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**
1773 EAST 12TH STREET, LLC (OWNER)	:	**DOCKET NO.: KV210023RO**
	:	**RENT ADMINISTRATOR'S**
	:	**DOCKET NO.: JO210009OR**
PETITIONER	:	

ORDER AND OPINION DENYING PETITION FOR ADMINISTRATIVE REVIEW

On October 24, 2022, the Managing Agent for the above-named petitioner-owner filed a Petition for Administrative Review ("PAR") challenging Docket No. JO210009OR, the order the Rent Administrator issued on May 23, 2022 (the "Order"), concerning the housing accommodation known as 1773 East 12th Street, Apt. [redacted], Brooklyn, NY, wherein the Agency's Rent Administrator denied the owner's application to restore the rent for the subject apartment.

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 Managing Agent claims that the error of fact and/or law in the Order being appealed is that, "the apartment has been repaired. However, before DHCR comes to inspect the apartment, the tenant deliberately damages the apartment in order to receive a rent reduction." The Managing Agent attached copies of work orders that were purportedly signed by the tenant, and a paid invoice from [redacted] claiming to substantiate the Managing Agent's claim that they completed all of the repairs.

The Agency's records show that the tenant responded to the owner's PAR on November. 14, 2022, when the tenant asserted that "the owners lied on the paperwork" and requested an inspection, further claiming that the owner did not paint or fix anything.

After careful consideration of the entire evidence of the record in this PAR, 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. DHCR Policy Statement 90-2 states that the

Rent Administrator may rely on an Agency inspection when making the determination in a matter.

A review of the proceeding below reveals that the tenant was previously granted a rent reduction under Docket No. IO210114S on February 24, 2021 for paint/plaster in the kitchen, bathroom, and bedroom 1. On March 3, 2021, the owner filed the subject rent restoration application claiming that the peeling paint, plaster, and chipped paint were repaired. The tenant was provided with notice of the owner's rent restoration application on April 8, 2021.

Thereafter, the Agency requested an inspection of the subject apartment, and on October 8, 2021 an impartial DHCR inspector visited the subject apartment and made the following observations of services that were not being maintained: (i) On the kitchen north wall, the paint/plaster is peeling and crumbling. There is evidence of cracked paint/plaster on the cabinets under the kitchen sink. (ii) The bathroom wall around the showerhead has chipped paint/plaster. (iii) Bedroom #1 has chipped paint/plaster on the ceiling in the east corner, above the window and in the center of the ceiling.

After taking the details of the owner's rent restoration claim and the results of the Agency inspection into account, the Rent Administrator issued an order denying the owner's Application to Restore Rent for the subject apartment on May 23, 2022.

The Commissioner subscribes to the fact that the owner is entitled to the restoration of rent after this Agency establishes that the required services that were cited in the underlying rent reduction order, Docket No. IO210114S, have been restored. However, in this case, the Rent Administrator's denial of the owner's rent restoration claim was correctly based on a finding that the conditions that were cited in the order reducing rent under Docket No. IO210114S were found not restored during the inspection that was conducted by the Agency's impartial inspector on October 8, 2021. The Commissioner adds that Section 2527.5(b) of the Rent Stabilization Code (RSC) authorizes the Rent Administrator to request an inspection at any stage during a DHCR proceeding and New York courts have held that this Agency has broad discretion to decide when an inspection is necessary.

After a review of the underlying matter, the Commissioner finds that on appeal, the Petitioner-owner has not presented any allegations of errors of fact or law against the Rent Administrator's determination that warrant the modification or reversal of the Rent Administrator's order. Instead, the Petitioner-owner merely claims that they have complied with the Rent Administrator's instruction by restoring the services that were at issue, and the tenant deliberately damages the apartment in order to receive a rent reduction. The Petitioner-owner's claims, however, are not substantiated and are purely self-serving in this case.

The Commissioner finds that the Rent Administrator's determination in the matter below was neither arbitrary nor capricious and was supported by a rational basis in the record, namely the inspector's observations that were noted during the inspection that was conducted on October 8, 2021 and recorded in the Inspection Report for Docket No. JO210009OR. The Rent Administrator's reliance on the inspector's training and experience with building inspections as

well as the inspector's impartiality in conducting the inspection and taking photographs during the inspection was reasonable (see Policy Statement 90-2).

Based on the foregoing, the Commissioner finds that the Rent Administrator correctly denied the owner's rent restoration request, and 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 file an "Owner's Application to Restore Rent" with this Agency if the facts so warrant.

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

ORDERED, the petition is denied and the Rent Administrator's Order under Docket No. JO210009OR is affirmed.

ISSUED: JAN 6 2023

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.

There is no other method of appeal.

