STATE OF N EW 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

INK 1144 LLC,

PETITIONER X

ADMINISTRATIVE REVIEW
DOCKET NO. KP210038RO

RENT ADMINISTRATOR'S
DOCKET NO. FS210001R

ORDER AND OPINION DENYING PETITION FOR ADMINISTRATIVE REVIEW

The above-named owner has filed an administrative appeal of an order issued on March 16, 2022 by a Rent Administrator, concerning the housing accommodations known as apartment [redacted] at 1144 President Street, Brooklyn, in which order the Administrator has determined that the owner overcharged (simultaneously) the tenants [redacted], [redacted], [redacted] and [redacted].

The order states: that the "base date" applicable to the tenant's complaint is July 3, 2013; that because "[t]he owner has failed to submit a copy of the lease and/or rent ledger in effect on [that] date as requested in [four] notices . . ., the initial stabilized rent of the complainants is established using the last rent paid subsequent to the base date by the . . . prior tenant, which was $1,759.42"; that "pursuant to th[at] default [methodology], the rent remains frozen at the [latter] lawful stabilized rent"; and that the result was an overcharge of $2,240.58 for each of 21 months, trebled because "the owner has not established that the overcharge was not willful," yielding a liability of $141,156.54.

In objecting to that determination the owner states: "DHCR has taken the position that Owner was not entitled to increase the . . . rent . . . for Individual Apartment Improvements (IAIs) that were indisputably performed because the Owner could not retrieve from the prior owner the paper lease . . . that was in effect on the base date[, * * *] the only issue presented [being] whether IAIs are 'subsequent lawful increases' as defined in R[ent

]S[tabilization]C[ode] Sec. 2526.1(a)(3)(i)."

Petitioner adds: "that regardless of how DHCR sets the base rent, Owner is entitled to any lawful increases to which owner would otherwise be entitled," as per the aforementioned Code section, which allows "'any subsequent lawful increases'" to be added to the default base rent; that that is why the owner was here allowed a "vacancy increase" leaving the refusal of an IAI as arbitrary; and that here, where the owner got no leases from his predecessor and clearly made the improvements in question, the Administrator has been "particularly punitive."

Owners are responsible for submitting proof of the base-date rent in the form of a lease or rent ledger in effect on the base date. Pursuant to section 2522.6(b)(2)(i) of said Code (the "RSC"), the Rent Administrator must use the default rent formula when the base-date rent cannot be determined. Applying that formula freezes the rent from the base date and does not permit the addition of rent increases, including vacancies, IAIs or Guidelines increases, that occurred after the rent was frozen. The Commissioner will thus deny this petition because of the unique nature of the default procedure, which procedure culminates in an Administrator's order setting a new base rent, without regard to any previous partial rental history. Only those events—such as "Guidelines" increases or improvements—occurring after the order is issued, can break the "freeze" imposed pursuant to the default, so that any improvement made herein gave rise to no "subsequent" lawful increase.

The Rent Administrator has correctly imposed treble damages. Imposition of the default formula carries with it a presumption that the overcharge was willful. Given that the Rent Stabilization Law and Code impose upon an owner the duty of providing a complete rental history to the Administrator, an owner's failure to do so or to demonstrate the legality of a rent, warrants the Administrator's finding of willfulness. The failure, moreover, of a former owner to maintain or provide rental records is not a defense against liability or treble damages. Even new owners or managers are responsible for presenting the four-year history, and it is not a defense that a new owner failed to obtain all of such records at the time of purchase. Finally, even if the overcharge occurred before the current owner's purchase, that owner would still be responsible

for the overcharge and treble damages. See RSC Sec. 2526.1(f)(2)(i).

(Contrary to petitioner's claim, the order allows no vacancy increase; as the Administrator's calculation chart makes clear, the initial lawful rent is identical to the result of the "default" methodology.) _

In sum the Rent Administrator's order is without error and

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

ORDERED that the petition be, and the same hereby is, denied.

ISSUED:

JUL 08 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.

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IN THE MATTER OF THE
ADMINISTRATIVE APPEAL OF

ADMINISTRATIVE REVIEW
DOCKET NO.: K0110001RP

RENT ADMINISTRATOR'S
DOCKET NO.: EQ11052R

NY SANDY 8 BROOKLYN II

TENANT: [redacted]

PETITIONER ---X

ORDER AND OPINION GRANTING IN PART
PETITION FOR ADMINISTRATIVE REVIEW

The petitioner-owner timely filed an administrative appeal against an Order issued on September 18, 2020 by the Rent Administrator (RA) concerning the housing accommodation known as Apt. [redacted] located at 36-05 Vernon Blvd., Long Island City, NY, which Order granted the tenant's rent overcharge complaint.

The tenant filed a rent overcharge complaint on May 3, 2016, asserting that the owner improperly raised the rent above the threshold for high rent vacancy deregulation, to $2,700.00 per month, prior to her vacancy lease. The RA issued an Order under Docket Number EQ11052R granting the complaint. In his Order, the RA found that the base date for this proceeding is May 3, 2012, and that the legal regulated rent at that time was $1,498.00 pursuant to the month-to-month tenancy of the prior tenant from October 1, 2013, to June 30, 2015.

The tenant moved into the subject apartment pursuant to a vacancy lease which commenced July 1, 2015, and ended June 30, 2016, at a rent of $2,700.00 per month. The RA found that the legal monthly regulated rent at that time was $2,526.39. The tenant remained in the subject premises as a month-to-month tenant from July 1, 2016 until May 31, 2018 without a valid lease or any increase in rent.

Docket # K0110001RP

The petitioner, in his answer to the tenant's overcharge complaint, claimed that it was entitled to collect a legal regulated vacancy rent of $2,846.39 per month, and that it offered the tenant a preferential rent of $2,700.00 per month; that, because the tenant was to pay $2,700.00 or more per month, which was over the threshold for deregulation at that time, the subject apartment was deregulated and is therefore not under the jurisdiction of DHCR; that the base date for this proceeding is May 13, 2012, and that, on that date, the legal regulated rent that it was entitled to collect was $1,498.00 per month pursuant to the prior tenant's two-year rent stabilized lease which spanned the period from October 1, 2011 through October 1, 2013; that the subject tenant took possession of the apartment under a market lease at monthly rent of $2,700.00 (petitioner submitted an executed lease as evidence of this agreement); and that, in the tenant's vacancy lease, it was entitled to collect an 18.25% vacancy increase as well as 1/40th of alleged $43,000.00 in costs for individual apartment improvements (IAIs) allegedly completed in the subject apartment during the vacancy prior to the subject tenant taking possession.

In support of the alleged IAIs, the petitioner submitted an unsigned copy of a notice of apartment deregulation pursuant to high rent vacancy which listed the prior legal regulated rent as $1,498.00 per month and added the statutory vacancy increase. Said notice further added IAI costs stemming from a complete bathroom renovation at a cost of $15,000.00 leading to an IAI increase of $375.00, a complete kitchen renovation at a cost of $13,000.00 leading to an IAI increase of $325, work on doors, windows, radiators, light fixtures, the electrical system, sheetrock and flooring at a cost of $15,000.00 leading to an IAI increase of $375, resulting in a total claimed IAI rent increase of $1,075.00. The petitioner concluded that the tenant's vacancy rent should accordingly have been $2,846.39 per month. The petitioner also provided an invoice from In Style Home Renovation which listed renovations for the subject apartment costing $15,000.00 for electrical, installation, electrical panel, fixture, and bathroom finishes; costing $13,000.00 for kitchen renovation; and costing $15,000.00 for flooring and other finishing, resulting in a total of $43,000.00. The petitioner further provided copies of two cancelled checks made payable to In Style Home renovation, one for $10,000.00 dated February 12, 2015, and one for $35,000.00 dated July 20, 2015, along with a notarized contractor's affidavit from Mario Maria of In Style Home Renovation, dated November 10, 2016,

certifying that the work has been completed and paid in full.

