is considered, the owner's PAR must still be denied as the owner had not argued that the Rent Administrator's order was wrongly decided or be reconsidered; that the owner did not deny the laundry room as a required service pursuant to Section 2520.6(r); that the service was provided to the tenants for many years, essentially, if not exclusively, for the tenants of the subject premises; that the laundry room service was not in place at the time of the tenants filing of complaint, at the time of Agency's inspection, and at the time of submission of the tenants' response to the owner's PAR; that the fact that the owner who owns the entire building chose to enter into a lease with a third party does not alter the fact that the owner owns the entire building, laundry room and its facilities, and that the tenant, selected and entrusted by the owner, who operated the laundry room, was not an independent contractor within the meaning of the Code; and that all the three DOB violations of 2019 were issued to the owner, and all efforts made by the owner do not change the fact of the laundry room being not operational.

After careful consideration of the entire evidence of record, the Commissioner is of the opinion that the petition should be denied.

Pursuant to Section 2523.4 of the Rent Stabilization Code ("RSC" or "the Code"), DHCR is authorized by law to direct the restoration of services and grant a rent reduction, upon application by a tenant where it is determined that required services have not been maintained. Section 2520.6(r) of the Code defines required services as that space and those services which the owner

was maintaining or was required to maintain on the applicable base dates, and any additional space or services provided or required to be provided thereafter by applicable law.

A review of the record reveals that the tenants of Apartment [redacted] commenced the proceeding herein below on August 6, 2020, alleging a diminution in laundry room service in the subject building. On September 9, 2020, the owner was served with a copy of the tenants' complaint. The owner, through counsel, responded to the tenants' complaint, claiming, in pertinent part, that the laundry room was operated by CSC, however, CSC failed to provide the laundry room service and that the failure of CSC could not be attributed to the owner.

The Agency's records indicate that the Rent Administrator requested an inspection of the laundry room in the subject premises during the proceeding below. The Commissioner notes that pursuant to the Agency's February 25, 2021 inspection, the laundry room washers and the laundry room dryers were found not maintained at the time of inspection. Accordingly, the Rent Administrator, on June 23, 2021, issued an order granting the tenants a rent reduction for the laundry room washers and the laundry room dryers that were found not maintained.

The Commissioner notes that the owner has submitted ample information subsequent to the Agency's inspection to argue the owner's contention that the lack of provision of laundry room services (washers and dryers) was not under the owner's direct control. However, contrary to the owner's claims, the Commissioner notes that in the Agency's database, on the registered Building Services information page, "laundry room" is one of the services listed by the owner as services provided by the owner in the subject premises. The Commissioner notes that this piece of evidence, without more, suffices for a finding that the laundry room services are required services pursuant to Sections 2520.6(r) and 2523.4 of the RSC, and therefore the laundry room diminution warrants a rent reduction in this case. Thus, the owner's argument herein is deemed to be without merit and is merely self-serving. Additionally, the Commissioner notes that the owner's contention that the service was only provided by a third party is unsupported by the records.

Therefore, as noted above, the owner has an obligation under the Code, to provide required services, and in the instant case, since laundry room service is listed in the Agency's database as a service that the owner provides, the Commissioner finds that, unless and until the owner files a decrease or modification of services application pursuant to Sections 2522.4(d) or (e) of the Code, and such application is granted by the Agency, the owner has to ensure that laundry room service is provided in the subject premises.

The Commissioner notes that the case cited by the owner, Matter of Regina Metropolitan Co., LLC, is not dispositive of this case as that case relates to overcharge provisions of the Housing Stability and Tenant Protection Act of 2019.

Based on the foregoing, the Commissioner finds, after a review of the entire records, that the owner's PAR has not established any basis to modify or revoke the Administrator's determination. Accordingly, the owner's petition is denied.

The Commissioner notes that the owner may file a rent restoration application, if the facts warrant.

THEREFORE, in accordance with the applicable provisions of the Rent Stabilization Law and Code, it is

ORDERED, that this petition be, and the same hereby is, denied, and that the Rent Administrator's order be, and the same hereby is, affirmed.

ISSUED: MAY 26 2022

WOODY PASCAL
Deputy Commissioner

State of New York
Division of Housing and Community Renewal
Office of Rent Administration
Gertz Plaza, 92-31 Union Hall Street
Jamaica, NY 11433
Web Site: www.hcr.ny.gov

Right to Court Appeal

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There is no other method of appeal.

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92-31 UNION HALL STREET
JAMAICA, NEW YORK 11433

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IN THE MATTER OF THE ADMINISTRATIVE APPEAL OF

STEB REALTY CORPORATION

PETITIONER

ADMINISTRATIVE REVIEW DOCKET NO.: JW610016RO

RENT ADMINISTRATOR'S DOCKET NO.: IN610022B

----------x

ORDER AND OPINION DENYING PETITION FOR ADMINISTRATIVE REVIEW

On November 2, 2021, the above-named Petitioner-owner filed a Petition for Administrative Review ("PAR") against IN610022B, an order the Rent Administrator issued on September 28, 2021 (the "order"), concerning the housing accommodations known as 1551 Sheridan Avenue, Various Apartments, Bronx, New York, wherein the Rent Administrator granted the tenants a rent reduction and directed the restoration of services after an Agency inspection of the subject premises confirmed that the services cited in the tenants' complaint were unmaintained at the time of inspection on March 23, 2021.

The Commissioner has reviewed the entire evidence of the record including that portion of the record that is relevant to the issues raised by the PAR.

In the PAR, the owner, through their representative, requests a modification of the Rent Administrator's order, contending that the subject trash chutes are not services provided to the tenants as there is no trash compactor or chute in the building and that there have been no knobs or "access to them in over twenty-five years". The owner asserts that the tenants may have mistakenly included trash chutes in their complaint. The Petitioner-owner further claims that the passage of four years or more will be considered presumptive evidence that the condition is de minimis, and that this applies to the instant matter as it has been twenty-five years since the service was provided.

One of the tenants responded opposing the owner's appeal, claiming that common areas were still dirty and unpainted.

After careful consideration of the entire evidence of record, the Commissioner is of the opinion that the petition should be denied.

Pursuant to Section 2523.4 of the Rent Stabilization Code ("RSC" or the "Code"), DHCR is authorized to order a rent reduction, upon application by a tenant, where it is found that an owner has failed to maintain required or essential services. Section 2520.6 (r) of the Code states that an owner is required to provide those services which the owner was maintaining or was required to maintain on the applicable base dates, and any additional services provided or required to be provided thereafter by applicable law. Under the RSC and long-standing Agency policy, an owner may not unilaterally eliminate a required service without Agency permission. Section 2522.4 (d) and (e) requires an owner to file an application to reduce or modify required services, prior to doing so, provided that doing so would not be inconsistent with Rent Stabilization Code and Law.

The tenants commenced the proceeding below on February 24, 2020, by filing a complaint, alleging that multiple services in the subject premises were decreased, including heat and hot water issues; various defects to the courtyard, the lobby, the hallways, the stairwells; vermin control issues; and issues with the elevator. The tenants claimed, in pertinent part, that the trash chutes in the hallways did not have doorknobs and were "difficult to open" and that on "some" of the garbage chute doors, cracks were covered with tape and painted over. The owner was notified of the tenants' application on March 16, 2020. The owner's answer dated August 4, 2020, asserted that repairs had been made and that services were maintained. The owner further specifically alleged that "there are no trash chutes in the hallways".

The Agency determined that an inspection was warranted, and therefore, on March 23, 2021, an inspection was conducted at the subject premises by the Agency's impartial inspector. The inspector reported defects to the following services at the time of the inspection: the mailboxes for apartments [redacted] and [redacted] paint/plaster building-wide; janitorial services in the elevator and the lobby; the trash/compactor chutes on all floors were inoperable as they were sealed off with missing doorknobs and the tenants do not have access; defective staircase between the 2nd and the 3rd floor, creating a trip hazard; and the staircase window between the 2nd and 3rd floor was loose, not secure, and comes off the track when opening and closing. The inspector attached corroborative time and date-stamped photographs of the defects observed at the time of inspection.

Based on the record and the substantiated report of the impartial Agency inspector, the Rent Administrator, on September 28, 2021, granted the tenants' application for a rent reduction under Docket No. IN610022B as evidence revealed that services were not maintained as delineated in the Agency inspection report from March 23, 2021.

The Commissioner finds that the owner's contentions are without merit and merely self-serving in this case as the rent regulation laws require owners to maintain, inter alia, all required services provided on the base date or provided thereafter, until an application to decrease or modify same

has been filed, and an order permitting such has been issued by this Agency. Thus, any unilateral modification or decrease of service(s) without the Agency's permission to do so constitutes a decrease in service warranting a rent reduction under Section 2523.4 of the RSC. There is no evidence in the record supporting that the owner complied with this requirement for obtaining this Agency's permission to modify or reduce the trash chute service.

Furthermore, the Commissioner notes the authenticity of the report and the inspector's findings contained therein and finds that the Administrator's order is not erroneous and is reasonable as the inspection report revealed that the hallways contained trash chutes, however, they were inoperable and sealed off with no door knobs, preventing the tenant's access. The inspection report directly conflicts the owner's answer from August 4, 2020 that asserted that there were no trash chutes in the hallways. It is an established policy that where there is a dispute as to whether required services have been provided or maintained, the Rent Administrator may rely on the results of an agency inspection (see Policy Statement 90-2). As such, the Rent Administrator properly and reasonably relied on the Agency inspection conducted on March 23, 2021 which revealed that the trash/compactor chutes on all floors were not maintained as alleged by the tenants. The Rent Administrator's reliance on the inspector's training and experience in the area of building inspections as well as the inspector's impartiality in conducting the inspection was reasonable, and in compliance with the Agency's established policies and procedures.

The Commissioner rejects the owner's claim with respect to the trash chute condition being de minimis due to the passage of time. Section 2523.4 (f) of the RSC states that the passage of time may be considered in the finding of a de minimis condition, and that the passage of four years or more shall be considered presumptive evidence that the condition is de minimis. As a result, the passage of time is not determinative although presumptive, and the Rent Administrator has the discretion to decide if a condition is de minimis depending on the facts of the case. Here there is no merit to the owner's argument that the removal of the trash chutes herein should be treated as a de minimis condition as there is no evidence corroborating the owner's claim that the trash chutes have been removed for twenty-five years (the Commissioner notes that in the tenants' services complaint, they specify that the trash chutes do not have door knobs "or are difficult to open"). The Commissioner also notes that this de minimis claim was raised for the first time on appeal, and therefore is beyond the scope of the subject appeal pursuant to fundamental principles of the administrative review process and Section 2529.6 of the Code.