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IN THE MATTER OF THE ADMINISTRATIVE APPEAL OF

ESCO ASSOCIATES LLC

PETITIONER

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ADMINISTRATIVE REVIEW DOCKET NO.: KW110006RO

RENT ADMINISTRATOR'S DOCKET NO.: KN110055OR

ORDER AND OPINION DENYING PETITION FOR ADMINISTRATIVE REVIEW

On November 8, 2022, the above-named Petitioner-owner filed a Petition for Administrative Review ("PAR") challenging KN110055OR, an order the Rent Administrator issued on October 4, 2022 (the "order"), concerning the housing accommodation known as 94-26 34th Road, Apartment [redacted], Jackson Heights, New York, wherein the Rent Administrator granted the owner's rent restoration application effective February 18, 2022.

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 modification of the Rent Administrator's order asserting that the order is erroneous, capricious, arbitrary, egregious, unjust, inequitable, and deviates from the DHCR precedent, policy, and procedure by establishing the effective date of restoration as February 18, 2022 (the date the Petitioner-owner filed the rent restoration application). The Petitioner argues that the rent should have been restored as of June 14, 2006, (the date the Vacate Order was lifted) or December 30, 2005 (the date the tenant opted not to return to the apartment); that the subject unit was restored as of May 5, 2005, the date the New York City Housing Preservation and Development ("HPD") inspected the apartment, as noted by a letter issued on June 14, 2006 by HPD rescinding the Vacate Order; that after the tenant was notified that the apartment had been restored to a habitable condition pursuant to the HPD inspection, the tenant opted not to return to the said apartment, and thereafter, the subject apartment was re-rented to a new tenant in September of 2007, and that the new occupant

consented to the restoration; that there has been no harm or inequity to the tenant as a result of the owner's delay; that, per the Matter of Haidt, Docket No. HD410378RT; Matter of Franklin, Docket No. XH410005RT; and Matter of Goos, Docket No. VA410061RT; and the Rent Administrator's order in Matter of 44 North Grove, LLC, Docket No. GN710043OR, the Agency set the effective date of the rent restoration as of the date the tenant resumed occupancy, or the date the apartment was restored to habitability; that the rent reduction order is devoid of any instruction to the owner concerning the filing of their rent restoration application, and that establishing the rent at $1.00 is not meant to be punitive but rather to maintain the landlord/tenant relationship until the tenant is restored to occupancy, citing to the Matter of Bush/Amiet Corp, Docket No. BK410289RO; Matter of 2070 LLC, Docket No. AS610002RO; Matter of B.M.H. Realty, Ltd, Docket No. ET420024RO; and that the February 18, 2022 effective date unfairly creates rent overcharge exposure, and the reason the owner did not file earlier because the owner at the time was not aware that an application was required to restore the rent. The owner attached a letter from HPD dated June 14, 2006 stating that Vacate Order #23827 was rescinded, a purported affidavit of Talin Eshagoff dated September 30, 2021 wherein the affiant claims to be the managing member of the owner, ESCO Associates LLC, as well as the previous (now deceased) owner's son, claiming that he had no prior involvement with the management of the building, and that he does not know why his father did not file the rent restoration applications after the apartments were restored to habitability, and that after Talin Eshaghoff learned of the requirement to file the rent restoration applications, he retained counsel to assist him with the filing of the said application; and a purported letter from a former tenant dated December 30, 2005 stating that the tenant was surrendering the apartment.

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

Pursuant to Section 2522.6 of the Rent Stabilization Code ("RSC" or "the Code"), where a tenant was forced to vacate their apartment because it is legally uninhabitable, it is the Division's policy to establish the rent at $1.00 per month to maintain the landlord/tenant relationship between the parties until such time as the apartment is restored to habitability and the subject tenant is restored to occupancy or refused an offer to reoccupy the subject apartment.

It is the general practice of the Agency to restore the rent for rent stabilized apartments effective the first day of the month following the date the tenant was served with the rent restoration application. However, DHCR's policy and practice further dictates that if an owner restores a fire-related damaged apartment to habitability after a $1.00 order has been issued and the tenant advises that occupancy has resumed, the Rent Administrator may grant the owner's rent restoration application to the level in effect prior to the date of the fire, effective the date the tenant is restored to occupancy. On the contrary, the failure to file a timely rent restoration application may affect the effective date of the rent restoration.

In this case, according to the Agency's records, pursuant to Section 2522.6 of the RSC, the rent for the subject apartment was determined to be $1.00 per month as of March 20, 2005, the date of the fire that caused the tenant to vacate the subject premises involuntarily (see Docket No. TC110151S issued on April 7, 2005).