The RA found that the tenant's legal regulated vacancy rent for the subject apartment was $2,526.39 and that the apartment is subject to the Rent Stabilization Law and Code. The rent was frozen at the legal regulated vacancy rent due to the owner's failure to properly file annual registrations for 2017 and 2018. The rent was also reduced and frozen due to a service reduction order, Docket Number GO110009HW, issued on April 26, 2018, and effective on April 1, 2018.

The RA found the total amount due to the tenant is $10,416.60 which includes an overcharge of $3,472.20 and treble damages of $6,944.40. However, it was found that the tenant had not paid rent since March of 2017. Pursuant to a Stipulation of Settlement entered into in the Queens County Civil Court on April 26, 2018, the tenant was found to have owed rent arrears in the amount of $34,500.00. Based on the lawful rent of $2,536.29 as per the RA's order, the total rent arrears from March 2017 through May 2018 was found by the RA to be $35,369.46. Therefore, the RA's Order offset the total overcharge award against the rent arrears and found that there was no money owed to the tenant.

The RA reviewed the evidence submitted by the petitioner to support its contention that IAIs had been performed prior to the inception of the complainant's tenancy. The RA also ordered an agency inspection of the subject apartment to investigate the IAIs at issue. Pursuant to an inspection of the premises conducted on May 3, 2017, the agency inspector made the following findings in his report:

1. The gut renovations were done on or about 2015.

2. The radiators throughout the apartment do not appear new. However, the valves could have been replaced on/or around 2015.

3. The flooring in the kitchen could have been installed in or about January 2015. (The inspector was unable to determine whether the sub-floor was replaced at the time of the inspection)

4. It appears new sheet rock has been installed on or about 2015.

5. The electrical panel could have been installed on or about 2015.

6. Ceramic tiles could have been installed on the kitchen wall on or about 2015. The counter tops were not ceramic but could have been installed on or about 2015.

7. No evidence of new door and trim installed in the kitchen area at the time of inspection.

8. The windows installed in the kitchen could have been installed on or about 2015.

9. The kitchen appliances do not appear to have been installed new on or about 2015.

10. The two bathrooms in the apartment could have been completely renovated on or about 2015.

The RA accordingly found that the owner proved the cost of the installation of new equipment and improvements in the apartment which totaled $30,200.00 and was entitled to a rent increase equal to 1/40th of this amount resulting in a permissible IAI rent increase of $755.00 per month. The RA disallowed claimed IAIs in the amount of $12,800.00, including: door trim installation $3,200.00; windows $1,500.00; appliances $5,000.00; radiators $1,500.00; and radiator valves $1,600.00. The owner failed to substantiate that the aforementioned installation work was completed, and the DHCR inspection report dated May 3, 2017 did not confirm this alleged work was performed, except for the radiator valves which the RA considered as routine repair and maintenance work which therefore did not qualify as an IAI. When the RA calculated the tenant's vacancy rent, including allowable rent increases for the IAIs and the vacancy allowance, the rent did not surpass the deregulation threshold and the RA accordingly found that the apartment is subject to rent regulation.

On PAR, the petitioner asserted that the RA's order should be modified because the denial of some of the claimed IAIs were based on a vague and amorphous DHCR inspection report; and that, in early 2015, major improvements were completed at the subject premises, and these improvements included a complete gut renovation including new sheetrock for the entire apartment, a new kitchen, new appliances including a stove, refrigerator, and dishwasher, new windows, new bathroom with new sink, fixtures and tiles, new gas line for the stove, and installation of all new appliances.

The petitioner also objected to the May 3, 2017 inspection report and submitted documentation in opposition to the inspection report findings. The petitioner alleged that DHCR scheduled another inspection for March 29, 2019; that this inspection was not completed because the tenant at the time did not give the inspector access to the apartment; that, although the building manager opened the apartment with a master key, the DHCR inspector would not enter without the tenant being aware of the inspection; that the Order was improperly based on the May 3, 2017 inspection despite the inadequacy of said inspection and despite the failure to conduct another scheduled inspection; that, if all qualifying IAIs were properly allowed, the legal rent would have exceeded the deregulation threshold amount and the apartment would have been properly deregulated on July 1, 2015 and would not be subject to rent regulation; that it submitted evidence to the RA supporting the claimed IAIs, including invoices, cancelled checks, and an affidavit from Mario Maria, the owner of In Style Home Renovations, the company claiming to have completed the installation of the IAIs; and that this is sufficient proof that all of the IAIs were completed at the subject premises in early 2015 and met the requirements set forth in DHCR Policy Statement 90-10.

Petitioner also argued that DHCR has consistently held that invoices and cancelled checks are sufficient proof of IAIs (citing DHCR Administrative Review Docket Number EI-410103-RO (6/2/93)); that DHCR has held in other cases that the RA erred in disallowing a copy of an invoice and cancelled checks as proof that claimed IAIs had been performed (citing, *Fried*, DHCR Administrative Review Docket Number JL-210004-RP (5/3/96)); that, pursuant to a DHCR Order under Docket Number HA110045RT (9/27/96), submission of copies of bills and cancelled checks is sufficient to support IAI rent increases; that the Administrative Review Order under Docket Number GM-410018-RO (4/9/19) held that, based on the disparity of claims between the petitioner and the tenant as to the nature and extent of IAIs, it was reasonable for the RA to order an inspection of the apartment to confirm the IAIs; that the DHCR inspection and its findings were insufficient; and that the DHCR inspector must conduct a full visual inspection which petitioner alleges the inspector failed to do in this case.

On September 7, 2021, the Commissioner issued an Order under Docket No. IV110019RO denying the petitioner's PAR.

Thereafter, the petitioner instituted a proceeding under

Article 78 of the CPLR in Supreme Court, Queens County, under Index No. 724785/2021, seeking a review of the Commissioner's Order.

Pursuant to a Court-ordered Stipulation of Settlement to Remand to DHCR, the matter has been remanded to the agency for further consideration, and the instant Order is the disposition of this remanded proceeding.

On September 7, 2021, the agency served the tenant and the owner with Notice of Proceeding to Reconsider Order.

The Commissioner, having reviewed the entire evidentiary record, finds that the PAR should be granted in part.

A second inspection was completed by the Agency on May 20, 2022. The agency inspector made the following observations in his report:

1. Some radiators appear to be installed around 2015. No. 1 bedroom radiator appears to be older than 2015 and has peeling paint; No. 2 bedroom radiator appear to be older than 2015, no defect observed; No. 3 bedroom new radiator, no defect observed; Living room, new radiator, no defect observed.

2. New entrance door and trim installed.

3. Three new windows installed in the kitchen/living room.

4. Brand and Model # match for refrigerator installed in the kitchen.

5. Brand and Model # match for stove installed in the kitchen.

6. No dryer was in the apartment.

7. Range hood installed does not match model # claimed by owner.

8. Dishwasher model # does not match model # claimed by owner.

The Commissioner finds that, based on the findings of the May 20, 2022, inspection, some of the IAIs disallowed by the RA should be allowed, including door trim installation at a cost of $3,200.00, windows at a cost of $1,500.00, a refrigerator at a cost of $606.60, and a stove at a cost of $535.98, for a total

additional allowable IAI cost of $5,842.58. The owner is therefore entitled to increase the relevant legal rent by 1/40th of the cost of the installation of new equipment and improvements in the apartment, including these additional allowable costs, and totaling $36,042.58, which results in a permissible IAI rent increase of $901.06 per month.

The Commissioner therefore finds that the tenant's legal regulated vacancy rent for the relevant period is $2,672.44 based on the recalculated IAI increase. This rent was frozen (as correctly found by the RA) for the duration of the relevant time. The total amount now due to the tenant is $1,653.60, which includes an overcharge of $551.20 and treble damages of $1,102.40. However, based on the lawful rent of $2,672.44 as found in this Order, the total rent arrears from March 2017 through May 2018 is $40,086.60. Therefore, the overcharge award set forth herein is offset against the above-calculated and referenced rent arrears, and it remains that there is no money owed to the tenant pursuant to this proceeding.

The parties should base all leases, registrations and future rents on the legal rent as found in this Order.