Based on the foregoing, the Commissioner finds that the Rent Administrator's decision under the subject rent reduction application, Docket No. IN610022B was proper and in accordance with the RSC and Agency policies and procedures. The owner's PAR has not established any basis to modify or revoke the Rent Administrator's decision.

The Commissioner notes that the owner filed an "Owner's Application to Restore Rent;" which was granted in part under Docket No. KM610036OR on May 2, 2022. The Commissioner advises the owner to file a fresh application to restore rent, if the facts so warrant. The Commissioner also advises the owner to file an application to modify or reduce required services with this Agency, if the facts warrant.

THEREFORE, in accordance with the relevant Rent Regulatory Laws and Regulations, it is ORDERED, that this petition is denied and that the Rent Administrator's order is affirmed.

ISSUED: MAY 26 2022

Woody Pascal
Deputy Commissioner

State of New York
Division of Housing and Community Renewal
Office of Rent Administration
Gertz Plaza, 92-31 Union Hall Street
Jamaica, NY 11433
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DIVISION OF HOUSING AND COMMUNITY RENEWAL
OFFICE OF RENT ADMINISTRATION
GERTZ PLAZA
92-31 UNION HALL STREET
JAMAICA, NEW YORK, 11433

IN THE MATTER OF THE ADMINISTRATIVE APPEAL OF:	:	
	:	ADMINISTRATIVE REVIEW
6701 5TH AVE. REALTY, LLC (OWNER)	:	DOCKET NO.: KO210008RO
	:	RENT ADMINISTRATOR'S
PETITIONER	:	DOCKET NO.: HU210005B

ORDER AND OPINION DENYING PETITION FOR ADMINISTRATIVE REVIEW

On March 7, 2022, the above-named petitioner-owner filed a Petition for Administrative Review ("PAR") challenging HU210005B, an order the Rent Administrator issued on January 31, 2022 (the "Order"), concerning the housing accommodation known as 6701 5th Avenue, Apt. [redacted], Brooklyn, NY 11220, wherein the Rent Administrator granted the tenants a rent reduction and directed the restoration of services.

The Commissioner has carefully reviewed the entire evidence of the record including that portion of the record that is relevant to the issue raised by the PAR.

In the PAR, the owner claims: "The owner and management company did not receive any notice or copy of this complaint before the order reducing rent. There is a 24-hour super on premises maintaining the building."

After careful consideration of the entire evidence of record, the Commissioner is of the opinion the petition should be denied.

Pursuant to Section 2523.4 of the Rent Stabilization Code (the "Code"), DHCR is authorized to order a rent reduction, upon application by a tenant, where it is found that an owner has failed to maintain required or essential services. Additionally, DHCR Policy Statement 90-2 states that the Rent Administrator may rely on an Agency inspection when making the determination in a matter.

In the proceeding below, the tenants filed a service complaint with the Agency, alleging that the entrance and lobby are dirty with garbage in the hall and there is peeling paint on the walls/ceilings. The owner was served with the notice of the tenants' complaint (the "Initial Notice") on October 10, 2019.

The Agency records indicate that the owner responded to the Initial Notice on December 4, 2019 when the owner claimed that the building is being swept and mopped on a regular basis, and all garbage is placed in containers outside at a designated garbage area; hallways and staircases are being cleaned regularly; areas that had peeling paint have been plastered and painted; all items were removed from hallways, fire escapes and the backyard; and that tenants with concerns can contact management at the numbers provided.

On January 4, 2020 an inspection was conducted at the subject premises when the DHCR inspector found the following:

1) Inadequate janitorial services in the building lobby – the floors need to be swept/mopped.
2) Inadequate janitorial service in the hallway – discarded items/garbage under the staircase leading to the second floor on the left. The floors need to be swept/mopped.
3) There was evidence of peeling paint on the lobby ceiling/wall near the entrance door.
4) There was inadequate janitorial service on the staircase – floors need to be swept/mopped.
5) There was evidence of peeling paint/plaster on staircase walls/ceiling in the bulkheads.
6) There was adequate janitorial service in the building entrance at the time of inspection.

A reinspection of the subject premises was conducted on March 15, 2021, when a DHCR inspector visited the building and found the following services not maintained:

1) Inadequate janitorial services in the building lobby – areas need to be properly swept and mopped.
2) Inadequate janitorial service in the building hallway – areas need to be properly swept and mopped.
3) Evidence of defective paint/plaster in the lobby – cracks/peeling paint/plaster on the walls and the ceiling.
4) Inadequate janitorial service throughout the staircases – areas need to be properly swept and mopped.
5) Evidence of defects were found with the staircase paint/plaster – holes/leak stains and peeling paint/cracks on walls/ceiling and bulkheads throughout.

Thereafter, on January 31, 2022, based on the results of the Agency inspections, the Rent Administrator granted the tenants a reduction in rent for the services found not maintained at the time of the inspections.

The Commissioner notes the owner's contention herein that the owner and management company did not receive any notice or copy of this complaint before the order reducing rent was issued, and there is a 24-hour super on premises maintaining the building. However, this unsubstantiated claim by the owner contradicts this Agency's record of the Notice and Transmittal of Tenant's Complaint that was mailed to 6701 5th Avenue Realty, LLC, P.O. Box

297065, Brooklyn, NY 11229 on October 10, 2019. Additional review of the underlying matter shows no evidence that the United States Postal Service returned the mail to the Agency because the mail could not be delivered. Furthermore, the record shows that the owner received notice of the tenants' complaint as the owner responded on the "Answer To Notice And/Or Application" form provided with the initial notice to the owner. Therefore, the Commissioner finds that the owner's claim that they did not have notice of the services complaint is merely self-serving and without merit.

Based on the foregoing, the Commissioner finds that the Rent Administrator correctly determined that the owner was not providing the required and essential services in the subject building and granted the tenant a rent reduction based on the findings of the Agency inspections conducted on January 4, 2020 and March 15, 2021. The Commissioner has concluded that the owner's PAR has not established any basis to modify or revoke the Rent Administrator's determination.

The owner is advised that it may submit an "Owner's Application to Restore Rent," if the facts so warrant.

THEREFORE, in accordance with the applicable provisions of the Rent Stabilization Law and Code, it is

ORDERED, the petition is denied and the Rent Administrator's Order is affirmed.

ISSUED: MAY 26 2022

Woody Pascal
Deputy Commissioner

State of New York
Division of Housing and Community Renewal
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There is no other method of appeal.

STATE OF NEW YORK
DIVISION OF HOUSING AND COMMUNITY RENEWAL
OFFICE OF RENT ADMINISTRATION
GERTZ PLAZA
92-31 UNION HALL STREET
JAMAICA, NEW YORK 11433

IN THE MATTER OF THE ADMINISTRATIVE APPEAL OF	
711 Realty Associates, LLC	ADMINISTRATIVE REVIEW DOCKET NO.: JS210047RO
PETITIONER	RENT ADMINISTRATOR'S DOCKET NO.: IT210017B

ORDER AND OPINION DENYING PETITION FOR ADMINISTRATIVE REVIEW

On July 23, 2021, the above-named petitioner-owner filed a petition for administrative review ("PAR") against an order issued on June 23, 2021, by the Rent Administrator concerning the housing accommodations known as 711 Brightwater Court, Various Apartments, Brooklyn, NY, wherein the Administrator granted the tenants a rent reduction and directed the restoration of services.

The Commissioner has reviewed all of the evidence in the record and has carefully considered the portion of the record relevant to the issues raised by the petition.

The owner, requesting a reversal of the Rent Administrator's order, contends that the lapse of the use of laundry washers and dryers in the subject premises was beyond the owner's control as it was the result of malfeasance perpetrated by third parties, not under the owner's control; that the owner does not, and has not directly operated the laundry equipment in the laundry room; that the operator, CSC Service Works, Inc. ("CSC"), leased the laundry room from the owner, and CSC owed the obligation for its operation; that under the terms of the lease, CSC was to install and operate the laundry room equipment in accordance with local laws, including the Department of Buildings ("DOB"), *inter alia*; that the owner received violations from the DOB based on improper installation of the laundry equipment and the operation of the laundry room; that pursuant to the violations, the owner retained counsel and commenced legal proceedings against CSC for immediate correction of the violations, and that when CSC failed to address the conditions, the owner sent CSC a Notice of Termination; and the owner started a hold-over proceeding against CSC at the Civil Court, Kings County, but CSC did not vacate the premises until December 31, 2019 pursuant to a Stipulation of Settlement.

The owner claimed further that during the pendency of the litigation with CSC, the owner made considerable efforts to, and entered into negotiations with Hercules Corp., to ensure a new laundry room, with a lease prepared for execution in early March of 2020, but the pandemic forestalled the final execution of the lease; that CRC Plumbing and Heating Corp. ("CRC") was consulted to do the necessary plumbing work, and that CRC contacted an architect, Philip Toscano, to work together on the project, whose affidavit the owner submitted for the first time with the PAR filing; that in narrow circumstances, the DHCR may allow a petitioner to submit with the petition certain facts or evidence established that it could not reasonably have been offered or included in the prior proceeding; that the affidavit of Mr. Toscano could not be submitted before the Rent Administrator as he had not been retained at the time; that Mr. Toscano had advised that the plans submitted by the company retained to bring the operation of the laundry room into DOB compliance were incomplete on their face and that they did not address the three violations that resulted in the shutting down of the laundry room, the washing machine and the dryers; and that counsel had advised the owner that the DHCR cannot properly hold the owner culpable for the conditions that have resulted in the rent reduction, as such holding would be a violation of the owner's due process rights, citing the Matter of Regina Metropolitan Co., LLC v New York State DHCR, 35 N.Y.3d 332 [2020].

The tenants' attorneys by submission dated October 26, 2021, contend that not all the tenants received DHCR notice of PAR dated September 16, 2021; arguing in response to the owner's PAR, essentially, *inter alia*, as follows: that the Agency's inspection of February 25, 2021 confirmed that the laundry room washers and the dryers were not functional at the time of the Agency's inspection; that they had not been functional for almost two years; that new evidence, on PAR, is generally not permitted, and that in the event that the owner's new submission is considered, the owner's PAR must still be denied as the owner had not argued that the Rent Administrator's order was wrongly decided or be reconsidered; that the owner did not deny the laundry room as a required service pursuant to Section 2520.6(r); that the service was provided to the tenants for many years, essentially, if not exclusively, for the tenants of the subject premises; that the laundry room service was not in place at the time of the tenants filing of complaint, at the time of Agency's inspection, and at the time of submission of the tenants' response to the owner's PAR; that the fact that the owner who owns the entire building chose to enter into a lease with a third party does not alter the fact that the owner owns the entire building, laundry room and its facilities, and that the tenant, selected and entrusted by the owner, who operated the laundry room, was not an independent contractor within the meaning of the Code; and that all the three DOB violations of 2019 were issued to the owner, and all efforts made by the owner do not change the fact of the laundry room being not operational.