In the proceeding below, Docket No. KN110055OR, the owner filed an application to restore the rent on February 18, 2022, wherein the owner asserted that the apartment was restored for occupancy on May 5, 2005, and attached a letter from HPD dated June 14, 2006 rescinding Vacate Order #23827 (Vacate Order #23827 was issued on April 7, 2005 for the subject premises) based on an inspection conducted on May 5, 2005; a purported letter from the former tenant dated December 30, 2005 indicating that they would not be returning to the subject apartment [redacted]; and the Tenant's Statement of Consent (Part B of the owner's rent restoration application) purported to be signed by the "current tenant" on April 28, 2021. The owner's application with the accompanied documents were served on the current tenant on February 22, 2022. On April 6, 2022, the Rent Administrated requested from the current tenant the date the tenant took tenancy and to submit a copy of their initial lease.

The record shows that on April 6, 2022, the Administrator requested from the owner the following information: who the current tenant of the subject apartment is, when the tenant took occupancy, and to submit the initial lease of the current tenant.

By correspondence dated April 27, 2022, the owner, through counsel, responded and claimed that the former tenant on the rent reduction order surrendered the apartment in December of 2005, and that a new tenant took occupancy on February 1, 2006, and attached that tenant's initial lease that indicated that tenant moved in on February 1, 2006.

Another request was sent to the owner on September 14, 2022, requesting from the owner an explanation as to why it took the owner so long to apply for rent restoration. In the owner's answer dated September 23, 2022, the owner indicated that current management "was not aware the rent reduction order was in effect until recently."

Based on the totality of the evidence, including the owner's submissions, the Rent Administrator, on October 4, 2022, granted the owner's rent restoration application finding that the restoration of rent was warranted, and that the services were restored. The Administrator determined that the rent be restored to the level in effect prior to the rent reduction plus all lawful increases, effective February 18, 2022, the date the owner filed the subject rent restoration application asserting that services were restored.

The Commissioner, having reviewed the record herein, finds that the owner's PAR is without merit and the owner has not presented any allegations of error of fact or law to warrant a modification of the Rent Administrator's order. The Commissioner in this case rejects the owner's claim that the effective date of the Rent Administrator's order must be modified to reflect an effective date sixteen (16) years prior to when the owner filed the subject rent restoration application. An owner is required to complete an application for rent restoration upon restoration of the apartment to a habitable condition and that a timely filing is essential for the tenant's rent to be restored as of the date of re-occupancy.

Here, the Commissioner notes that it is undisputed that on April 7, 2005, Vacate Order #23827 for the subject premises was issued by HPD, that under Docket No. TC110151S, issued on April 7, 2005, the rent was set at $1.00 per month as of March 20, 2005, the date of the fire which caused the tenant to vacate the premises involuntarily, that on June 14, 2006, HPD rescinded

Vacate Order #23827 based on an HPD vacant building survey inspection conducted on May 5, 2005, and that the owner failed to file a rent restoration application until more than sixteen (16) years later, on February 18, 2022.

The record below establishes that the Rent Administrator took into account the entire record and that after consideration, concluded that it would be inequitable to restore the rent back to December 2005 or June 2006 as the owner requested, considering that the owner failed to submit a rent restoration until February 18, 2022, more than sixteen (16) years after the owner claims the former tenant of the underlying rent reduction order, Docket No. TC110151S, surrendered the apartment in 2005. Under the circumstances in this case, the Rent Administrator properly determined that the effective date be February 18, 2022, the day the owner filed a rent restoration application asserting that services were restored.

The longstanding policy of DHCR is that an owner is responsible for knowing whether or not there are outstanding rent reduction orders in effect. The purchaser of a building, or a new owner of a building, steps into the shoes of its predecessor in interest and assumes all the liabilities as well as assets of the previous owner, including those outstanding rent reduction orders that were issued prior to the purchase of the building. The existence of all DHCR orders and proceedings is available to purchasers and new owners of buildings upon request of the Agency. In this case, the previous owner failed to adhere to Agency policy and procedures and apply for the restoration. The current owner fails to offer a reasonable explanation for such lack of filing a rent restoration application that would provide for a different effective date. Furthermore, the Commissioner notes that the responsibility of the owner to file a rent restoration does not change just because the owner is unaware of the requirement to file a rent restoration application.