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

ORDERED, that this petition be, and the same hereby is, granted in part, and that the Rent Administrator's order be, and the same hereby is, modified as set forth by this Order.

ISSUED:
JUL 12 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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OFFICE OF RENT ADMINISTRATION
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JAMAICA, NEW YORK 11433

IN THE MATTER OF THE ADMINISTRATIVE APPEAL OF	:	ADMINISTRATIVE REVIEW DOCKET NO. KP210036RO
Nieuw Amsterdam Property Mgmt. LLC,	:	RENT ADMINISTRATOR'S DOCKET NO. FU210027R
PETITIONER		**TENANT:** [redacted]

ORDER AND OPINION DENYING PETITION FOR ADMINISTRATIVE REVIEW

The petitioner has filed an administrative appeal (PAR) against an order issued on March 21, 2022 by a Rent Administrator (RA) concerning the housing accommodations known as apartment [redacted] at 649 Classon Avenue, Brooklyn, New York, which found the owner liable for overcharging the tenant.

The RA order states in pertinent part: that the tenant paid $2,700 per month during the period covered by the order while the lawful rent was established, using the "default" rent formula, at $2,288.14 per month, because the owner did not produce a lease or rent ledger dating back to the four-year base date. After treble damages, liability was set at $12,355.80.

On PAR, the owner now cites error by referring to "a rent ledger (see Exhibit B) from the former Owner of the premises' attorney as well as an Affirmation from said attorney (see Exhibit B). * * *

"[Before the accession of the next tenant] [redacted] * * *, as the record of this proceeding indicates (and included in Exhibit B) the Owner performed $48,204.08 worth of Individual Apartment Improvements . . . which increased the rent by $1,205.10 (1/40th of $48,204.08) which brings the Legal Regulated Rent to $2,502.81 a month.

"[If] deemed willful . . . the Grand Total [of overcharges] is $5,915.70."

The PAR will be denied.

Under Rent Stabilization Code §2529.6, the Commissioner may not accept new evidence on PAR unless a reasonable excuse is offered for failing to produce it before the RA. The owner has offered no reasonable excuse for not producing evidence of the base date rent before the RA. Given that the underlying case commenced in 2017, the owner has no excuse for failing to produce the purported rent ledger during the almost five years the case was pending before the RA.

A lease or rent ledger covering the four-year base date is an absolute prerequisite to considering any other aspect of the rental history. Where neither of those documents is submitted, then, the RA's default determination is without error and complies with the Rent Stabilization Code.

Even were the Commissioner to consider the new evidence submitted on PAR, it would not change the result herein. The purported rent ledger contains no heading or other indication that it is indeed a rent ledger maintained in the normal course of business; the names and rents listed on the document are blurred; and the column assumedly listing the preferential rent paid is totally obliterated. Thus, the purported ledger cannot, even by a generous reading of same, establish a base date rent for the subject apartment. We are left with no ledger or lease, and thus no avoidance of a default.

Furthermore, given that the base-date rent was established by the default formula, subsequent rental increases, including those for individual apartment improvements, are disallowed from the frozen rental amount. The Commissioner finally notes that treble damages are sustainable where the owner fails to produce evidence of the base-date rent and where, as here, the default formula is used to set the rent.

THEREFORE, in accordance with the relevant rent-regulatory laws and regulations, it is

ORDERED that this petition be, and the same hereby is, denied.

ISSUED:

JUL 12 2022

Woody Pascal
Deputy Commissioner

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IN THE MATTER OF THE ADMINISTRATIVE APPEAL OF 166 Street LLC., PETITIONER	ADMINISTRATIVE REVIEW DOCKET NO. KR110003RP RENT ADMINISTRATOR'S DOCKET NO. EM110053R TENANT: [redacted]

ORDER AND OPINION DENYING PETITION FOR ADMINISTRATIVE REVIEW

The owner here appeals an order of a Rent Administrator, issued on April 17, 2018, which determined that said owner overcharged the tenant of the housing accommodations known as apartment [redacted] at 166-05 88th Avenue, Jamaica, NY.

The four-year base date lease running from September 2011 through August 2012 provided: "Legal rent $2,124.25 [l]ess on time discount per month $935.25 = Discounted Rent $1,189.00. * * * The discount . . . is only permitted where the owner receives the full . . . discounted rent, on or before the 5th day of each month. * * * If . . . payment is not . . . made [by that time], the monthly rent due shall be the full rental amount . . . [and shall] result in on[-]time discount being discontinued . . ." (Emphasis deleted.)

In ruling on the current tenant's complaint of overcharge, the Administrator states: that the "base date" herein, being the date exactly four years before the tenant's complaint, is January 14, 2012; that although the base-date lease provided for a "legal" rent and a lower "preferential collectible" rent, the latter, $1,189 per month, becomes the "legal and collectible" rent because the above-quoted "discount rent clause for 'on time payment' [was] in violation of Rent Stabilization Law and Code"; adding lawful increases to that rent resulted in a lower lawful rent than what the complainant herein paid; and that that overcharge, trebled for willfulness, yields a liability of $2,662.20.

In this Petition for Administrative Review (PAR), petitioner challenges the order as follows. The "Administrator's rationale for . . . vitiating the at all times preserved legal regulated rent has no legal[. . .] basis. * * * The owner demonstrated

full adherence with Rent Stabilization Code (RSC) S2521.2, as it read prior to the 2014 Amendments to the RSC.". The lower rent charged was preferential, the Administrator's determination to the contrary being "contrary to DHCR's prior . . . determinations and . . . unsupported by . . . statutory or judicial precedent."

The Commissioner previously denied the PAR under docket number GP110041RO. That determination was appealed to the Supreme Court, Queens County under Article 78 of the Civil Practice Law and Rules, and the Court has remitted the matter to the Commissioner for reconsideration of his order.

Upon such reconsideration, the Commissioner denies the PAR.

The Rent Administrator correctly relied on revised agency Fact Sheet 40 which reflects the preferential rent section of the Rent Stabilization Code, clarifies Agency policy regarding the allowance of no more than a 5% late fee in a rent stabilized apartment, and does not permit the on-time discount at issue in this case. The agency's practice regarding preferential rent is properly explained in revised Fact Sheet 40, which states, "since the agency has found that an owner may only demand a late fee of up to 5% of the rent being charged and paid and since preferential rents may not be terminated during a lease term, the agency will not permit an owner to enforce a clause in a rent-stabilized lease that provides that an owner may end a preferential or discounted rent by a certain day of the month."

Recent Appellate Division, Second Department cases have upheld agency determinations that on-time discount clauses are invalid, that such rents did not constitute a preferential rent and that the amount charged by the owner as set forth in the lease becomes the legal regulated rent. See Kings Park 8809 v. New York State Division of Housing and Community Renewal, 200 A.D. 3d 959 (2021), Hillside Park 168 LLC. v. New York State of Division of Housing and Community Renewal, 200 A.D. 3d 964 (2021) and One Ninety Sixth St., LLC. v. New York State Division of Housing and Community Renewal, 200 A.D. 3d 961 (2021). See also Park Haven, LLC v. Robinson, 45 Misc. 3d. 129 (A) (App Term 2nd Dep't 2014)(the "lease's rent discount scheme" which was substantially an on-time discount provision is "an unconscionable late charge and penalty").

The Second Department cases are in accord with Appellate Division, First Department rulings. See Matter of Bandil Farms Inc. v. New York State Div. of Housing & Community Renewal, 190 A.D.3d 403 citing Matter of 333 E. 49th Partnership LP. V. New York State Div. of Housing & Community Renewal, 165 A.D.3d 93, (1st Dept. 2018). In the Matter of 333 E. 49th Partnership LP., the Court found that the RA properly set the legal regulated rent for the apartment at the reduced rent the owner set on the base date. The DHCR determination was based on the finding that the higher rent that the tenant would have to pay if he did not pay on time did not make the lower rent a preferential rent under the Rent Stabilization Law but was instead an unconscionable late fee. The Courts have found that there is no ability to use the term "concession rent" or "preferential rent" interchangeably.