After careful consideration of the entire evidence of record, the Commissioner is of the opinion that the petition should be denied.

Pursuant to Section 2523.4 of the Rent Stabilization Code ("RSC" or "the Code"), DHCR is authorized by law to direct the restoration of services and grant a rent reduction, upon application by a tenant where it is determined that required services have not been maintained. Section 2520.6(r) of the Code defines required services as that space and those services which the owner

was maintaining or was required to maintain on the applicable base dates, and any additional space or services provided or required to be provided thereafter by applicable law.

A review of the record reveals that the tenant of Apartment [redacted] commenced the proceeding herein below on August 27, 2020, alleging a diminution in laundry room service. On October 16, 2020, the owner was served with a copy of the tenant's complaint.

The owner, through counsel, submitted a response dated October 26, 2020, wherein the owner, in substance, claimed that the laundry room was operated by CSC, however, CSC failed to provide the laundry room service and that the failure of CSC could not be attributed to the owner.

The Agency's records indicate that the Rent Administrator requested an inspection of the laundry room in the subject premises during the proceeding below. The Commissioner notes that pursuant to the Agency's February 25, 2021 inspection, the laundry room washers and the laundry room dryers were found not maintained at the time of inspection. Accordingly, the Rent Administrator, on June 23, 2021, issued an order granting the tenant a rent reduction for the laundry room washers and laundry room dryers that were found not maintained.

The Commissioner notes that the owner has submitted ample information to argue the owner's contention that the lack of provision of laundry room services (washers and dryers) was not under the owner's direct control. However, contrary to the owner's claims, the Commissioner notes that in the Agency's database, on the registered Building Services information page, "laundry room" is one of the services listed by the owner as services provided by the owner in the subject premises. The Commissioner notes that this piece of evidence, without more, suffices for a finding that the laundry room services are required services pursuant to Sections 2520.6(r) and 2523.4 of the RSC, and therefore the laundry room diminution warrants a rent reduction in this case. Thus, the owner's argument herein is without merit and is merely self-serving. Additionally, the owner's contention that the service was only provided by a third party is unsupported by the records.

Therefore, as noted above, the owner has an obligation under the Code, to provide required services, and in the instant case, since laundry room service is listed in the Agency's database as a service that the owner provides, the Commissioner notes that, unless and until the owner files a decrease or modification of services application pursuant to Sections 2522.4(d) or (e) of the Code, and such application is granted by the Agency, the owner has to ensure that laundry room service is provided in the subject premises.

The Commissioner notes that the case cited by the owner, Matter of Regina Metropolitan Co., LLC, is not dispositive of this case as that case relates to overcharge provisions of the Housing Stability and Tenant Protection Act of 2019.

Based on the foregoing, the Commissioner finds, after a review of the entire records, that the owner's PAR has not established any basis to modify or revoke the Administrator's determination. Accordingly, the owner's petition is denied.

The Commissioner notes that the owner may file a rent restoration application, if the facts warrant.

THEREFORE, in accordance with the applicable provisions of the Rent Stabilization Law and Code, it is

ORDERED, that this petition be, and the same hereby is, denied, and that the Rent Administrator's order be, and the same hereby is, affirmed.

ISSUED: MAY 26 2022

WOODY PASCAL
Deputy Commissioner

State of New York
Division of Housing and Community Renewal
Office of Rent Administration
Gertz Plaza, 92-31 Union Hall Street
Jamaica, NY 11433
Web Site: www.hcr.ny.gov

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STATE OF NEW YORK
DIVISION OF HOUSING AND COMMUNITY RENEWAL
OFFICE OF RENT ADMINISTRATION
GERTZ PLAZA
92-31 UNION HALL STREET
JAMAICA, NEW YORK 11433

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IN THE MATTER OF THE
ADMINISTRATIVE APPEAL OF :

ADMINISTRATIVE REVIEW
DOCKET NO.: JU420034RO

229-231 East 12th Associates :

RENT ADMINISTRATOR'S
: DOCKET NO.: HP420050B

PETITIONER

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ORDER AND OPINION GRANTING PETITION FOR ADMINISTRATIVE REVIEW

The above-named petitioner-owner properly re-filed a petition for administrative review (PAR) against an order issued by the Rent Administrator on June 22, 2020, concerning the housing accommodations known as 229 E. 12th Street, Apartment [redacted] New York, NY, wherein the Administrator granted the tenant a rent reduction and directed the restoration of services.

The Commissioner has reviewed all of the evidence in the record and has carefully considered the portion of the record relevant to the issues raised by the petition.

The owner requests a reversal of the Rent Administrator's order and contends that the tenant's use of the storage bin was temporary; that storage space was not provided for in a specific rider to the tenant's lease, nor was it ever provided for on a permanent basis; that the owner only allowed the tenant to store some of his belongings on a temporary basis while needed beam work was completed to the tenant's floor in the tenant's unit; and that the tenant failed to remove the items from the temporary storage space upon the completion of work.

The owner argues further that storage space was not a service; that no agreement was signed, and no fee was paid by the tenant; that the initial service registration for the subject

apartment did not include storage space; and that the condition complained of is *de minimis*, not rising to the level of failure to maintain an essential service.

The tenant was provided with an opportunity to respond to the owner's PAR on October 14, 2021, however, the tenant did not respond to the owner's claims on appeal.

Pursuant to Sections 2202.16 and 2202.21 of the New York City Rent and Eviction Regulations, (the Regulations), DHCR is authorized to order a rent reduction, upon application by a tenant, where it is found that an owner has failed to maintain required or essential services. Pursuant to Section 2202.16 of the Regulations, conditions that are *de minimis* in nature may not rise to the level of a failure to maintain an essential service. According to the Schedule of *De Minimis* Conditions of Section 2202.16, the removal or reduction of storage space is considered a *de minimis* condition, unless storage space is provided for in a specific rider to the lease, or unless the landlord has provided formal storage boxes or bins to tenants within three years of the filing of the tenant's complaint.

After careful consideration of the entire evidence of record, the Commissioner is of the opinion that the petition should be granted.

On April 15, 2019, the tenant commenced the proceeding below, wherein the tenant alleged a diminution in laundry room and storage room services due to a lack of access resulting from elevator work. The complaint was served on the owner on May 22, 2019.

On May 30, 2019, the owner responded to the tenant's complaint and alleged that "the only access to the laundry room in the basement of the building is by elevator" and the only elevator in the building is undergoing a "full modernization".

The records below indicates that the Rent Administrator requested an Agency's inspection of the conditions complained about by the tenant. The inspection records indicate that a physical inspection of the items complained of was conducted on October 30, 2019. The Commissioner notes that the inspection report reveals that the inspector was unable to gain access into the laundry room as the door to the laundry room was locked and the elevator through which the tenants could access the laundry room was not operational at the time of the inspection. Regarding the storage space, the inspector stated that there was no storage space in the basement, and that there was no evidence of previous/existing storage space in the building.

On June 22, 2020, the Rent Administrator granted the tenant a rent reduction for the laundry room service and storage space access.

Based on the foregoing, the Commissioner finds that the Rent Administrator's granting of a rent reduction for storage service access was in error as the only item for which a rent reduction was warranted is the laundry room service. There was no evidence that "formal storage boxes or bins" were provided to the tenant, or that storage space service was provided for in the tenant's lease. Therefore, the Commissioner finds that the Rent Administrator's order under Docket No.

HP420050B is herein modified to remove "storage service access" as a service found not maintained.

The Commissioner notes that any arrears due the owner as a result of this Order and Opinion may be paid by the tenant in equal monthly installments equivalent to the amount of the rent reduction taken.

THEREFORE, in accordance with the applicable sections of the New York City Rent and Eviction Regulations, it is

ORDERED, that this petition be, and the same hereby is, granted, and that the Rent Administrator's order be, and the same hereby is, modified, in that the only item for which a rent reduction was warranted is the laundry room service, and that the Rent Administrator's order, as herein modified by this Commissioner's order, is so otherwise affirmed; and it is further

ORDERED, that any arrears due the owner, by the tenant, may be paid by the tenants in equal monthly installments equivalent to the amount of the rent reduction taken.

ISSUED: JUN 2 2022

WOODY PASCAL
Deputy Commissioner

State of New York
Division of Housing and Community Renewal
Office of Rent Administration
Gertz Plaza, 92-31 Union Hall Street
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Web Site: www.hcr.ny.gov

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STATE OF NEW YORK
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OFFICE OF RENT ADMINISTRATION
GERTZ PLAZA
92-31 UNION HALL STREET
JAMAICA, NEW YORK 11433

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IN THE MATTER OF THE ADMINISTRATIVE APPEAL OF	ADMINISTRATIVE REVIEW DOCKET NO.: KM430035RO
RSP 100 PROPERTY, LLC	
PETITIONER	RENT ADMINISTRATOR'S DOCKET NO.: IX430003B

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ORDER AND OPINION DENYING PETITION FOR ADMINISTRATIVE REVIEW

On January 27, 2022, the above-named petitioner-owner filed a Petition for Administrative Review ("PAR") against an order the Rent Administrator issued on December 24, 2021 (the "order"), concerning the housing accommodation known as 314 West 100th Street, New York, New York, wherein the Rent Administrator granted the tenants' building-wide rent reduction application upon finding that the laundry room washers and dryers were not being maintained as the owner changed the washers and dryers from coin operated to smartphone operated equipment and that there was no evidence that the owner filed and was granted permission in an "Application to Modify Services" with DHCR prior to the change in the tenants' laundry room service.

The Commissioner has reviewed the entire evidence of the record including that portion of the record that is relevant to the issues raised by the PAR.

The owner, by counsel, seeks a reversal of the Rent Administrator's order asserting the order is arbitrary, capricious, and illegal. The owner claims a rent reduction was not warranted since 1) the subject apartments are condominium units and the owner does not have control over the laundry service; 2) the laundry service is operated and controlled by a third-party independent contractor who has no common ownership with the owner of the subject units; 3) the laundry service is being provided to the tenants as supported by the findings of the Agency

inspection; and 4) the change from coin-operated machines to smartphone-operated machines is a de minimis condition.

The tenants, by counsel, oppose the petition asserting, *inter alia*, that the owner's reliance on the fact that the present laundry room service is being provided by a third party is insufficient as the owner has not provided any documentation to support the claim that the laundry room service is currently, and/or has been operated for the past forty years by a third party vendor, that the tenants do not own "smartphones" due in part to the high costs associated with ownership, and that the tenants, due to their ages, have limited knowledge regarding the operation of "smartphones" and their related applications.