The Commissioner finds that the tenant should not be made to bear the brunt of the owner's choice to not file a rent restoration application for sixteen (16) years from the time that the owner claims the effective date should be.[1] This Agency has a duty to ensure that its decisions are not inconsistent with the spirit and intent of the rent laws. See Matter of 305 Realty NY LLC v. DHCR, Supreme Court of the State of New York, County of Kings, Index No. 5044/2010, wherein the Court found that although it may seem unfair to the owner that the tenant was able to occupy the apartment and continue to pay the reduced rent of $1.00, "it would be just as unfair to raise the tenant's rent retroactively" because of the owner's failure to timely file the application for rent restoration. The Court also found that, "here, equity does not weigh in petitioner[-owner]'s favor in that petitioner is requesting that the court remedy petitioner's error, not [the Agency's] mistake." Accordingly, the Commissioner finds that the owner's claim that the rent should be restored to June 14, 2006 or December 30, 2005, more than sixteen (16) years prior to the filing of the rent restoration application is without merit and is merely self-serving.

Regarding the cases cited by the Petitioner, the Commissioner finds the decisions in those cases are not determinative of the issues herein as the facts in those cases are distinguishable, and therefore not applicable to the instant case. For Docket No. HD410378RT, the relevant facts pertained to a previously filed rent restoration application, which is not the case herein. As for the rest of the cases cited by the owner, as mentioned above, the facts are distinguishable from the facts of the subject case as the cited cases do not relate to the owner's protracted delay in

[1] See Docket Nos. CQ410024RO and XH410001RP.

filing their rent restoration application. Furthermore, Docket No. VA410061RT was remitted to DHCR, and in an order issued on February 24, 2010 under Docket No. XH410001RP, the Commissioner granted the tenant's appeal on remand, modifying the effective date due to the owner's delay in filing their rent restoration application.

Based on the foregoing, the Commissioner finds that the Rent Administrator's order is correct as issued, and the effective date of February 18, 2022, the date the owner filed the rent restoration application asserting that services had been restored, is proper under the circumstances herein, and the owner's PAR has not established any basis to modify or revoke the Rent Administrator's determination.

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

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

ISSUED: JAN 13 2023

Woody Pascal
Deputy Commissioner

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Office of Rent Administration
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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.

There is no other method of appeal.

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IN THE MATTER OF THE ADMINISTRATIVE APPEAL OF

ESCO ASSOCIATES LLC

PETITIONER

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ADMINISTRATIVE REVIEW DOCKET NO.: KW110007RO

RENT ADMINISTRATOR'S DOCKET NO.: KN110047OR

ORDER AND OPINION DENYING PETITION FOR ADMINISTRATIVE REVIEW

On November 8, 2022, the above-named petitioner-owner filed a Petition for Administrative Review ("PAR") challenging KN110047OR, an order the Rent Administrator issued on October 4, 2022 (the "order"), concerning the housing accommodation known as 94-26 34th Road, Apartment [redacted], Jackson Heights, New York, wherein the Rent Administrator granted the owner's rent restoration application effective February 15, 2022.

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 modification of the Rent Administrator's order asserting that the order is erroneous, capricious, arbitrary, egregious, unjust, inequitable, and deviates from the DHCR precedent, policy, and procedure by establishing the effective date of restoration as February 15, 2022 (the date the Petitioner-owner filed the rent restoration application). The Petitioner argues that the rent should have been restored as of June 14, 2006, (the date the Vacate Order was lifted) or the date the tenant opted not to return to the apartment; that the subject unit was restored as of May 5, 2005, the date the New York City Housing Preservation and Development ("HPD") inspected the apartment, as noted by a letter issued on June 14, 2006 by HPD rescinding the Vacate Order; that after the tenant was notified that the apartment had been restored to a habitable condition pursuant to the HPD inspection, the tenant opted not to return to the said apartment, and thereafter, the subject apartment was re-rented to a new tenant in September of 2007, and that the new occupant consented to the restoration of the

rent; that there has been no harm or inequity to the tenant as a result of the owner's delay; that, per the Matter of Haidt, Docket No. HD410378RT; Matter of Franklin, Docket No. XH410005RT; Matter of Goos, Docket No. VA410061RT; and the Rent Administrator's order, Matter of 44 North Grove, LLC, Docket No. GN710043OR, the Agency set the effective date of the rent restoration as of the date the tenant resumed occupancy, or the date the apartment was restored to habitability; that the rent reduction order is devoid of any instruction to the owner concerning the filing of a rent restoration application, and that establishing the rent at $1.00 is not meant to be punitive but rather to maintain the landlord/tenant relationship until the tenant is restored to occupancy, citing to the Matter of Bush/Amiet Corp, Docket No. BK410289RO; Matter of 2070 LLC, Docket No. AS610002RO; and Matter of B.M.H. Realty, Ltd, Docket No. ET420024RO; and that the February 15, 2022 effective date unfairly creates rent overcharge exposure due to a decrease in services which was corrected years earlier. The owner attached a letter from HPD dated June 14, 2006 stating that Vacate Order #23827 was rescinded; a purported affidavit of Talin Eshagoff dated September 30, 2021 wherein the affiant claims to be the managing member of the owner, ESCO Associates LLC, as well as the previous (now deceased) owner's son, claiming that he had no prior involvement with the management of the building, and that he does not know why his father did not file the rent restoration applications after the apartments were restored to habitability, and that after Talin Eshaghoff learned of the requirement to file the rent restoration applications, he retained counsel to assist him with the filing of the application; and a purported letter from the former tenant who was displaced by the fire, dated June 1, 2005, stating that the tenant was surrendering the apartment.