In accordance with Appellate Division case law, the Rent Administrator was correct to find that $1,189.00 was the legal regulated rent on the base date given the improper on-time discount clause in the base date lease. The Rent Administrator properly calculated rent increases subsequent to the base date. The purported higher legal regulated rents in the tenant's November 2014 vacancy lease and subsequent renewal leases were intrinsically tied to the illegal on-time discount clauses in the prior leases, were akin to improper late fees and therefore themselves invalid.

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

ORDERED that this petition be, and the same hereby is, denied.

ISSUED:

JUL 22 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

IN THE MATTER OF THE
ADMINISTRATIVE APPEAL OF

[redacted]

ADMINISTRATIVE REVIEW
DOCKET NO.: KP210030RT

RENT ADMINISTRATOR'S
DOCKET NO.: GW210035R

OWNER: ALI ALSAEDE

PETITIONER X

ORDER AND OPINION GRANTING IN PART PETITION FOR ADMINISTRATIVE REVIEW

The petitioner-tenant timely filed an administrative appeal ("PAR") against an order issued on March 22, 2022, by the Rent Administrator ("RA") concerning the housing accommodation known as Apt. [redacted] located at 1717 West 6th Street, Brooklyn, NY, 11223 which denied the tenant's rent overcharge complaint.

The tenant moved into the subject apartment on February 1, 2009. On or about November 19, 2018, the tenant filed a rent overcharge complaint challenging his current rent of $1,208.92 per month; alleging that he was previously charged $1,100 per month; and that the owner has not acknowledged his security deposit.

The owner answered by stating that it purchased the premises on March 29, 2016; that the base date for the proceeding is November 21, 2014; that the lease in effect on the base date had a legal regulated rent of $1,374.22 per month and a preferential rent of $1,185.25 per month; that the tenant has not paid more than the legal regulated rent therefore there is no overcharge; that the tenant has not substantiated any fraud claims; and that the Court, in a stipulation signed by both parties, set a preferential rent of $1,208.92 per month as of the lease renewal period beginning January 1, 2017.

In a reply from May 2, 2019, the tenant denied executing the purported base date lease submitted by the owner (a renewal lease commencing September 1, 2014).

In another reply from November 5, 2019, the tenant stated that his first renewal lease was from July 1, 2013 through June 30, 2015, which he and Eileen Vitale, the widow of the former owner, signed; that there was no renewal on September 1, 2014, because the prior renewal lease was still in effect; that the new owner signed the purported lease dated September 1, 2014 which was created in 2016 after he purchased the premises; that the purported lease of 2014 was not signed by Eileen Vitale, the former owner's widow; and that Ms. Vitale sent him notice before the sale in 2016 that his rent was $1,100 per month.

The RA denied the tenant's rent overcharge complaint. The RA determined that the base date for this proceeding is November 19, 2014 - - four years prior to the filing of the complaint; that the base date legal regulated rent is $1,374.22 per month; that rental events occurring more than four years prior to the filing date of the complaint are not subject to challenge and shall not be examined; that the tenant remained in occupancy as a month to month tenant for the period September 1, 2016 to December 31, 2016 without a valid lease or increase in the legal regulated rent; that the tenant was paying a preferential rent of $1,208.92 per month during this period; that the legal regulated rent was increased by 2% to $1,401.70 per month based on a two-year renewal lease commencing January 1, 2017; that the collectible rent remained at $1,208.92 per month during this period; that the tenant remained in occupancy as a month to month tenant for the period January 1, 2019 to December 31, 2019 without a valid lease or increase in rent; that the rent paid is reflected through December 31, 2019; that based on the information submitted by the owner's attorney on November 16, 2021, the tenant accrued rent arrears; that the issue of the rent arrears may be addressed in a court of competent jurisdiction; that the evidence indicates that the rent adjustments subsequent to the base date have been lawful; that the parties acknowledged that the tenant has a security deposit amount of $1,050.00 on file; that, therefore, it is found that there is no overcharge, and it is ordered that the relief requested is denied.

On PAR, the tenant contends that the RA disregarded the tenant's fraud claims and failed to examine DHCR's own records; that the Commissioner should reverse the RA's decision to limit the lookback period to four-years because the petitioner alleged sufficient indicia of fraud; that the RA failed to address any of the tenant's fraud allegations; that because the 2015-2016 rent registration is fraudulent, or at the very least unreliable, and because the 2017-2018 rent registration is based on the 2015-2016 registration, DHCR should find that neither rent registration is

reliable; that DHCR is able to set the legal rent at the last reliable registered rent and award damages accordingly; that because the owner has engaged in fraudulent behavior by forging his signature on a lease, signing a lease the owner had no authority to sign, manufacturing a legal rent, and submitting multiple false rent registrations to DHCR, DHCR should find that the overcharge herein was willful.

The owner served an answer to the PAR denying all fraud allegations.

The Commissioner, having reviewed the record herein, finds that the petition should be granted in part and the RA order is amended.

The Commissioner finds that the RA incorrectly set the base date rent at $1,374.22 per month because the purported base date lease presented by the owner and dated September 1, 2014 is invalid. The tenant presents a convincing argument that the prior two-year renewal lease from July 1, 2013 to June 30, 2015 was still in effect, so that another renewal on September 1, 2014 was invalid. Moreover, Eileen Vitale, the prior owner's widow who signed the July 1, 2013 two-year renewal lease, was still the owner in 2014 and her signature is not on the purported September 1, 2014 renewal lease. The tenant has also denied signing such lease.

The RA's rent calculation chart is amended as follows:

The base date legal regulated rent (LRR) is set at $1,275.42 per month pursuant to the July 1, 2013 - June 30, 2015 renewal lease. The collectible rent (CR) on the base date is $1,100.00 per month based on rental payments in evidence.

The next period covered in the RA chart is amended to July 1, 2015 through December 31, 2016, at which time the LRR remained at $1,275.42 per month. The CR is $1,208.92 per month based on the rent paid, which was still less than the LRR and so there is no overcharge for that period.

The owner was entitled to increase the LRR to $1,300.93 per month as of January 1, 2017 ($1,275.42 + 2%). The parties executed a Court stipulation wherein the parties agreed to execute a lease on December 31, 2016, with a two-year preferential rent of $1,208.92 per month. Given that this preferential rent was lower than the LRR of $1,300.93 per month, there was no overcharge for the period January 1, 2017 through December 31, 2018.

The rent amounts remained the same for the period January 1, 2019 through December 31, 2021 ($1,300.93 legal and $1,208.92 preferential) because the tenant was month to month, and there was no overcharge because the rent paid was less than the LRR.

The Commissioner finds no evidence that the new base date rent established herein (i.e. $1,275.42) was the product of fraud. Indeed, there is no evidence of any actions by the former owner or his estate prior to November 19, 2014 which would render the base date rent unreliable. The allegations of fraud presented in the RA proceeding and here on PAR occurred subsequent to the base date and were analyzed as part of the standard four-year rent review.

The registering of improper rents on or after the base date does not invalidate the base date rent established herein. The remedy for such improper registrations is to direct the owner to amend them to reflect the new legal regulated rent established in the agency order. On this basis, the Commissioner directs the owner to amend apartment registrations from 2015 through 2022 to reflect the new rents established in this PAR order.

The Commissioner has considered any remaining claims raised by the petitioner and finds them to be without merit.

THEREFORE, pursuant to the applicable provisions of the Rent Stabilization Law and Code, it is

ORDERED, that this petition be, and the same hereby is, granted in part, and that the Rent Administrator's order is amended accordingly.

ISSUED:
JUL 25 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

140-25 Ash Associates, LLC,

ADMINISTRATIVE REVIEW
DOCKET NO. KQ110002RO

RENT ADMINISTRATOR'S
DOCKET NO. HR110093R

TENANT: [redacted]

PETITIONER X

ORDER AND OPINION DENYING PETITION FOR ADMINISTRATIVE REVIEW

The petitioner - owner has filed an administrative appeal (PAR) against an order issued on April 12, 2022 by a Rent Administrator (RA) concerning the housing accommodations known as apartment [redacted] at 140-25 Ash Avenue, Flushing, New York which determined that the owner overcharged the tenant.