The owner, in an April 4, 2022 letter, responded to the tenants' answer contending, *inter alia*, that the tenants have resubmitted their November 19, 2021 submission as the date has been crossed out and a new date, February 19, 2022 has been written underneath, and that the tenants' allegation of discrimination did not form the basis of the Rent Administrator's order.

After careful consideration of the entire evidence of record, the Commissioner is of the opinion that the petition should be denied.

Pursuant to Rent Stabilization Code Sections 2520.6(r) and 2523.4 ("RSC" or the "Code"), the Rent Administrator is authorized to order a rent reduction, upon application by the tenant, where it is found that an owner has failed to maintain required or essential services. Ancillary services concern that space and those required services not contained within the individual housing accommodation which the owner was providing on the applicable base date, and any additional space and services provided or required to be provided thereafter by applicable law. These may include, but are not limited to, garage facilities, laundry facilities, and recreational facilities [RSC Section 2520.6(r)(3)].

RSC Section 2520.6(r)(4)(xi) provides that when such ancillary services for which there is or was a separate charge for and are or was provided on the applicable base date and at all times thereafter by an independent contractor pursuant to a contract or agreement with the owner, the ancillary service will not be deemed a required service.

Furthermore, under the Code and long-standing Agency policy, an owner may not unilaterally eliminate or modify a required service without Agency permission. Section 2522.4 (d) and (e) states that an owner is required to file an application to decrease or modify required services which is granted by this Agency, prior to doing so, provided that doing so would not be inconsistent with the Rent Stabilization Law and Code

In the proceeding below, on December 21, 2020, the tenants filed a complaint based upon their claim there was a decrease in laundry room service, a service that had been provided since as early as 1969. The tenants submitted a memo from the owner dated January 28, 2018 informing the tenants that the laundry room would be closed until further notice. This notice was received after the laundry room was locked in December 2017. Upon reopening in August 2020, the tenants claimed the laundry room's new equipment required a "smartphone" to operate. The

tenants asserted that the owner did not file an application with DHCR to modify the laundry service from coin-operated laundry equipment to smartphone operated equipment, and that they do not have smartphones in which to utilize the new laundry equipment.

On January 26, 2021, the owner was afforded an opportunity to respond to the tenants' application (the "Initial Notice"). The owner, through its counsel, responded to the application claiming the subject building is a Condominium building with the owner owning the subject apartments as well as several others in the building. The owner contended that the owner does not control or provide the laundry room service, and that the laundry room service has been continuously provided by and operated by a third-party independent contractor, Coinmach, for which there is no common ownership between the unit owner and the contractor.

Subsequently, in a follow up submission dated July 6, 2021, the tenants, by counsel, asserted, *inter alia*, that the tenants' laundry room service had been provided by the previous owner and not by an independent contractor.

According to the record both the tenants and owner filed additional submissions to support their claims with the owner submitting the affidavit of [redacted] dated September 16, 2021. [redacted] the Superintendent of the subject building for "over 4 years", averred that the "Complainant" has access to the laundry room service, and there has not been a decrease in services. Additionally the Superintendent stated upon information and belief that the "Complainant," with the exception of the tenant of record for apartment [redacted] all possess "smartphones and can operate the laundry room service"; that only the tenant of record for apartment [redacted] utilizes the common laundry room service; and that the tenants of record for apartments [redacted] have laundry service in their individual units.

A further review of the record indicates the Rent Administrator requested an Agency inspection which was conducted on May 7, 2021. The Agency inspector conducted an inspection of the laundry room condition. The inspector found 1) the laundry room is operable 24/7 for all tenants with access to the laundry room being provided throughout the building by the elevator and basement without restrictions and locks; 2) three operable washers and three operable dryers; 3) All the washers/dryers are pay service by smart phone or Wi-Fi digital gadgets; 4) No coin/cash/card pay services for washers and dryers in the laundry room; 5) the laundry room belongs to the building and building owner; 6) The equipment (dryers/washers) belongs to and is serviced by CSC Company; 7) the laundry room service is only provided for building tenants; and 8) the laundry room was renovated at the beginning of 2020 according to the Superintendent.

On December 24, 2021, the Rent Administrator, based upon a complete review of the record and all the supporting submissions from the tenants and owner, including the inspection report dated May 7, 2021, granted the tenants' rent reduction application as the Administrator determined the change in the essential service from coin-operated to smart phone/Wi-Fi device operated laundry equipment (dryers/washers) was a reduction in laundry room services and that

the owner had not filed an "Application to Modify Services" with DHCR prior to the change in service.

In light of the foregoing, the Commissioner finds that the Rent Administrator properly granted the tenants a rent reduction as the facts established that the tenants' laundry room service was changed from coin-operated to smartphone/Wi-Fi device operated which restricted the tenants' access to the laundry service without prior Agency approval.

The Commissioner finds that the Rent Administrator's determination was not arbitrary, capricious, or illegal, and that the owner's contentions are without merit. The Commissioner notes that the rent regulation laws require owners to maintain, *inter alia*, the required services, including required ancillary services, until an application to decrease or modify same has been filed, and an order permitting such has been issued by the Rent Administrator. Accordingly, a unilateral elimination or modification of a required service without the Agency's permission to do so constitutes a decrease in service under Section 2523.4 of the RSC.

The Commissioner notes the owner's reliance on the Matter of Gresham[1], and the Matter of Gertel[2] is misplaced. In both of the cited cases, DHCR found the submitted evidence clearly supported the owners' claims that the service was being continuously operated by an independent third-party vendor which is not the case herein. Here, the evidence, which was not refuted by the owner, shows the tenants' laundry room service had been provided by the previous owner since 1969 and that the change from coin operated to smartphone/Wi-Fi device operated occurred in August 2020 after the laundry room reopened after it was closed by the owner in 2018.

The Commissioner further notes the owner's additional contention that the rent reduction was not warranted as the equipment change from coin-operated to smartphone operated is de minimis relying on the Matter of Smith[3] to support the assertion. However, the owner's reliance on the Matter of Smith is erroneous as the Commissioner therein found that the change from a coin operated system to a magnetic card system had only a minimal impact on the tenants and did not affect their use of the laundry. Here the evidence presented showed the tenants were impacted as they were unable to use the laundry room service entirely without the use of additional personal equipment via a smartphone/Wi-Fi device.

Based on the totality of the record, the Commissioner finds that the Rent Administrator correctly granted the tenants a rent reduction, and the owner's PAR has not established any basis to modify or revoke the Rent Administrator's determination.

The Commissioner notes that the owner may commence a proceeding pursuant to Section

[1] DHCR Docket No. VA410051RT.
[2] DHCR Docket No. BG410106RO.
[3] DHCR Docket No. EP210014RT.

2522.4 (d) and (e) of the RSC to modify or substitute required services.

The owner is advised to file an "Owner's Application to Restore Rent," if the facts so warrant.

THEREFORE, in accordance with the relevant Rent Regulatory Laws and Regulations, it is

ORDERED, that this petition is denied and that the Rent Administrator's order is affirmed.

ISSUED: JUN 2 2022

Woody Pascal
Deputy Commissioner

State of New York
Division of Housing and Community Renewal
Office of Rent Administration
Gertz Plaza, 92-31 Union Hall Street
Jamaica, NY 11433
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OFFICE OF RENT ADMINISTRATION
GERTZ PLAZA
92-31 UNION HALL STREET
JAMAICA, NEW YORK 11433

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IN THE MATTER OF THE ADMINISTRATIVE APPEAL OF

CHAI FOUNDATION INC

PETITIONER

ADMINISTRATIVE REVIEW DOCKET NO.: JW410018RO

RENT ADMINISTRATOR'S DOCKET NO.: IQ410003B

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ORDER AND OPINION DENYING PETITION FOR ADMINISTRATIVE REVIEW

On November 10, 2021, the above-named Petitioner-owner filed a Petition for Administrative Review ("PAR") against IQ410003B, an order the Rent Administrator issued on October 12, 2021 (the "order"), concerning the housing accommodations known as 32 East 38th Street, Apartment [redacted] New York, New York wherein the Rent Administrator, based on Agency inspections conducted at the subject premises on December 16, 2020, February 22, 2021 and May 17, 2021, found that the owner failed to maintain services in regard to the lobby and second floor landing as the construction of a private stairway reduced the size of the lobby and second floor landing areas and the second floor door posed a hazard as it opens outward onto the second floor landing and the door is locked, preventing tenant access to the roof, if needed.

The Commissioner has reviewed the entire evidence of the record including that portion of the record that is relevant to the issues raised by the PAR.

In the PAR, the Petitioner-owner through its representative, seeks a reversal of the Rent Administrator's order, claiming that the findings in the order are erroneous; that to conclude that the reduction in lobby size warranted a rent reduction is contrary to Section 2523.4(e) of the Rent Stabilization Code ("RSC or "the Code") as a reduction in lobby space does not affect the tenant's use and enjoyment of the premises; and the lobby size reduction is considered de minimis under the RSC; that the subject door was approved by the New York City Department of Buildings ("DOB") and that the DOB would not have approved same if it did not "comply with code"; that access to the roof is limited to emergency situations when the door opens

automatically in the event of a fire; that the use of the roof is not a required service and that the tenant does not have "permission to access the roof" as the roof is for emergencies only; and that the tenant did not specifically mention which way the door opens in their complaint, nor would the tenant "even know whether or not this is Code complaint".

The tenant submitted a rebuttal response to the owner's petition stating that the reduction in the size of the lobby poses a problem in case of an emergency, especially in a situation if the tenant needs a stretcher to be taken out of her apartment and that the same argument goes for the door that swings out towards the tenant's front door which creates a safety issue, and the egress to the roof that has been terminated, which has also become problematic for service repairs that warrant inspection from the roof area like the tenant's cable and internet.

After careful consideration of the entire evidence of record, the Commissioner is of the opinion that the petition should be denied.

Pursuant to Section 2523.4 of the RSC, the Rent Administrator is authorized by law to direct the restoration of services and grant a rent reduction, upon application by a tenant where it is determined that required services have not been maintained. Policy Statement 90-2 states that the Rent Administrator may rely on an Agency inspection when making a determination and New York Courts have consistently upheld the reliability of the DHCR inspections. In addition, Sections 2522.4 (d) and (e) states that an owner is required to file an application to modify or reduce required services with this Agency, and such application is granted prior to doing so, provided that doing so would not be inconsistent with Rent Stabilization Code and Law.