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

Pursuant to Section 2522.6 of the Rent Stabilization Code ("RSC" or "the Code"), where a tenant was forced to vacate their apartment because it is legally uninhabitable, it is the Division's policy to establish the rent at $1.00 per month to maintain the landlord/tenant relationship between the parties until such time as the apartment is restored to habitability and the subject tenant is restored to occupancy or refused an offer to reoccupy the subject apartment.

It is the general practice of the Agency to restore the rent for rent stabilized apartments effective the first day of the month following the date the tenant was served with the rent restoration application. However, DHCR's policy and practice further dictates that if an owner restores a fire-related damaged apartment to habitability after a $1.00 order has been issued and the tenant advises that occupancy has resumed, the Rent Administrator may grant the owner's rent restoration application to the level in effect prior to the date of the fire, effective the date the tenant is restored to occupancy. On the contrary, the failure to file a timely rent restoration application may affect the effective date of the rent restoration.

In this case, according to the Agency's records, pursuant to Section 2522.6 of the RSC, the rent for the subject apartment was determined to be $1.00 per month as of March 20, 2005, the date of the fire that caused the tenant to vacate the subject premises involuntarily (see Docket No. TD110045S issued on May 4, 2005).

In the proceeding below, Docket No. KN110047OR, the owner filed an application to restore the rent on February 15, 2022, wherein the owner asserted that the apartment was restored for occupancy on May 5, 2005, and attached a letter from HPD dated June 14, 2006 rescinding Vacate Order #23827 (Vacate Order #23827 was issued on April 7, 2005 for the subject premises) based on an inspection conducted on May 5, 2005; a purported letter from the former displaced tenant dated June 1, 2005 indicating that they would not be returning to the subject apartment [redacted]; and the Tenant's Statement of Consent (Part B of the owner's rent restoration application) purported to be signed by the "current tenant" on April 30, 2021. The owner's application with the accompanied documents were served on the current tenant on February 17, 2022. On April 7, 2022, the Rent Administrator requested from the current tenant the date the tenant took tenancy and to submit a copy of their initial lease.

The record shows that on April 7, 2022, the Administrator requested from the owner the following information: who the current tenant of the subject apartment is, when the tenant took occupancy, and to submit the initial lease of the current tenant.

By correspondence dated April 27, 2022, the owner, through counsel, responded and claimed that the former tenant in the rent reduction order surrendered the apartment in 2005 after the subject apartment was returned to habitability and the Vacate Order was lifted, and that a new tenant, the [redacted] family, took occupancy on September 1, 2007, and attached the initial lease and the renewal for the [redacted] family.

Another request was sent to the owner on September 2, 2022, requesting from the owner an explanation as to why it took the owner so long to apply for rent restoration. In the owner's answer dated September 23, 2022, the owner indicated that "current management was not aware the rent reduction order was in effect until recently."

Based on the totality of the evidence, including the owner's submissions, the Rent Administrator, on October 4, 2022, granted the owner's rent restoration application finding that the restoration of rent was warranted, and that the services were restored. The Administrator determined that the rent be restored to the level in effect prior to the rent reduction plus all lawful increases, effective February 15, 2022, the date the owner filled the rent restoration application asserting that services were restored.

The Commissioner, having reviewed the record herein, finds that the owner's PAR is without merit and the owner has not presented any allegations of error of fact or law to warrant a modification of the Rent Administrator's order. The Commissioner in this case rejects the owner's claim that the effective date of the Rent Administrator's order must be modified to reflect an effective date more than fifteen (15) years prior to when the owner filed the subject rent restoration application. An owner is required to complete an application for rent restoration upon restoration of the apartment to a habitable condition and that a timely filing is essential for the tenant's rent to be restored as of the date of re-occupancy.

Here, the Commissioner notes that it is undisputed that on April 7, 2005, Vacate Order #23827 for the subject premises was issued by HPD, that under Docket No. TD110045S, issued on May 4, 2005, the rent was set at $1.00 per month as of March 20, 2005, the date of the fire which

caused the tenant to vacate the premises involuntarily, that on June 14, 2006, HPD rescinded Vacate Order #23827 based on an HPD vacant building survey inspection conducted on May 5, 2005, and that the owner failed to file a rent restoration application until more than sixteen (16) years later, on February 15, 2022.