The tenant filed a rent overcharge complaint on June 28, 2019, alleging that she moved into the subject apartment on December 1, 2009 at an initial rent of $1,300.00 per month pursuant to a non-rent-regulated lease. She alleged that the owner illegally increased the rent to $1,400, then $1,450 and then $1,525 per month without a lease and without registering the apartment with DHCR. She alleges that the owner improperly deregulated the apartment and has been attempting to harass her out of the apartment. The tenant also filed a lease violation complaint which was consolidated into the overcharge proceeding.

In answer to both complaints, the owner asserted that the apartment was deregulated at the time of the tenant's initial occupancy. The owner pointed to the 2009 vacancy lease rider which indicated that the prior rent was $1,006.56 per month, that a vacancy increase of $171.11 was added in addition to $1,308.00 based on $52,000 spent to renovate the apartment. The resulting rent was $2,485.67 which was over the deregulation threshold.

The owner was not able to provide evidence of the apartment renovations to substantiate the $1,300 rent increase.

The RA found that "the examination of the rent during this proceeding was pursuant to the Housing Stability and Tenant Protection Act of 2019 (HSTPA)"; that "the owner failed to prove how the apartment was deregulated"; that the rent in effect on the "base date" of June 14, 2015 was $1,300 per month; that because of a "freeze" based on the owner's failure to register the apartment, the lawful rent never exceeded that figure, while the rents paid rose to $1,400, $1,450 and then $1,525, embodying overcharges; and that the damages are trebled "because the owner has not established that the overcharge was not willful" and "in accordance with the applicable statutes." Liability was fixed at $43,575. The RA directed the owner to offer the tenant a rent stabilized renewal lease and to register the apartment from 2016-2021.

On PAR, the owner first asserts that it has:

> made out the claim that the apartment is deregulated by virtue of the lease agreement (which contained a rider explaining the increases to the prior rent) . . . and the fact that the tenant has never disputed that the apartment was rehabilitated prior to her occupancy, adding that her complaint did not come until ten years after the renovations, exceeding the time period the landlord would be obligated to maintain records of those improvements.

The owner also contests the assessment of treble damages, arguing that it had a reasonable belief that the apartment was deregulated and that any overcharge was not willful.

In opposition to the PAR, the tenant asserts that the owner's failure to produce records to support the apartment renovations is not excused by the passage of time.

The Commissioner denies the PAR.

The requirement of an owner to maintain and produce records to substantiate the deregulation of an apartment existed even before the passage of HSTPA in 2019. Rent Stabilization Code §2526.1(a)(2)(iii) provided an exception to the then four-year

look-back period to determine whether the apartment is subject to the Rent Stabilization Law. *See also* East West Renovating Co. v DHCR 16 A.D.3d 166 (1st Dept. 2005).

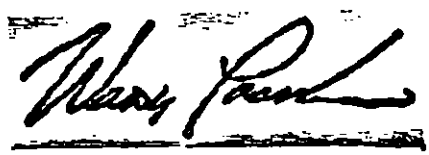
In this case, the RA properly requested proof of the apartment renovations which purportedly caused the legal regulated rent to exceed the deregulation threshold and the owner failed to produce such records (i.e. contracts, work records, a contractor affidavit or proof of payment). The lease rider, by itself, does not constitute evidence justifying a rental increase based on vacancy improvements.

There can be no error in the assessment of treble damages on the overcharge because such damages are mandatory under HSTPA with very limited exceptions which do not apply based on the facts of this case.

THEREFORE, in accordance with the relevant rent-regulatory laws and regulations, it is

ORDERED that this petition be, and the same hereby is, denied.

ISSUED:
JUL 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.

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.: KP210027RT

RENT ADMINISTRATOR'S
DOCKET NO.: HT210052R

[redacted]

OWNER: CARDINAL PROPERTIES

PETITIONER X

ORDER AND OPINION DENYING PETITION FOR ADMINISTRATIVE REVIEW

The petitioner filed an administrative appeal ("PAR") against an Order issued March 14, 2022, by the Rent Administrator (RA) concerning the housing accommodation know as Apt. [redacted] located at 642 Driggs Avenue, Brooklyn, NY which denied petitioner's rent overcharge complaint.

Petitioner filed a rent overcharge complaint on August 20, 2019, alleging that the owner engaged in a fraudulent illusory tenancy scheme; that she was a victim of this scheme; that all of the registered rent increases were pursuant to this fraudulent illusionary tenancy scheme; that the owner took an individual apartment improvement (IAI) rent increase on or about July of 2012 for work which was not done in the subject apartment; that she was overcharged from 2012 to 2021; and that the owner did not offer her a valid stabilized lease until July of 2019.

The RA determined in his Order, issued under Docket Number HT210052R, that the base date for this proceeding is June 14, 2015; that all rent adjustments subsequent to the base date were lawful; that the petitioner remained in occupancy as a month-to-month tenant from June 14, 2015 to February 29, 2020 without a valid lease or increase in rent; that the legal regulated rent was $1,565.07 per

month; that the rent was frozen at $1,565.07 on June 1, 2019 due to a service reduction Order issued under Docket Number HP210167S on July 19, 2019 and effective on June 1, 2019; and that the petitioner never paid a rent in excess of the legally collectible rent. The RA therefore found no overcharge from the base date to the date of his Order, and the petitioner's complaint was accordingly denied.

On PAR, petitioner alleges that the RA should have considered the rental history prior to the standard four-year statute of limitations based on the existence of fraud; that the overcharge complaint was based on a finding of an illusory tenancy scheme; that the owner and the prime tenant schemed to avoid giving the petitioner a rent stabilized lease for the subject apartment; that DHCR and the Kings County Housing Court determined that the petitioner was entitled to a rent stabilized lease; that the owner gave itself a fraudulent IAI rent increase in 2012; and that she paid rent that included said fraudulent IAI increase even though no improvements or repairs were done to and in the subject apartment.

The Commissioner, having reviewed the evidentiary record, finds that the PAR should be denied.

The petitioner alleges that there was fraud, and that pre-base date rental events should therefore be investigated, because the owner gave itself an unwarranted IAI increase in 2012. While the DHCR annual rent registration record for the subject apartment shows a rent increase from $1,127.00 in 2011 to $1,565.07 in 2012, such increase, alone, is not sufficient to show a fraudulent scheme to deregulate an apartment warranting investigation of pre-base date rental events. The Court of Appeals, in Matter of Grimm v. New York State Div. of Hous. & Community Renewal, 15 NY3d 358 (2010), held that an increase in the rent alone will not be sufficient to establish a "colorable claim of fraud", and that a mere allegation of fraud, without more, will not be sufficient to require DHCR to investigate rental events prior to the base date.

The petitioner filed a previous PAR on August 8, 2018, under Docket No. GU210030RT, which was granted by the Commissioner on November 14, 2018. The Commissioner's Order in that proceeding was based on a September 19, 2018, Kings County Civil Court determination that the prime tenant and the owner acted in concert to deprive the

petitioner of the protections of the Rent Stabilization Code, and that the prime tenant's tenancy was illusory. In said Order, the Commissioner revoked the lease between the owner and the prime tenant, granted the lease violation complaint at issue in that proceeding, and ordered the owner to offer the petitioner a rent stabilized renewal lease for one or two years, at petitioner's option, within 30 days of the issuance date of said Order.

The Kings County Housing Court Order did not make any finding regarding any alleged fraudulent scheme by the owner to deregulate the apartment, while the DHCR Order was specifically issued to resolve the petitioner's lease violation action. These determinations, while finding illusory tenancy in both cases, and that the owner failed to offer the complainant a regulated lease in the PAR proceeding, did not find that the owner had engaged in a fraudulent scheme to deregulate the apartment. Because these proceedings did not find any fraudulent scheme to deregulate the apartment, they do not require or permit investigation of pre-base date rental events (see Grimm supra, which allowed investigation of pre-base date rental events only when such a fraudulent scheme exists). It is noted that the record shows that the petitioner received a rent stabilized lease, dated February 18, 2020, with a rental amount of $1,565.07 as per the DHCR Order referenced above.