The tenant commenced the proceeding below on May 14, 2020, alleging that the front door was left open during construction; the lobby was reduced to create a new store; the landing was reduced from 20 feet by 6 feet to approximately 4 feet by 4 feet; and the new construction had been impactful to the tenant as free egress was compromised considering that the tenant occasionally had medical emergencies and was taken out on a stretcher.

The owner was offered an opportunity to respond by service of the tenant's application on August 24, 2020. According to the records, the owner submitted their rebuttal opposing the tenant's application by correspondence dated December 21, 2020 and contended that owner had to connect the first floor with the third floor, bypassing the tenant's apartment as part of its "housing program", that the new landing sizes were compliant with the New York building code and has been approved by the DOB and does not interfere with reasonable access to tenant areas, and that the tenant grossly exaggerated their allegations.

Additional information was requested by the Agency and the tenant's response dated November 24, 2020 specifically stated that the configuration and dimensions for the stairs and landings were reduced as follows: the second floor landing size was reduced from approximately 6 ½ feet by 15 feet to about 5 feet by 4 feet; and that the owner added a private staircase and a door that is 4 feet away from the tenant's apartment door in which if the door opened while the tenant was going downstairs, it would hit the tenant; and the apartment had no fire escape in the back.

The record indicates that three separate inspections of the premises were conducted on December 16, 2020, February 22, 2021 and May 17, 2021 whereupon the inspector observed, in relevant part, that at the time of the inspections, there was evidence that the lobby and the second floor landing were reduced in size to construct a private stairway; the door on the second floor poses a hazard as it opens outward onto the second floor landing and was locked, thereby restricting the tenant's access to the roof should there be need. The inspector attached date and time-stamped photographs of the conditions to substantiate their findings. Further, a review of the violations issued by the New York City DOB revealed that a violation was issued on August 13, 2020 for the second floor landing door which was a potential hazard to the tenants using the staircase connected to the landing (ECB Violation # 39026804Y).

Consequently, as a result of this persuasive and evidentiary report of findings at the time of the Agency inspections, along with a review of DOB ECB Violation #39026804Y, and all of the submissions from the Petitioner and the tenant, the Rent Administrator determined that a rent reduction was warranted for the issues with the lobby and second floor landing and granted the tenant's services application under Docket No. IQ410003B on October 12, 2021.

The Commissioner has carefully reviewed all the facts as presented and concludes that the Rent Administrator's order is correct as issued, and that the Rent Administrator's reliance on the Agency records and inspector's training and experience in the area of building inspections as well as his impartiality in conducting the inspections and taking the photographs was reasonable.

The Commissioner notes the owner's contention that a rent reduction is not warranted as the reduction in the landing size is considered de minimis. However, the Commissioner finds that the owner's contentions are without merit and merely self-serving. Here the record reveals that the reduction in landing size was not merely a de minimis condition as the owner claims, but in fact, the reduced space created an access issue for the tenant in that the area was smaller and also has a door that poses as a hazard due to the way it opens in that smaller space. As the tenant experienced actual, measurable reduction of the landing space which also created a hazard due to the door on the second-floor landing, the finding of a rent reduction was warranted for this issue.

Furthermore, the Rent Administrator did not err in considering the Agency inspector's reports and their findings of the reduction of the size of the landing areas. The Commissioner notes that any observable condition reported by the Agency's impartial inspector for which no alternative expertise is required may be properly relied upon by the Agency, and in the instant case, the reduction in size of the lobby and second floor landing issue was discernable by visual inspection by the Agency's inspector. The Rent Administrator properly relied on the inspection report in accordance with DHCR Policy Statement 90-2. See also Matter of 113-117 Realty, LLC v. DHCR, 2021 N.Y. Slip. Op. 06432 [1st Dept. 2021] citing to Matter of Sherman v. DHCR, 210 AD2d 486 [2nd Dept. 1994]. The Commissioner also notes that it is irrelevant that the DOB may have approved the construction as the owner claims. DHCR is the entity charged with enforcing the Rent Stabilization Law and Code (see 495 Estates v. DHCR, 2022 NY Slip Op 30942[U] [Sup. Ct., NY County 2022]).

Based on the foregoing, the Commissioner finds that the Rent Administrator's order is not arbitrary and capricious, and that the Rent Administrator properly granted the tenant's rent

reduction application based on the Agency inspections. The owner has not established any basis to modify or revoke the Rent Administrator's order.

The owner is advised that it may file a rent restoration request with this Agency, if the facts so warrant

The owner is also advised to file an application to modify or reduce required services pursuant to the provisions of Sections 2522.4 (d) and (e) of Rent Stabilization Code, if the facts so warrant.

THEREFORE, in accordance with the relevant Rent Regulatory Laws and Regulations, it is

ORDERED, that this petition is denied and that the Rent Administrator's order is affirmed.

ISSUED: JUN 3 2022

Woody Pascal
Deputy Commissioner

State of New York
Division of Housing and Community Renewal
Office of Rent Administration
Gertz Plaza, 92-31 Union Hall Street
Jamaica, NY 11433
Web Site: www.hcr.ny.gov

Right to Court Appeal

This Deputy Commissioner's order can be further appealed by either party, only by filing a proceeding in court under Article 78 of the Civil Practice Law and Rules seeking judicial review. The deadline for filing this "Article 78 proceeding" with the courts is within 60 days of the issuance date of the Deputy Commissioner's order. This 60-day deadline for appeal may be extended by executive orders at https://governor.ny.gov/executiveorders. No additional time can or will be given. In preparing your papers, please cite the Administrative Review Docket Number which appears on the front page of the attached order. If you file an Article 78 appeal, the law requires that a full copy of your appeal papers be served on each party including the Division of Housing and Community Renewal (DHCR). With respect to DHCR, your appeal must be served on DHCR Counsel's office at 641 Lexington Ave, New York, NY 10022.

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There is no other method of appeal.

STATE OF NEW YORK
DIVISION OF HOUSING AND COMMUNITY RENEWAL
OFFICE OF RENT ADMINISTRATION
GERTZ PLAZA
92-31 UNION HALL STREET
JAMAICA, NEW YORK, 11433

IN THE MATTER OF THE ADMINISTRATIVE APPEAL OF:	:	
452 East 29th Street Holdings, LLC. (OWNER)	:	**ADMINISTRATIVE REVIEW DOCKET NO.: HU210026RO**
	:	**RENT ADMINISTRATOR'S DOCKET NO.: HO210021B**
PETITIONER	:	

ORDER AND OPINION GRANTING, IN PART, PETITION FOR ADMINISTRATIVE REVIEW

On September 26, 2019, the above-named petitioner-owner filed a Petition for Administrative Review ("PAR") of an order the Rent Administrator issued on September 17, 2019 (the "Order"), concerning the housing accommodation known as 456 East 29th Street, [redacted], Brooklyn, New York 11226, wherein the Rent Administrator granted the tenant a rent reduction.

In the PAR, the petitioner-owner requests a reversal of the Rent Administrator's Order. The petitioner-owner contends that the building was newly constructed in 2016, a boiler was installed for each individual apartment before any tenant moved into the building and that the tenants are reimbursed monthly for costs of hot water in the amount of $35.00. The tenants responded to the PAR. The tenants contend that they should not be charged for heat and gas and that their monthly bill for heat and gas is on average $121.00.

Subsequently, during the pending PAR proceeding, the Administrative Review Unit requested additional information from the petitioner-owner on February 4th, 2022, namely a 421-a Regulatory Agreement and all leases for the tenants.

On February 23, 2022 the owner submitted the initial Rent Stabilized Lease, signed and dated by the subject complaining tenants on July 17, 2017 for a one-year lease term beginning July 15, 2017 to July 14, 2018 (which includes a "Notice of Tenants 421-a Rider to Lease

Agreement signed by both parties), a Renewal Lease Form dated April 14, 2018 that was unsigned, a Renewal Lease Form dated April 15, 2019 that was signed and dated by the subject tenants on August 26, 2019 for a one-year lease term, and an "Apartment Lease" beginning August 1, 2020 to July 31, 2021, signed by new tenants.

After careful consideration of the entire evidence of record, the Commissioner is of the opinion the petition should be granted in part, to the extent that the Rent Administrator's order is modified to reflect a rent reduction for the owner unilaterally transferring the cost of providing hot water to the tenant.

Pursuant to the Rent Stabilization Law and Code and longstanding policy of the DHCR and predecessor agencies, generally a rent regulated tenant is not considered to be liable for the cost of providing heat and hot water. The provision of heat and hot water is a fundamental service which an owner must continue to provide, and which must be included in a tenant's rent.

Rent Stabilization Code ("RSC" or "Code") Sections 2520.6(r) and 2522.4(d) and (e) require an owner to provide and maintain all required services unless and until an owner files an application to decrease or modify such services and an order permitting such decrease has been issued[1]. RSC Section 2522.4 provides that no such reduction in rent, decrease in services, or modification or substitution of required services shall take place prior to the approval of the owner's application by the DHCR. Sections 2522.4(d) and (e) of the Code further provides that such decrease, modification, or substitution must not be inconsistent with the Rent Stabilization Law or Code.

Based on the evidence of record including the owner's response to the tenants' services application on April 15, 2019 wherein the owner did not refute the tenant's claims that the tenants were paying for the costs of the hot water, on September 17, 2019, the Rent Administrator found the owner unilaterally transferred the cost of providing heat and hot water to the tenant and granted the tenant's application ordering a rent reduction. The Administrator having found that the owner had failed to file an application to modify services for providing heat and hot water as required by Section 2522.4(d) of the Code, also directed the owner to assume the costs of providing heat and hot water to the tenant's apartment. The Rent Administrator noted that should the owner fail to assume the costs of providing heat and hot water, including reimbursement to the tenant from May 1, 2019, the effective date of the order, the tenant was directed to deduct the costs of the utility bills, as it related to the provision of heat and hot water, from the monthly rent until the owner restored the services.

After a review of the evidence submitted, the Commissioner finds that the tenant sought a rent reduction below based on the tenant's complaint that the owner was not paying for the heat and hot water. However, the Rent Administrator's decision to impose a rent reduction and related relief on the grounds that the owner had taken unilateral action to transfer the costs of providing heat to the apartment cannot be sustained as the initial Rent Stabilized Lease, signed

[1] Pursuant to Section 2520.6(r)(4), the base date for required services shall be for housing accommodations subject to the Rent Stabilization Law pursuant to Section 421-a of the Real Property Tax Law, for building-wide and individual dwelling unit services: the date of the issuance of the initial Certificate of Occupancy.

and dated by the subject complaining tenants on July 17, 2017, states specifically that heat is a utility that is the responsibility of the tenant. The Commissioner finds a rent reduction as it pertains to heat specifically is unwarranted and the Administrator's order must be modified to remove the finding that the owner unilaterally transferred the service of providing heat at the owner's sole cost to the tenant.