The record below establishes that the Rent Administrator took into account the entire record and that after consideration, concluded that it would be inequitable to restore the rent back to 2005 or June 2006 as the owner requested, considering that the owner failed to submit a rent restoration application until February 15, 2022, sixteen (16) years after the owner claims the former tenant of the underlying rent reduction order, Docket No. TD110045S, surrendered the apartment in 2005. Under the circumstances in this case, the Commissioner finds that the Rent Administrator properly determined that the effective date be February 15, 2022, the date the owner filed the rent restoration application asserting that services had been restored.

The longstanding policy of DHCR is that an owner is responsible for knowing whether or not there are outstanding rent reduction orders in effect. The purchaser of a building, or a new owner of a building, steps into the shoes of its predecessor in interest and assumes all the liabilities as well as assets of the previous owner, including those outstanding rent reduction orders that were issued prior to the purchase of the building. The existence of all DHCR orders and proceedings is available to purchasers and new owners of buildings upon request of the Agency. In this case, the previous owner failed to adhere to Agency policy and procedures and apply for the restoration. The current owner fails to offer a reasonable explanation for such lack of filing a rent restoration application that would provide for a different effective date. Furthermore, the Commissioner notes that the responsibility of the owner to file a rent restoration does not change just because the owner is unaware of the requirement to file a rent restoration application.

The Commissioner finds that the tenant should not be made to bear the brunt of the owner's choice to not file a rent restoration application for more than fifteen (15) years from the time that the owner claims the effective date should be.[1] This Agency has a duty to ensure that its decisions are not inconsistent with the spirit and intent of the rent laws. See Matter of 305 Realty NY LLC v. DHCR, Supreme Court of the State of New York, County of Kings, Index No. 5044/2010, wherein the Court found that although it may seem unfair to the owner that the tenant was able to occupy the apartment and continue to pay the reduced rent of $1.00, "it would be just as unfair to raise the tenant's rent retroactively" because of the owner's failure to timely file the application for rent restoration. The Court also found that, "here, equity does not weigh in petitioner[-owner]'s favor in that petitioner is requesting that the court remedy petitioner's error, not [the Agency's] mistake." Accordingly, the Commissioner finds that the owner's claim that the rent should be restored the date the displaced tenant opted not to return to the apartment or June 14, 2006, more than fifteen (15) years prior to the filing of the rent restoration application is without merit and is merely self-serving.

Regarding the cases cited by the Petitioner, the Commissioner finds the decisions in those cases are not determinative of the issues herein as the facts in those cases are distinguishable, and therefore not applicable to the instant case. For Docket No. HD410378RT, the relevant facts pertained to a previously filed rent restoration application, which is not the case herein. As for

[1] See Docket Nos. CQ410024RO and XH410001RP.

the rest of the cases cited by the owner, as mentioned above, the facts are distinguishable from the facts of the subject case as the cited cases do not relate to the owner's protracted delay in filing their rent restoration application. Furthermore, Docket No. VA410061RT was remitted to DHCR, and in an order issued on February 24, 2010 under Docket No. XH410001RP, the Commissioner granted the tenant's appeal on remand, modifying the effective date due to the owner's delay in filing their rent restoration application.

Based on the foregoing, the Commissioner finds that the Rent Administrator's order is correct as issued, and the effective date of February 15, 2022, the date the owner filed the rent restoration application asserting that services had been restored, is proper under the circumstances herein, and the owner's PAR has not established any basis to modify or revoke the Rent Administrator's determination.

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: JAN 13 2023

Woody Pascal
Deputy Commissioner

State of New York
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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.

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

ESCO ASSOCIATES LLC

PETITIONER

ADMINISTRATIVE REVIEW DOCKET NO.: KW110012RO

RENT ADMINISTRATOR'S DOCKET NO.: KN110041OR

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ORDER AND OPINION DENYING PETITION FOR ADMINISTRATIVE REVIEW

On November 4, 2022, the above-named Petitioner-owner filed a Petition for Administrative Review ("PAR") challenging KN110041OR, an order the Rent Administrator issued on September 30, 2022 (the "order"), concerning the housing accommodation known as 94-26 34th Road, Apartment [redacted], Jackson Heights, New York, wherein the Rent Administrator granted the owner's rent restoration application effective February 10, 2022.