Given that the record does not show that there was a fraudulent scheme to deregulate the apartment, as explained above, there was no reason for the RA to consider the rental history prior to the base date. Because pre-base date rental events may not be examined, the base date rent charged and paid is the legal regulated base date rent (See Regina Metro. Co., LLC v NYSHCR, 35 NY3d 332 (2020)). As the tenant was not charged any rent during her tenancy above that base date rent, as correctly found by the RA, the Commissioner affirms the RA's finding that the petitioner was not overcharged.

THEREFORE, in accordance with the relevant Rent Regulatory Laws and Regulations, 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 in accordance with this Order and Opinion.

ISSUED:

AUG 02 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

Hendrik Hudson House, LP,

ADMINISTRATIVE REVIEW
DOCKET NO. KQ610016RO

RENT ADMINISTRATOR'S
DOCKET NO. GN610066R

FORMER TENANT:
[redacted]

PETITIONER X

ORDER AND OPINION DENYING PETITION FOR ADMINISTRATIVE REVIEW

The petitioner has filed an administrative appeal (PAR) against an order issued on April 12, 2022 by a Rent Administrator concerning the housing accommodation known as apartment [redacted] at 2675 Henry Hudson Parkway W., Bronx, New York which determined that the owner overcharged the former tenant.

The Administrator's order is in response to the former tenant's complaint of February 14, 2018. It states in pertinent part: that interest (rather than treble damages) has been assessed on said finding of overcharge "because the owner has established that the overcharge was not willful"; that from 2014 through March of 2018 there was no overcharge; that: "the [subsequent] overcharge was the result of the SCRIE tax abatement credit (TAC) benefit; as a result, treble damages are not warranted and interest only is assessed"; and that such assessment plus the overcharges collected yields a liability of $8,527.53.

On PAR, the owner asserts that the proceeding should be dismissed because the tenant has vacated the subject accommodations and that the overcharge was caused by an error made by SCRIE, not the owner.

The fact that the tenant has vacated the apartment is not grounds to dismiss the overcharge complaint.

The evidence established that the owner collected rent which exceeded the legal regulated rent of $1,275.47 per month from April 1, 2018 through March 2020 (less one month). The owner is responsible for the return of the excess rent whether it was received directly from the tenant or in the form of a SCRIE tax credit. It is of no matter that the collection of excess rent was caused by a mistake made by SCRIE. In determining that treble damages are not warranted, the Rent Administrator has indeed acknowledged that the overcharge "was the result" of SCRIE's mistake and has therefore done all he could under the Rent Stabilization Code—assessing interest only—to minimize the penalization of the owner.

No error in the order having in sum been shown, now

THEREFORE, in accordance with the relevant rent-regulatory laws and regulations, it is

ORDERED that this petition be, and the same hereby is, denied.

ISSUED:

AUG 02 2022

Woody Pascal
Deputy Commissioner

State of New York
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Right to Court Appeal

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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

X

IN THE MATTER OF THE
ADMINISTRATIVE APPEAL OF

[redacted]

ADMINISTRATIVE REVIEW
DOCKET NO. KR210019RO

RENT ADMINISTRATOR'S
DOCKET NO. GO210059R

PETITIONER X

[redacted]

ORDER AND OPINION DENYING PETITION FOR ADMINISTRATIVE REVIEW

The petitioner/prime tenant has filed an administrative appeal (PAR) against an order issued on May 20, 2022 by a Rent Administrator concerning the housing accommodations known as apartment [redacted] at 38 Winthrop Street, Brooklyn, New York which granted the subtenant's application alleging rental overcharge by the petitioner.

The Administrator's order states: "Section 2525.7 of the Rent Stabilization Code prohibits the prime tenant from collecting more than the roommate's proportionate share of rent. In the instant case . . . . . the proportionate share of rent was 50% . . .

"[T]he legal regulated rent . . . was $788.56 and $804.33 during . . . the roommate's occupancy.

"The roommate occupied the premises from June 2015 through January 2017, paying a monthly rent of $800.00.

"Thus, the roommate paid in excess of [his] proportionate share of the rent by $405.72 . . . through March 2016, and $397.83 through January 2017, totaling $8,035.50 in excess overpayment due the roommate. . ."

On PAR, the prime tenant seeks modification of the order, to wit: "adjust[ment]" for "accrued unpaid rent, utilities, cable & internet charges as per the rental agreement, including damages to my washing machine and personal item[s]." Attached are copies of a printout from Con Edison and bills for cable television.

Admin Review Docket No. KR210019RO

The Commissioner is of the opinion that the petition should be denied.

The Rent Stabilization Code, as reported above by the Rent Administrator, deals with proportions of "rent." Whatever may have been agreed between the tenants regarding utilities, damage to personal property, etc., would therefore remain a private matter outside the purview of said Code, and thus not enforceable by this agency.

Petitioner has meanwhile made no specific claim to the Commissioner regarding "accrued unpaid rent." She did, however, state to the Administrator that [redacted] did not pay rent for the months of February, March, and April of 2017." No error can be based on any such failure to pay, however, because the Administrator has found no overcharge after January of that year. Any alleged monies owed to petitioner for damages or unpaid bills/rent may be resolved in a court of competent jurisdiction.

Petitioner has thus shown no error in the Administrator's treatment of this matter.

THEREFORE, in accordance with the relevant rent-regulatory laws and regulations, it is

ORDERED that this petition be, and the same hereby is, denied.

ISSUED:
AUG 08 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.: KQ220007RT
[redacted]	DISTRICT RENT ADMINISTRATOR' S DOCKET NO.: JX220025R
PETITIONER	LANDLORD: Bruno Garofalo

----------X

ORDER AND OPINION DENYING PETITION FOR ADMINISTRATIVE REVIEW

The above-named tenant filed a timely petition for administrative review (PAR) of an Order issued on April 20, 2022 by a Rent Administrator (RA) concerning the housing accommodation known as apartment [redacted] at 1711 Bath Avenue, Brooklyn, NY 11214

This proceeding commenced on December 15, 2021, when the tenant in this five-room rent-controlled apartment filed an overcharge complaint with DHCR, stating that her current rent is $39.10 per month; that her father passed away in February of 2021; and that the landlord started asking a monthly rent of $443.23:

On January 11, 2022, the landlord interposed an answer stating that the complainant is the successor tenant; that the overcharge complaint is disingenuous because the rent increase was a result of DHCR granting, on September 24, 2021, the landlord's hardship application under Docket Number ZC230001OH; that this Order is final because no PAR was filed against this Order within 35 days of its issuance; that the tenant refused to pay the rent since this Order was issued and effective October 1, 2021; and that the record belies the tenant's statement that the reason for the rent increase was the death of her father in February 2021.

The tenant replied that she has not received a copy of the landlord's hardship Order; that she is experiencing hardship financially; and that the apartment has various service deficiencies.

The landlord responded that the tenant would not have had standing to oppose the hardship application, which was filed on August 13, 2013; and that her father answered the application (a copy of her father's answer to the hardship application was attached to the response).

The RA denied the tenant's overcharge complaint based on a finding that an Order under Docket Number ZC230001OH, issued on September 24, 2021 and effective on October 1, 2021,

increased the monthly rent from $39.10 to $443.23, which is the Maximum Collectible Rent (MCR) for the above housing accommodation. The RA advised that issues concerning the landlord's failure to maintain services will be addressed in Docket Number JX220181S.

On PAR, the tenant contends that because she is 70 + years old with medical issues, she cannot afford to pay the drastic increase to $443.23 per month, but that she is willing to come to an agreement to pay half of that amount.

The PAR is denied.

The petitioner has not raised any basis to modify or revoke the RA's order which was based both on the apartment's rental history since January 1, 1972, and on the granting of the landlord's hardship application under Docket Number ZC230001OH which increased the monthly rent from $39.10 to $443.23. The Commissioner finds no error of fact or law committed by the RA in reaching the new MCR for the subject apartment.