The Commissioner takes administrative notice of the data in DHCR's registration files, which is based on information supplied by the owner and filed in the initial registration for the subject building, effective June 12, 2017. The initial building registration indicates that heat is paid by the tenant.

The Commissioner also finds that the Rent Administrator correctly considered the entire evidence below to determine that the owner, without DHCR approval, modified the hot water services for the subject apartment and transferred the costs of the hot water to the tenant, in violation of the tenant's lease and RSC Section 2522.4. A review of the tenant's initial lease clearly states on page two "Hot Water: Paid by Owner". As noted above, under RSC Section 2522.4 (d) and (e), an owner is required to maintain required services unless and until an owner files an application to decrease or modify such services is granted by the DHCR. In this case, the owner is required to provide hot water, and the record shows that instead the tenant was paying for such services, and that the owner has not filed an application to modify or decrease such service with this Agency. The Commissioner therefore finds that the Rent Administrator properly granted a rent reduction for the hot water service in this case.

The Commissioner notes that once the owner restores the tenant's hot water service, the owner may file an application to restore the rent, if the facts so warrant. The owner may also file an "Owner's Application for Modification of Services", if the facts so warrant.

THEREFORE, in accordance with the applicable provisions of the Rent Stabilization Law and Code, it is

ORDERED, that the Petition is hereby granted in part, and the Rent Administrator's Order is hereby modified according to this Commissioner's Order, and the Rent Administrator's Order, as modified, is so otherwise affirmed.

ISSUED: JUN 23 2022

Woody Pascal
Deputy Commissioner

State of New York
Division of Housing and Community Renewal
Office of Rent Administration
Gertz Plaza, 92-31 Union Hall Street
Jamaica, NY 11433
Web Site: www.hcr.ny.gov

Right to Court Appeal

This Deputy Commissioner's order can be further appealed by either party, only by filing a proceeding in court under Article 78 of the Civil Practice Law and Rules seeking judicial review. The deadline for filing this "Article 78 proceeding" with the courts is within 60 days of the issuance date of the Deputy Commissioner's order. This 60-day deadline for appeal may be extended by executive orders at https://governor.ny.gov/executiveorders. No additional time can or will be given. In preparing your papers, please cite the Administrative Review Docket Number which appears on the front page of the attached order. If you file an Article 78 appeal, the law requires that a full copy of your appeal papers be served on each party including the Division of Housing and Community Renewal (DHCR). With respect to DHCR, your appeal must be served on DHCR Counsel's office at 641 Lexington Ave, New York, NY 10022.

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There is no other method of appeal.

STATE OF NEW YORK
DIVISION OF HOUSING AND COMMUNITY RENEWAL
OFFICE OF RENT ADMINISTRATION
GERTZ PLAZA
92-31 UNION HALL STREET
JAMAICA, NEW YORK, 11433

IN THE MATTER OF THE ADMINISTRATIVE APPEAL OF:	:	**ADMINISTRATIVE REVIEW DOCKET NO.: JN410036RO**
900 Eight Avenue Condo LLC. (OWNER)	:	**RENT ADMINISTRATOR'S DOCKET NO.: HS410030B**
PETITIONER	:	

ORDER AND OPINION DENYING PETITION FOR ADMINISTRATIVE REVIEW

On February 25, 2021, the above-named petitioner filed a Petition for Administrative Review ("PAR") of an order the Rent Administrator issued on January 29, 2021 (the "Order"), concerning the housing accommodation known as 260 West 54th Street, New York, New York 10019, wherein the Rent Administrator granted the tenant's application for a rent reduction due to a decrease in services.

In the PAR, the petitioner requests a modification of the Rent Administrator's Order that found that doorman services were not maintained. The petitioner contends that doorman services are provided and that they are provided, "regardless of whether the Building staff member tasked with opening the door holds the title 'doorman,' 'concierge' or 'porter." The petitioner further contends that a decrease in staff, that does not affect an actual service, is *de minimis* and that the tenants' failure to establish that a designated doorman was employed at the building after 2010 gives rise to the presumption that doorman services are *de minimis*. On March 17th, 2021, the petitioner filed a supplement to the PAR. In that supplement, the petitioner submits a copy of an Agency inspection report, procured through a Freedom of Information Law (FOIL) request, wherein an Agency inspector found that, "concierge and doorman are provided 24/7," during an inspection that occurred on November 21st, 2019 in connection with the tenants' application for a rent reduction under Docket No. HS410030B.

The tenants filed an initial reply and several supplemental replies to the instant PAR. In these submissions, the tenants contend that there were, "two staff in the lobby: one at the door

who was responsible for opening the door and one who was behind the desk," up until 2018 and that the discontinuation of doorman services is not *de minimis*.

After a review of the Rent Administrator's proceeding in its entirety, including the inspection report, and other supporting evidence, it was determined that a reinspection of the subject premises was necessary in this case to verify concierge and doorman services. A reinspection of the premises was conducted on April 13, 2022 by the Agency's inspector. The inspection report revealed that at the time of the Agency inspection on April 13, 2022, the building provided only concierge services and no doorman services.

The Commissioner has reviewed all of the evidence in the record and has carefully considered that portion of the record relevant to the issues raised by the PAR. After careful consideration of the entire evidence of record, the Commissioner is of the opinion that the petition should be denied.

Section 2523.4(a) of the Rent Stabilization Code (hereinafter referred to as "RSC") states that a tenant may apply to the DHCR for a reduction of the legal regulated rent where the owner has failed to maintain required services. The record reflects that the owner does not provide separate doorman services at the building. Here the record reflects that doorman service (in addition to concierge service) was provided to the tenants prior to 2018, and therefore, pursuant to RSC Sections 2520.6 and 2522.4(d) and (e), the owner is required to provide such required doorman service until an owner's application to modify or decrease the doorman service has been granted by this Agency. As the owner raised below and again on appeal, the "front desk staff" maintain those services provided by the doorman, however, the Commissioner finds that the removal of the doorman service in this case is a reduction in a required service, warranting a rent reduction. Furthermore, the Commissioner finds that the owner's claim that the removal of the doorman service is *de minimis* is without merit and merely self-serving. In this case, the removal of the doorman service affects the tenants' use and enjoyment of the premises, and furthermore, compromises the access and security at the building's entrance door which is in direct conflict to what could be considered *de minimis* under the "Schedule of *De Minimis* Conditions Building-Wide Conditions" listed in Section 2523.4 of the RSC.

Furthermore, Policy Statement 90-2 states that Agency inspections should be relied upon due to the Agency inspector's training and experience in the area of building inspections as well as the Agency inspector's impartiality in conducting the inspection and taking the photographs when making its determination regarding the tenants' application for a rent reduction. In this case, the Commissioner finds that a reinspection of the subject premises was warranted on appeal to verify the types of services the owner was providing, and at the time of the Agency inspection on April 13, 2022, the Agency inspector observed that only concierge service was being provided to the building, and that no doorman services were provided (the Commissioner notes that this inspection report confirms the tenants' claims and the owner's failure to rebut the tenant's claims and the owner's statement that concierge is being provided).

Accordingly, the Commissioner finds that the Rent Administrator properly granted the tenants' a rent reduction for the removal of the doorman service in accordance with RSC

Sections 2520.6 and 2523.4. The owner is advised to file an application to restore rent, if the facts so warrant. The owner is also advised to file an application to modify or reduce services with this Agency, should the facts warrant.

THEREFORE, in accordance with the applicable provisions of the Rent Stabilization Law and Code, it is

ORDERED, that this petition be, and the same hereby is, denied, and that the Rent Administrator's Order be, and the same hereby is, affirmed.

ISSUED:
JUN 23 2022

Woody Pascal
Deputy Commissioner

State of New York
Division of Housing and Community Renewal
Office of Rent Administration
Gertz Plaza, 92-31 Union Hall Street
Jamaica, NY 11433
Web Site: www.hcr.ny.gov

Right to Court Appeal

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There is no other method of appeal.

STATE OF NEW YORK
DIVISION OF HOUSING AND COMMUNITY RENEWAL
OFFICE OF RENT ADMINISTRATION
GERTZ PLAZA
92-31 UNION HALL STREET
JAMAICA, NEW YORK 11433

----------X

IN THE MATTER OF THE
ADMINISTRATIVE APPEAL OF :

ADMINISTRATIVE REVIEW
DOCKET NO.: KM610018RO

2430 Morris Avenue Associate :

RENT ADMINISTRATOR'S
: DOCKET NO.: JQ610135S

PETITIONER

---------- X

ORDER AND OPINION DENYING PETITION FOR ADMINISTRATIVE REVIEW

On January 18, 2022, the above-named petitioner-owner filed a petition for administrative review (PAR) against an order issued by the Rent Administrator on January 5, 2022, concerning the housing accommodations known 2430 Morris Avenue, Apartment [redacted], Bronx, NY, wherein the Administrator granted the tenant a rent reduction and directed the restoration of services.

The Commissioner has reviewed all of the evidence in the record and has carefully considered the portion of the record relevant to the issues raised by the petition.

The owner requests a reversal of the Rent Administrator's order, contending that the necessary repairs had been completed; and that the owner has obtained the tenant's affirmation, which is attached to the owner's petition.

Pursuant to Section 2523.4 of the Rent Stabilization Code (RSC or the Code), DHCR is authorized to order a rent reduction, upon application by a tenant, where it is found that an owner has failed to maintain required or essential services. Likewise, an owner is entitled to the restoration of rent once it is established that the required services cited in the rent reduction order have been restored.

After careful consideration of the entire evidence of record, the Commissioner is of the opinion that the petition should be denied.

On May 28, 2021, the tenant filed a decrease in service complaint, alleging a decrease in various services, to wit: stove/oven condition, kitchen wall/floor tiles, bathtub enamel, vermin control, and peeling paint and plaster in the subject apartment. The tenant's complaint was served on the owner on July 1, 2021.

The Agency's records indicate that the Rent Administrator had requested an inspection of the items that the tenant complained about, and on September 20, 2021, the Agency's inspection was conducted. The inspection report indicates that two items, apartment-wide peeling paint and plaster and the kitchen wall/floor tiles, were found not maintained at the time of inspection. However, a rent reduction was found regarding the kitchen wall/floor tiles condition only as the tenant had indicated, in her communication with the owner, which was part of the record before the Rent Administrator, that the painting work should be done after the Summer.