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 modification of the Rent Administrator's order asserting that the order is erroneous, capricious, arbitrary, egregious, unjust, inequitable, and deviates from the DHCR precedent, policy, and procedure by establishing the effective date of restoration as February 10, 2022 (the date the Petitioner-owner filed the rent restoration application). The Petitioner argues that the rent should have been restored as of June 14, 2006, (the date the Vacate Order was lifted and the apartment was re-occupied); that the subject unit was restored as of May 5, 2005, the date the New York City Housing Preservation and Development ("HPD") inspected the apartment, as noted by a letter issued on June 14, 2006 by HPD rescinding the Vacate Order; that upon restoring the subject apartment to habitability, the subject tenant resumed occupancy; that the Petitioner provided the Administrator with documentation of when the tenant resumed occupancy and the date that HPD lifted the vacate order, and the Rent Administrator ignored the evidence; that the rent reduction order is devoid of

any instruction to the owner concerning the filing of a rent restoration application; that establishing the rent at $1.00 is not meant to be punitive but rather to maintain the landlord/tenant relationship until the tenant is restored to occupancy; that the owner made necessary repairs to return the apartment to habitability by May 5, 2005, and that the February 10, 2022 effective date unfairly creates rent overcharge exposure due to a decrease in services which was corrected years earlier; and the reason the owner did not file was because the owner at the time was not aware that an application was required to restore the rent.

The owner attached a letter from HPD dated June 14, 2006 stating that Vacate Order #23827 was rescinded, a purported affidavit of Talin Eshagoff dated September 30, 2021 wherein the affiant claims to be the managing member of the owner, ESCO Associates LLC, as well as the previous (now deceased) owner's son, claiming that he had no prior involvement with the management of the building, and that he does not know why his father did not file the rent restoration applications after the apartments were restored to habitability, and that after Talin Eshaghoff learned of the requirement to file the rent restoration applications, he retained counsel to assist him with the filing of the application.

The owner also references the following cases purporting to substantiate the Petitioner-owner's assertions that the Agency should set the effective date of the rent restoration as of the date the tenant resumed occupancy, or the date the apartment was restored to habitability: Matter of 44 North Grove LLC, Rent Administrator's Docket No. GN710043OR; Matter of Haidt, Docket No. HD410378RT; Matter of Franklin, Docket No. XH410005RT; Matter of Goos, Docket No. VA410061RT; Matter of Bush/Amiet Corp, Docket No. BK410289RO; Matter of 2070 LLC, Docket No. AS610002RO; Matter of B.M.H. Realty, Ltd, Docket No. ET420024RO.

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

Pursuant to Section 2522.6 of the Rent Stabilization Code ("RSC" or "the Code"), where a tenant was forced to vacate their apartment because it is legally uninhabitable, it is the Division's policy to establish the rent at $1.00 per month to maintain the landlord/tenant relationship between the parties until such time as the apartment is restored to habitability and the subject tenant is restored to occupancy or refused an offer to reoccupy the subject apartment.

It is the general practice of the Agency to restore the rent for rent stabilized apartments effective the first day of the month following the date the tenant was served with the rent restoration application. However, DHCR's policy and practice further dictates that if an owner restores a fire-related damaged apartment to habitability after a $1.00 order has been issued and the tenant advises that occupancy has resumed, the Rent Administrator may grant the owner's rent restoration application to the level in effect prior to the date of the fire, effective the date the tenant is restored to occupancy. On the contrary, the failure to file a timely rent restoration application may affect the effective date of the rent restoration.

In this case, according to the Agency's records, pursuant to Section 2522.6 of the RSC, the rent for the subject apartment was determined to be $1.00 per month as of March 20, 2005, the date

of the fire that caused the tenant to vacate the subject premises involuntarily (see Docket No. TC110129S issued on April 7, 2005).

In the proceeding below, Docket No. KN110041OR, the owner filed an application to restore the rent on February 10, 2022, wherein the owner asserted that the apartment was restored for occupancy on May 5, 2005, and the tenant resumed occupancy later in 2005. The owner's rent restoration application was submitted along with the a letter from HPD dated June 14, 2006 rescinding Vacate Order #23827 (which was issued on April 7, 2005 for the subject premises) based on an inspection conducted on May 5, 2005; the Tenant's Statement of Consent (Part B of the owner's rent restoration application) purported to be signed by the "current tenant" on April 28, 2021; and copies of rent rolls from November 2005 to June 2006 (April rent roll is missing) purporting to indicate that the tenant consents to the restoration of rent.

The owner's application with the accompanied documents were served on the tenant on February 14, 2022. There is no evidence in the record showing that the tenant refuted the owner's claims.

The record shows that on April 26, 2022, the Administrator requested from the owner the reason for the delay in filing their application. The owner responded on May 13, 2022 and indicated that the building was previously owned by the current owner's father at the time the Vacate Order was lifted, and that the current owner does not know the reason the former owner did not file for rent restoration but that the owner believes the former owner was unaware of the requirement as the rent reduction order did not provide such instruction.