THEREFORE, in accordance with the City Rent and Rehabilitation Law and the Rent and Eviction Regulations, 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:

AUG 11 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

X

IN THE MATTER OF THE
ADMINISTRATIVE APPEAL OF

ADMINISTRATIVE REVIEW
DOCKET NO.: KN110005RO

RENT ADMINISTRATOR'S
DOCKET NO.: EO110037R

57 ELMHURST LLC.

TENANT: [redacted]

PETITIONER X

ORDER AND OPINION GRANTING IN PART
THE OWNER'S PETITION FOR ADMINISTATIVE REVIEW

The above-named Petitioner-Owner timely filed an administrative appeal (PAR) against the above-referenced Order, issued on January 12, 2022, by the Rent Administrator (RA), concerning the housing accommodation known as Apartment [redacted] located at 94-25 57th Avenue, Elmhurst, NY, which Order found that the tenant had been overcharged and that the total amount due to the tenant is $13,864.92 representing the overcharges collected and treble damages on said overcharges, and minus a partial refund.

The RA determined that the base date for this proceeding is March 7, 2012, which is four years prior to the filing of the overcharge complaint; that, subsequent to March 7, 2012, a rent overcharge occurred as shown on the calculation chart attached to the RA's Order; that said calculation chart stated, among other things, that the owner was entitled to increase the rent by 1/60th of the $911.28 in individual apartment improvement (IAI) costs allowed by the RA, which resulted in an allowable rent increase for IAIs of $15.19 per month; that the petitioner erroneously claimed $50.35 for IAI rent increases; that this amount was in error because, of the total claimed IAI costs, $2,800.00 did not qualify because this amount was found to have been for ordinary repairs and maintenance; and that the RA determined that a service reduction Order, under Docket Number GX110018B, issued on December 4, 2019 and effective on February 1, 2019, further reduced the collectible rent.

On PAR, the petitioner contends that the RA erred and improperly applied treble damages to the overcharge because the overcharge was not willful; that the RA improperly applied treble damages to the entire overcharges because treble damages, if applicable, should only apply to overcharges occurring from March 7, 2014 (two years prior to the complaint) to March 7, 2016 (the date of the complaint) pursuant to the Rent Stabilization Law (RSL) §26-516(a)(2)(i); that the

petitioner rebutted the presumption of the willfulness of the overcharges pursuant to Policy Statement 89-2 (PS 89-2) by giving the tenant a refund; that mistaking claimed ordinary repairs for IAIs is a hyper-technical error, and overcharges flowing therefrom therefore do not warrant imposition of treble damages; that the tenant did not complain of the rent reduction Order under Docket Number GX110018B; that the rent was restored by Order JP110019OR; and that DHCR should not apply HSTPA's six year look back period because the six years it took for the Agency to render a determination was an undue delay.

The Commissioner, having reviewed the entire evidentiary record, finds that the PAR should be granted in part, and that the RA's Order should be modified accordingly.

The Commissioner finds that the RA's imposition of treble damage was proper pursuant to Rent Stabilization Code (RSC) §2526.1 (a)(2)(i) in effect at the time of the complaint, which states that "a penalty of three times the overcharge **may not** be based upon an overcharge having occurred **more than two years before the complaint** is filed...." [emphasis added]. This Code Section prohibited the imposition of treble damage on overcharges more than two years prior to the complaint, but did not prohibit (but rather authorized) the imposition of treble damages from two years prior to the date of the complaint through to the date of issuance of the RA's Order. In the instant case, the date of the complaint is March 7, 2016, so, while the RA could not apply treble damages to overcharges that occurred before March 7, 2014, which is two years before the filing of the complaint, treble damages were properly applied from March 7, 2014 through to the issuance of the RA's Order (January 12, 2022).

The Commissioner finds that the petitioner failed to rebut the presumption of the willfulness of the overcharges by giving the tenant a partial refund. Pursuant to DHCR Policy Statement 89-2 (PS 89-2) in effect at the time of the complaint:

> "DHCR has determined that the burden of proof in establishing lack of willfulness shall be deemed to have been met and, therefore, the treble damage penalty is not applicable, in some situations, where it is apparent or where it is demonstrated that an overcharge occurred under certain specified circumstances. Examples of such circumstances are as follows:
>
> ...
>
> 2. Where an owner adjusts the rent on his or her own within the time afforded to interpose an answer to the proceeding and submits proof to the DHCR that he or she has tendered, **in good faith, to the tenant a full refund of all excess rent collected, plus interest....**" [Emphasis added]

Here, the petitioner only refunded $1,638.54 to the tenant, while the amount of the overcharge was $4,678.12 (as calculated below), which is not close to a "full refund of all excess rent collected, plus interest." The owner therefore did not rebut the presumption of willfulness by offering this partial refund to the tenant.

While PS 89-2 does state that the presumption of the willfulness of an overcharge may be overcome if the overcharge is based on a hypertechnical error, in this case, the Commissioner finds

that petitioner has not shown that the overcharges herein were in fact based on such an error. Here, the petitioner alleges that its misunderstanding as to what is considered ordinary repairs versus what is considered IAIs is a hypertechnical error. The Agency has published comprehensive guidelines on IAIs in Operational Bulletin 2016-1, and this Bulletin clearly explains the difference between ordinary repairs and IAIs, further explaining that ordinary repairs do not in fact qualify as IAIs. The petitioner therefore had no reason or excuse for not knowing what work constitutes legitimate IAIs or for not knowing that ordinary repairs do not qualify as IAIs. It is also noted that this error does not fit into, and is not analogous to, any of the definitions of hypertechnical errors set forth in PS 89-2. For these reasons, the petitioner's argument that the presumption of willfulness has been rebutted due to the alleged hypertechnical nature of the errors causing the overcharges is unpersuasive.

The Commissioner finds that an Agency rent reduction order will be enforced and must be taken into consideration even if it is not asserted by the tenant. Such orders are part of Agency records, and the Agency is on notice of these orders regardless of the pleadings of the parties. The collectible rent was therefore correctly reduced by Order GX110018B, as stated by the RA's Order.

However, the Commissioner finds that the RA erred in overlooking the effect of restoration Order JP110019OR. Said Order restored the rent that had been frozen by Order GX110018B, and was effective as of May 1, 2021. The RA failed to include this restoration in his calculation of the legal regulated rent and of the overcharges set forth in his Order. Consequently, the owner was entitled to collect the legal rent of $2,250.29 from May 1, 2021 (the effective date of rent restoration under JP110019OR) through January 31, 2023. Accordingly, the rent overcharge for May 1, 2021 through September 30, 2021 is $7.93 per month, which must be multiplied by the five months that this overcharge occurred, yielding an overcharge of $39.65 for these months. As a result, the total amount due tenant is modified to $12,395.82.

The Rent Administrator's calculation chart summary is modified as follows:

Overcharge amount:	$ 4,678.12
Treble damage amount:	$ 9,356.24
Interest amount:	$ 0.00
Excess security amount:	$ 0.00
Subtotal	$14,034.36
-Refund	-$1,638.54
Total amount due tenant:	**$12,395.82**

The Commissioner finds that undue delay in the processing of a complaint may only be grounds for a remedy if said delay was negligent or deliberate. See Matter of IG Second Generation Partners L.P. v N.Y. State Div. of Hous. & Community Renewal, 10 N.Y.3d 474 (2008) (Court of Appeals refused to award remedies for an alleged delay since it was not proven that the delay resulted from DHCR's negligent or deliberate conduct). Because negligence or

deliberate conduct on the part of the RA has not been established, the fact it took the RA approximately six years to issue his determination is not grounds for the reversal or modification of his Order. Furthermore, the Commissioner finds that the RA's processing of this matter was properly thorough, and that the RA, in his appropriate investigation, sent many Requests For Additional Information/Evidence to the parties, and forwarded the parties' responses to each other, as was necessary for him to do a comprehensive and full analysis and to render a correct and fair determination. During the processing of the matter by the RA, between March of 2016 and January of 2022, the RA forwarded approximately 25 correspondences to the parties.