The Commissioner notes that where the condition(s) complained about by the tenant was not repaired prior to an Agency inspection or the Rent Administrator's order, it is the policy of the DHCR that a rent reduction is warranted. It is undisputed that the kitchen wall/floor tiles were not restored during the proceeding below as evidenced by the Agency inspection on September 20, 2021. Furthermore, the repairs claimed by the owner and tenant was not communicated to the Rent Administrator prior to the issuance of Administrator's order. Thus, the Commissioner finds that any such evidence/information regarding repairs of the service defects submitted in the instant appeal proceeding is deemed to be beyond the scope of review of the administrative proceeding, which is limited to that evidence properly presented before the Administrator.

Based on the foregoing, the Commissioner finds that the owner's PAR has not established any basis to modify or revoke the Administrator's determination. Accordingly, the owner's petition is denied.

The Commissioner notes that the owner may file a rent restoration application, if the facts warrant.

THEREFORE, in accordance with the applicable sections of the Rent Stabilization Law and Code, it is

ORDERED, that this petition be, and the same hereby is, denied, and that the Rent Administrator's order be, and the same hereby is, affirmed.

ISSUED: **APR 1 2022**

WOODY PASCAL
Deputy Commissioner

State of New York
Division of Housing and Community Renewal
Office of Rent Administration
Gertz Plaza, 92-31 Union Hall Street
Jamaica, NY 11433
Web Site: www.hcr.ny.gov

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There is no other method of appeal.

STATE OF NEW YORK
DIVISION OF HOUSING AND COMMUNITY RENEWAL
OFFICE OF RENT ADMINISTRATION
GERTZ PLAZA
92-31 UNION HALL STREET
JAMAICA, NEW YORK, 11433

IN THE MATTER OF THE ADMINISTRATIVE APPEAL OF:	:	
	:	**ADMINISTRATIVE REVIEW**
36 PLAZA CORP.	:	**DOCKET NO.: JV210018RO**
	:	
	:	**RENT ADMINISTRATOR'S**
PETITIONER	:	**DOCKET NO.:IU210028S**

ORDER AND OPINION DENYING PETITION FOR ADMINISTRATIVE REVIEW

On October 6, 2021 the above-named petitioner-owner filed a Petition for Administrative Review ("PAR") against an order the Rent Administrator issued on September 1, 2021 (the "Order"), concerning the housing accommodation known as 36 Plaza Street East, Apt [redacted] Brooklyn, New York, wherein the Rent Administrator granted the tenant a rent reduction and directed the restoration of services upon finding that services cited in the tenant's application were unmaintained as reported from the Agency inspection conducted on January 4, 2021.

The Commissioner has reviewed the entire evidence of the record including that portion of the record that is relevant to the issues raised by the PAR.

After careful consideration of the entire evidence of record, the Commissioner is of the opinion the petition should be denied.

In the PAR and Supplemental PARS, the owner, by counsel, seeks a reversal of the Rent Administrator's order asserting, *inter alia,* the tenant failed to provide access to the apartment so that the owner could make repairs, and that DHCR did not schedule a no-access inspection upon its receipt of the owner's January 5, 2021 letter which advised DHCR that the tenant had failed to provide access during the proceeding on December 28, 2020 and January 5, 2021.

The tenant opposes the petition.

Pursuant to Section 2523.4 of the Rent Stabilization Code (the "Code"), the Rent Administrator is authorized by law to direct the restoration of services and grant a rent reduction, upon application by a tenant where it is determined that required services have not been maintained. DHCR Policy Statement 90-2 permits the Rent Administrator to rely on an Agency

inspection when making a decision and Section 2527.5(b) of the Code gives the Administrator the authority to request an inspection at any stage of a DHCR proceeding. Furthermore, New York Courts have consistently recognized the reliability of DHCR inspections. Generally, no rent reduction is warranted if the owner has restored services prior to an Agency inspection.

In the proceeding below, the tenant filed a complaint on September 14, 2020, alleging a decrease in services to the intercom, kitchen, bathroom, bedroom 1, living room, dining room, hall/foyer, and apartment wide painting. The owner was served with the notice of the tenant's complaint (the "Initial Notice") on September 16, 2020. On October 15, 2020, the owner responded to the service complaint, claiming that the tenant "refused access for repairs." The owner submitted two letters dated September 21, 2020 and September 29, 2020 in support of their response. In the owner's September 21, 2020 letter to the tenant, the owner requested that the tenant provide access on September 25, 2020, and in the owner's letter dated September 29, 2020 to the tenant, the tenant was requested to provide the owner with access on October 2, 2020.

Subsequently, and to facilitate the resolution of the tenant's application, on December 4, 2020, the Rent Administrator requested that an Agency Inspection be conducted. The Rent Administrator did not request a "No Access" inspection as the owner failed to provide the requisite notices to the tenant regarding gaining access eight (8) days in advance of the proposed access dates. Accordingly, an Agency inspection was scheduled for January 4, 2021.

Thereafter, on December 23, 2020 and December 30, 2020, DHCR received correspondence from the owner seeking a postponement of the scheduled inspection as it was attempting to gain access to the apartment to make repairs.

However, the record shows that on January 4, 2021, the independent Agency inspector as requested by the Rent Administrator, inspected the subject premises and reported finding the following:

1. The intercom for the apartment was not working. The intercom was connected to the tenant's phone however the recording on the intercom stated the number was not in service. The tenant did supply the owner with a number to be added to the intercom system at the time of inspection.
2. The bathroom ceiling was severely cracking with defective paint/plaster.
3. The ceiling in kitchen had peeling paint/plaster.
4. The walls in the kitchen were cracking with defective peeling paint/plaster.
5. The bedroom 1 had peeling paint/plaster on the walls and ceiling.
6. The kitchen base cabinet doors and draws did not open/close properly as the draws were off the track. The lamination was coming off the cabinet doors. The base of the sink cabinet was broken.
7. No evidence of a sagging kitchen ceiling.

8. The kitchen window screen is rusted/dirty, bent, and difficult to open. The window open/close and locks properly.

9. No evidence of a sagging bathroom ceiling.

10. No evidence of a collapsing/sagging ceiling in bedroom 1.

11. No defects to the window in bedroom 1.

12. No evidence of a sagging/collapsing ceiling in living room.

13. A small rip in the left window screen in the living room was noted and the window open/closes and locks properly.

14. There is defective paint/plaster on the living room wall.

15. There is defective paint/plaster on the dining room ceiling with peeling paint/plaster.

16. The dining room right window tilt clips were broken and the window falls out and is hazardous. The glass is cracked and the window does not lock properly. The left window was difficult to open/close. A small rip in the screen was noted.

17. No evidence of sagging/collapsing hall/foyer ceiling. There was defective paint/plaster on hall/foyer ceiling and walls.

A review of the record indicates that after the Agency inspection was conducted on January 4, 2021, the owner, on January 8, 2021, requested a no-access inspection, claiming that the tenant failed to provide access for repairs as requested. Thereafter on January 15, 2021, the tenant responded and claimed that she has previously given access for repairs, however, the workers did not return to finish the work, thereby disputing the owner's no-access claims.

Based on the Agency inspection report from January 4, 2021, on September 1, 2021 the Rent Administrator found the paint/plaster apartment-wide, intercom, kitchen cabinet condition, kitchen screen, dining room window and windowpanes unmaintained.[1] The Administrator noted on page two of the order, that with regard to the tenant's complaint of defective living room and dining room screens, the Agency inspection found that there was a small rip to the screens and thus the conditions did not warrant the relief requested.

The Commissioner has carefully reviewed all the facts as presented and concludes that the Rent Administrator's order is correct as issued, and that the Rent Administrator's reliance on the Agency records and inspector's training and experience in the area of building inspections as well as the inspector's impartiality in conducting the inspection and taking the photographs was reasonable.

The Commissioner notes the owner's contention that it sent letters to the tenant requesting to be granted access for repairs. However, the Commissioner finds that there is no evidence in the record that the owner complied with RSC Section 2523.4(d)(2) prior to the date of the

[1] The Administrator found the following services conditions maintained: bedroom 1 window, and no sagging ceilings in the kitchen, bathroom, bedroom 1, living room, dining room, and hall/foyer.

Agency inspection (pursuant to RSC Section 2523.4(d)(2), an owner, in its answer to a services complaint, must demonstrate that the tenant failed to provide access at two specifically arranged access dates with notice given at least eight (8) days in advance, and that the owner must have sent both of these letters by certified mail, return receipt requested).

A review of the administrative record shows that the owner failed to submit two letters mailed to the tenant eight (8) days in advance of the proposed access dates, sent by certified mail, return receipt requested. The owner's initial response received on October 15, 2020 did not contain two letters to the tenant requesting access at least eight (8) days prior to the proposed access dates. Further, the record shows that the owner requested that the Agency inspection scheduled for January 4, 2021 be postponed in a response received by the Agency on December 30, 2020, however, the owner's response only included one proposed access letter to the tenant for an access date after the scheduled Agency inspection on January 5, 2021. Subsequent thereto, the owner requested in a letter received by the Agency after the Agency inspection on January 8, 2021 that a no-access inspection be conducted, however, such Agency inspection was already conducted on January 4, 2021 in accordance with Agency policy and the RSC. The Commissioner finds that an administrative proceeding is not an open-ended process, and in this case, the owner, pursuant to Section 2523.4(d)(2), failed to submit such required proposed access dates and notices to the tenant prior to the Agency inspection.

Furthermore, the Commissioner also notes that the tenant provided access to the Agency inspection as scheduled in the proceeding below.

In light of the above, the Commissioner finds that the Rent Administrator properly relied upon the Agency inspection conducted on January 4, 2021. Clearly the inspector's findings showed the existence of service deficiencies, and the Commissioner finds the owner has offered no basis to revoke or modify the Rent Administrator's order.

The owner is advised that it may file with the Agency an "Owner's Application to Restore Rent," and claim no-access issues in accordance with Section 2523.4 of the RSC, if the facts so warrant.

THEREFORE, in accordance with the applicable provisions of the Rent Stabilization Law and Code, it is

ORDERED, that the petition is denied, and the Rent Administrator's Order is affirmed.

ISSUED: APR 1 2022

Woody Pascal
Deputy Commissioner

State of New York
Division of Housing and Community Renewal
Office of Rent Administration
Gertz Plaza, 92-31 Union Hall Street
Jamaica, NY 11433
Web Site: www.hcr.ny.gov

Right to Court Appeal

This Deputy Commissioner's order can be further appealed by either party, only by filing a proceeding in court under Article 78 of the Civil Practice Law and Rules seeking judicial review. The deadline for filing this "Article 78 proceeding" with the courts is within 60 days of the issuance date of the Deputy Commissioner's order. This 60-day deadline for appeal may be extended by executive orders at https://governor.ny.gov/executiveorders. No additional time can or will be given. In preparing your papers, please cite the Administrative Review Docket Number which appears on the front page of the attached order. If you file an Article 78 appeal, the law requires that a full copy of your appeal papers be served on each party including the Division of Housing and Community Renewal (DHCR). With respect to DHCR, your appeal must be served on DHCR Counsel's office at 641 Lexington Ave, New York, NY 10022.

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There is no other method of appeal.

STATE OF NEW YORK
DIVISION OF HOUSING AND COMMUNITY RENEWAL
OFFICE OF RENT ADMINISTRATION
GERTZ PLAZA
92-31 UNION HALL STREET
JAMAICA, NEW YORK 11433

IN THE MATTER OF THE ADMINISTRATIVE APPEAL OF

[redacted]

PETITIONER

ADMINISTRATIVE REVIEW DOCKET NO.: JX410028RT

RENT ADMINISTRATOR'S DOCKET NO.: JT410141S

ORDER AND OPINION DENYING PETITION FOR ADMINISTRATIVE REVIEW

On December 16, 2021, the above-named Petitioner-tenant re-filed a Petition for Administrative Review ("PAR") against an order the Rent Administrator issued on November 17, 2021 (the "order"), concerning the housing accommodation known as 4260 Broadway, [redacted] New York, New York, wherein the Rent Administrator terminated the proceeding based upon the finding that the Petitioner did not provide access for the DHCR inspection scheduled for November 3, 2021.

The Commissioner has reviewed the entire evidence of the record including that portion of the record that is relevant to the issues raised by the PAR.

In the PAR, the Petitioner-tenant requests that the Rent Administrator's order be reversed and claims that the Petitioner's intercom and telephone line did not work on the day of the inspection on November 3, 2021, that they contacted their telephone provider for repairs, and that the Petitioner contacted the DHCR and that the inspection has been rescheduled for December 15, 2021.

After careful consideration of the entire evidence of record, the Commissioner is of the opinion that the petition should be denied.

Pursuant to Section 2523.4 of the Rent Stabilization Code ("RSC" or "the Code"), DHCR is authorized to order a rent reduction, upon application by a tenant, where it is found that an owner has failed to maintain required services. Policy Statement 90-2 allows the Rent Administrator to rely on an Agency's inspection in determining if services at issue are maintained.

A review of the record indicates that in the proceeding below, the tenant filed a complaint on August 17, 2021, alleging that (1) the kitchen had leaks, there was a bubbling wall/window (from building exterior); (2) the bedroom 1 (by entry) ceiling was collapsing, bubbling, and had leaks; (3) the living room had leaks, cracks, bubbling wall and ceiling by the window area, damp, moldy smell especially during humid/wet weather, and mold water stains; (4) the dining room had possible water damage from the living room; and (5) window areas were worsening from water damage building exterior. The owner was served with the notice of the tenant's complaint (the "Initial Notice") on September 17, 2021. By response dated October 6, 2021, the owner asserted that the tenant's complaints were addressed in a prior related case FX410079S, and that the time afforded the owner to repair conditions therein had not lapsed.

The Commissioner notes that a review of the administrative file in this matter discloses that on October 18, 2021, a Notice of Inspection ("Notice"), which scheduled an inspection for November 3, 2021 between the hours of 11:00 AM and 2:00 PM was mailed to the Parties. The Notice contained cautionary language advising the tenant that a failure to provide access (or call to reschedule the appointment) could result in a determination against the tenant's interests. The record shows that the tenant failed to provide access for the November 3, 2021 inspection. The record further reveals that the inspector called the tenant on the telephone number provided in the tenant's service complaint, but the inspector was told it was a wrong number. As such, the Rent Administrator terminated the proceeding on November 17, 2021 under Docket No. JT410141S for the tenant's failure to provide access for the Agency inspection.

The Commissioner finds that based on the evidence of record, the Rent Administrator correctly terminated the tenant's proceeding. The tenant was notified during the Rent Administrator's proceeding that a failure to grant access to the inspector, or the failure to reschedule the inspection may result in a determination against the tenant's interest. Furthermore, the record shows that the inspector attempted to call the tenant at the time of inspection using the telephone number the tenant provided on their service complaint, but the person who answered the call indicated that it was a wrong number. Consequently, based upon the above, the Commissioner further finds that the Rent Administrator decision is in compliance with the RSC and the established principles and procedures.

Based upon the above, the Commissioner finds that the tenant has not established any basis to revoke or modify the Rent Administrator's order.

The tenant is advised that they may file a fresh service complaint if the facts so warrant.

THEREFORE, in accordance with the relevant Rent Regulatory Laws and Regulations, it is

ORDERED, that this petition is denied and that the Rent Administrator's order is affirmed.

ISSUED: APR 1 2022

Woody Pascal
Deputy Commissioner

State of New York
Division of Housing and Community Renewal
Office of Rent Administration
Gertz Plaza, 92-31 Union Hall Street
Jamaica, NY 11433
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Right to Court Appeal

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There is no other method of appeal.

STATE OF NEW YORK
DIVISION OF HOUSING AND COMMUNITY RENEWAL
OFFICE OF RENT ADMINISTRATION
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92-31 UNION HALL STREET
JAMAICA, NEW YORK 11433

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IN THE MATTER OF THE ADMINISTRATIVE APPEAL OF

[redacted]

PETITIONER

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ADMINISTRATIVE REVIEW
DOCKET NO.: KM410014RT

RENT ADMINISTRATOR'S
DOCKET NO.: JP410163S

ORDER AND OPINION DENYING PETITION FOR ADMINISTRATIVE REVIEW

On January 18, 2022, the above-named Petitioner-tenant filed a Petition for Administrative Review ("PAR") against JP410163S, an order the Rent Administrator issued on December 17, 2021 (the "order"), concerning the housing accommodation known as 507 West 139th Street, Apartment [redacted] New York, New York, wherein the Rent Administrator denied the tenant's rent reduction application and terminated the proceeding upon finding that a physical inspection of the premises on October 6, 2021 revealed that the conditions cited in the tenant's services complaint were maintained at the time of the inspection.

The Commissioner has reviewed the entire evidence of the record including that portion of the record that is relevant to the issues raised by the PAR.

In the PAR, the Petitioner-tenant seeks a reversal of the Rent Administrator's order and claims that the owner fails to replace items similar to the old items being replaced, notably; the radiators, the stove; the bathroom cabinet, the bathroom sink; and the kitchen sink. The Petitioner also claims that they complained about the bathroom sink and requested that their old sink be reinstalled given that it's easier to operate, but the management failed to honor such request, and further, that the use of the new bathroom sink worsens the tenant's medical condition (body pain). The Petitioner-tenant asserts that the management is not helping to make her home environment "healthier and more comfortable".

After careful consideration of the entire evidence of record, the Commissioner is of the opinion that the petition should be denied.

Pursuant to Section 2523.4 of the Rent Stabilization Code (the "Code"), the Rent Administrator is authorized by law to order a rent reduction upon application by a tenant when it is found that an owner has failed to maintain required or essential services. Pursuant to DHCR Policy Statement 90-2, a rent reduction will not be ordered where there is no finding of a failure to maintain services. Furthermore, Policy Statement 90-2 states that generally, no rent reduction is warranted if the owner has restored services prior to an agency inspection. This Policy Statement also allows the Rent Administrator to rely on an Agency's inspection report when making a determination. Furthermore, New York Courts have consistently recognized the reliability of DHCR inspections.

A review of the record indicates that the tenant commenced the proceeding below on April 5, 2021, by filing a complaint, alleging the following unmaintained services needing repair: the bathroom sink was thrown out without the tenant's permission, the replacement sink has a smaller bowl than the replaced sink; a defective shower causing water to drip to the corner of the bathtub; puddles on the floor resulting from water leaks from the ledge of the bathtub; and a defective bathtub. The owner was served with the tenant's application on June 7, 2021. The Agency records indicate that the owner did not respond to the tenant's allegations. Subsequent thereto, the Rent Administrator requested an Agency inspection of the subject apartment to ascertain the condition of the issues the tenant complained of.

On October 6, 2021, a physical inspection of the subject apartment was conducted by the Division's impartial inspector who reported that all conditions the tenant raised in their service application were maintained at the time of the inspection. The inspector specifically stated that there were no defects to the bathtub; water did not run or drip from the bathtub; no evidence of defects to the bathroom sink; the sink did not overflow during use and no water drips from the top of the sink; the sink appeared smaller, however, it was level and secured to the wall/floor; there was no evidence of defects to the bathroom sink faucet; no evidence of a gap on the wall behind the tub at the bottom or underneath the bathtub; and no gap on ceiling around the bathtub. The inspector noted that there was evidence of vermin throughout the apartment.

Based thereon, on December 17, 2021 under Docket No. JP410163S, the Rent Administrator terminated the tenant's services application and determined that a rent reduction was not warranted as there was no finding of a failure to maintain services by the owner based on the inspection report from October 6, 2021 which revealed that the owner was maintaining the plumbing for the bathroom tub, sink, and faucet, and the bathroom tub wall/ceiling. The Rent Administrator noted that there was evidence of vermin in the apartment at the time of the inspection, however, this was not part of the tenant's services application and therefore the owner was directed to correct this condition within thirty (30) days, or the tenant may file a new services complaint should the owner not correct the vermin condition.

The Commissioner notes the Petitioner's dispute with the Rent Administrator's findings. However, the Commissioner finds that the Rent Administrator's determination was appropriate and was supported by a rational basis, namely the inspector's report and the photographic

evidence that revealed that the owner was maintaining the services raised in the tenant's services application at the time of inspection on October 6, 2021. The Rent Administrator's reliance on the inspector's training and experience in the area of building inspections as well as his impartiality in conducting the inspection, taking photographs, and noting observations depicting the services was reasonable and in compliance with Section 2523.4 of the RSC and Policy Statement 90-2. Accordingly, based upon the Agency inspection from October 6, 2021 that revealed that there was no evidence of defects to the bathtub, bathroom sink, bathroom sink faucet, or gaps on the wall behind the bathtub bottom, underneath the bathtub, or on the bathroom ceiling around the bathtub, a rent reduction was not warranted in this case.

Based on the foregoing, the Commissioner finds that the Rent Administrator correctly denied the tenant a rent reduction and the tenants' PAR has not established any basis to modify or revoke the Rent Administrator's determination.

The tenant is advised that they may file a fresh service application if the facts so warrant.

THEREFORE, in accordance with the relevant Rent Regulatory Laws and Regulations, it is

ORDERED, that this petition is denied and that the Rent Administrator's order is affirmed.

ISSUED: APR 8 2022

Woody Pascal
Deputy Commissioner

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