Finally, the Commissioner finds that, contrary to the owner's allegation, the RA did not apply HSTPA to this proceeding.

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, granted in part; that the Rent Administrator's Order is modified as set forth herein; and that said Order, having been so modified, is affirmed.

ISSUED:

AUG 18 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 (DHCR)
OFFICE OF RENT ADMINISTRATION
GERTZ PLAZA
92-31 UNION HALL STREET
JAMAICA, NEW YORK 11433

----------X

IN THE MATTER OF THE ADMINISTRATIVE APPEAL OF

[redacted]

PETITIONERS

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ADMINISTRATIVE REVIEW
DOCKET NO.: KR410021RT

RENT ADMINISTRATOR'S
DOCKET NO: GR410083R

OWNER: Quisqueya Housing Company, LP

ORDER AND OPINION DENYING PETITION FOR ADMINISTRATIVE REVIEW

The above-named tenants filed a timely petition for administrative review (PAR) of an Order issued on May 26. 2022 by the Rent Administrator (RA) concerning the housing accommodation known as apartment [redacted] at 500 West 176th Street, New York, NY 10033.

On June 29, 2018, the tenants filed a rent overcharge complaint indicating that, on March 13, 2001, DHCR issued an Order under Docket Number ZNK410042RV which directed the owner to issue them a renewal lease on March 13, 2001 at a monthly rent of $302.50. The tenants also alleged that there are open rent reduction Orders based on service deficiencies, which were in effect from November 1, 1999, October 1, 2000 and August 1, 2003; that these decreased services still exist because the owner has not made repairs; and that NYC Housing and Preservation Development (HPD) should not have increased the monthly rent to $679.00.

The owner submitted a copy of a correspondence from HPD, dated April 1, 2001, which determined that the rent for the subject apartment was $679.00 per month effective April 1, 2001.

The RA issued the Order under review, finding that, although there are open rent reduction Orders freezing the rent of the subject apartment, the HPD order directing the legal related rent (LRR) to be $679.00 per month takes precedence over the service reduction Orders freezing the monthly rent at $302.50. The RA found that there were no overcharges in this case and advised the owner that the collectible rent is frozen at $679.00 until all of the open service reduction Orders are restored.

On PAR, the tenants contend that the NYS Rent Stabilization Law and Code (RSL and RSC), not HPD, is the reigning law applicable to their apartment; that the RSC does not limit the base date

for an overcharge proceeding to 4 years prior the filing date of the complaint, but to 6 years prior to such filing; that the Agency can go beyond the 6-year look-back period; that the RA's Order should go back to1998 when, as enunciated by DHCR, the subject apartment was a rent-stabilized unit with a legal-related rent (LRR) of $302.50 per month; that the RA also erred in failing to determine whether the owner complied with Order ZNK410042RV, which Order directed the owner to issue them a renewal lease on March 13, 2001 at a monthly rent of $302.50; and that the RA further erred in finding that the tenants were month-to-month tenants from July 2014 through May 31, 2017 because the owner was responsible for the fact that there was no lease for this term.

In answer, the owner denies the PAR allegations and otherwise asserts that this is not the first time that these same tenants raised the same overcharge allegations at the RA and the PAR levels; and that all those allegations were rejected on the merits in prior proceedings.

Having reviewed the record and all submissions, the Commissioner denies this PAR.

First, this case must be decided under the law in effect prior to the effective date of the Housing Stability and Tenant Protection Act of 2019 (HSTPA), which date is June 14, 2019 (see Reginia Metro. Co., LLC v NYSDHCR, 35 NY3d 332 (2020)). The law in effect at the time of the alleged overcharges, and of the filing of the overcharge complaint, limits examination of rental events to those events occurring after four years prior to the filing of the complaint unless special circumstances are present which circumstances are not found in this case (see Rent Stabilization Code Section 2526.1 of the RSC). Accordingly, the RA was correct to limit examination of rental events to those events occurring after four years prior to the filing of the complaint. It is noted that outstanding rent reduction orders issued prior to said four years may in fact be relevant, but that any such orders in this case are not determinative or relevant for the reasons set forth below.

It is noted that Order ZNK410042RV was issued in 2001, which is prior to four years prior to the filing of the complaint herein, and may not, for the reasons set forth above, be considered. The scope of the instant proceeding is also limited to a determination of the complaint initiating this proceeding, and Order ZNK410042RV is therefore beyond the scope of this proceeding. It is further noted that this Order has been the subject of at least two non-compliance proceedings.

On August 5, 2004, this Agency issued a letter, under Enforcement Case No. SG410008HL. On December 15, 2017, the RA issued an Order under Docket Number FP410105RV, which Order was affirmed by PAR Order GO410014RT issued on December 12, 2018. Said letter, and the two referenced Orders, found that the LRR that the owner is entitled to charge $679.00 per month. Further, as correctly found and stated by the RA, even though there may be outstanding rent reduction Orders freezing the legal rent, the HPD order directing that the LRR is set at $679.00 per month takes precedence, and this HPD-set rent is the LRR of the subject apartment (which rent is frozen until all open service reduction Orders are restored, as also correctly stated by the RA).

Here, the owner did not collect any rent higher than the proper monthly LRR of $679.00. The tenants in fact admit that they did not pay any higher rent than the monthly LRR of $679.00. Accordingly, the Commissioner finds that the RA's Order was in all respects correct when issued.

THEREFORE, in accordance with the Rent Stabilization Law and Code and the regulations promulgated thereunder, it is

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

ISSUED
AUG 25 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

----------X

IN THE MATTER OF THE ADMINISTRATIVE APPEAL OF

[redacted]

PETITIONER

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ADMINISTRATIVE REVIE
DOCKET NO.: KS210019RT

RENT ADMINISTRATOR'S
DOCKET NO: GV210096R

OWNER: 745 Gates LP

ORDER AND OPINION DENYING PETITION FOR ADMINISTRATIVE REVIEW

The above-named tenant timely re-filed a petition for administrative review (PAR) of an order issued on June 24, 2022 by the Rent Administrator (RA) concerning the housing accommodation known as apartment [redacted] at 715 Gates Avenue, Brooklyn, New York.

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 this PAR.

On October 29, 2018, the tenant filed a specific rent overcharge complaint alleging that the owner did not comply with a DHCR order under Docket Number VF210038R which was issued on January 25, 2008 and which found an overcharge of $919.88 based on a reduction in rent due to the tenant paying her own electricity.

The RA terminated the proceeding after finding that the tenant's concerns were addressed in subsequent RA orders under Docket Numbers YF210115R and BS210048R.

Now on PAR, the tenant asserts that the earlier overcharge found under Docket Number VF210038R is "ongoing."

In answer, the owner asserted that the tenant was only charged the portion of the rent as set forth by the New York City Housing Authority (NYCHA) for the period of her tenancy from March 15, 2010 to the present; that according to NYCHA rent change notices and the owner's rent ledger, the tenant does not pay utility charges; and that this matter has been resolved in a 2015 housing court case whereby the owner and the tenant stipulated that the tenant's legal regulated rent (LRR) was set at $1,371.03 per month.

The PAR is denied.

The RA correctly pointed out that the issues raised by tenant were already determined by

PAR Docket Number KS210019RT

DHCR orders under Docket Number YF210115R issued on February 9, 2012, and BS210048R issued on November 17, 2014, which are final agency determinations. In those matters, the RA noted that the owner's compliance with the earlier DHCR order had also been addressed in two prior Civil Court proceedings which were settled.

The record establishes that the legal regulated rent was reduced by $47 per month as a result of the electrical exclusion order; that the tenant receives a utility credit from NYCHA as recorded in the rent voucher; that the owner has complied with Court orders in terms of the rent charged; that NYCHA has verified that rent; that as of June 12, 2022 the contract rent between the owner and NYCHA was $1,437.10 per month; that the tenant's portion of the rent was $198.00 per month; and that $198.00 does not include a utility charge.

As such, the petitioner has not raised any basis to modify or revoke the RA's order which was in all respects correct when issued.

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

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

ISSUED:

SEP 26 2022

WOODY PASCAL
Deputy Commissioner