Based on the totality of the evidence, including the owner's submissions, the Rent Administrator, on September 30, 2022, granted the owner's rent restoration application finding that the restoration of rent was warranted, and that the services were restored. The Administrator determined that the rent be restored to the level in effect prior to the rent reduction plus all lawful increases, effective February 10, 2022, the date the owner filled the rent restoration application asserting that services had been restored.

The Commissioner, having reviewed the record herein, finds that the owner's PAR is without merit and the owner has not presented any allegations of error of fact or law to warrant a modification of the Rent Administrator's order. The Commissioner in this case rejects the owner's claim that the effective date of the Rent Administrator's order must be modified to reflect an effective date more than fifteen (15) years prior to when the owner filed the subject rent restoration application. An owner is required to complete an application for rent restoration upon restoration of the apartment to a habitable condition and that a timely filing is essential for the tenant's rent to be restored as of the date of re-occupancy.

Here, the Commissioner notes that it is undisputed that on April 7, 2005, Vacate Order #23827 for the subject premises was issued by HPD, that under Docket No. TC110129S, issued on April 7, 2005, the rent was set at $1.00 per month as of March 20, 2005, the date of the fire which caused the tenant to vacate the premises involuntarily, that on June 14, 2006, HPD rescinded Vacate Order #23827 based on an HPD vacant building survey inspection conducted on May 5, 2005, and that the owner failed to file a rent restoration application until more than sixteen (16) years later, on February 10, 2022.

The record below establishes that the Rent Administrator took into account the entire record and that after consideration, concluded that it would be inequitable to restore the rent back to June 2006 as the owner requested, considering that the owner failed to submit a rent restoration until February 10, 2022, more than sixteen (16) years after the owner claims the former tenant was restored to occupancy in 2005. Under the circumstances in this case, the Commissioner finds that the Rent Administrator properly determined that the effective date be February 10, 2022, the day the owner filed a rent restoration application asserting that services had been restored.

The longstanding policy of DHCR is that an owner is responsible for knowing whether or not there are outstanding rent reduction orders in effect. The purchaser of a building, or a new owner of a building, steps into the shoes of its predecessor in interest and assumes all the liabilities as well as assets of the previous owner, including those outstanding rent reduction orders that were issued prior to the purchase of the building. The existence of all DHCR orders and proceedings is available to purchasers and new owners of buildings upon request of the Agency. In this case, the previous owner failed to adhere to Agency policy and procedures and apply for the restoration. The current owner fails to offer a reasonable explanation for such lack of filing a rent restoration application that would provide for a different effective date. Furthermore, the Commissioner notes that the responsibility of the owner to file a rent restoration does not change just because the owner is unaware of the requirement to file a rent restoration application.

The Commissioner finds that the tenant should not be made to bear the brunt of the owner's choice to not file a rent restoration application for more than fifteen (15) years from the time that the owner claims the effective date should be.[1] This Agency has a duty to ensure that its decisions are not inconsistent with the spirit and intent of the rent laws. See Matter of 305 Realty NY LLC v. DHCR, Supreme Court of the State of New York, County of Kings, Index No. 5044/2010, wherein the Court found that although it may seem unfair to the owner that the tenant was able to occupy the apartment and continue to pay the reduced rent of $1.00, "it would be just as unfair to raise the tenant's rent retroactively" because of the owner's failure to timely file the application for rent restoration. The Court also found that, "here, equity does not weigh in petitioner[-owner]'s favor in that petitioner is requesting that the court remedy petitioner's error, not [the Agency's] mistake." Accordingly, the Commissioner finds that the owner's claim that the rent should be restored to June 14, 2006, more than fifteen (15) years prior to the filing of the rent restoration application is without merit and is merely self-serving.

Regarding the cases cited by the Petitioner, the Commissioner finds the decisions in those cases are not determinative of the issues herein as the facts in those cases are distinguishable, and therefore not applicable to the instant case. For Docket No. HD410378RT, the relevant facts pertained to a previously filed rent restoration application, which is not the case herein. As for the rest of the cases cited by the owner, as mentioned above, the facts are distinguishable from the facts of the subject case as the cited cases do not relate to the owner's protracted delay in filing their rent restoration application. Furthermore, Docket No. VA410061RT was remitted to DHCR, and in an order issued on February 24, 2010 under Docket No. XH410001RP, the Commissioner granted the tenant's appeal on remand, modifying the effective date due to the owner's delay in filing their rent restoration application.

[1] See Docket Nos. CQ410024RO and XH410001RP.

Based on the foregoing, the Commissioner finds that the Rent Administrator's order is correct as issued, and the effective date of February 10, 2022, the date the owner filed the rent restoration application asserting that services had been restored, is proper under the circumstances herein, and the owner's PAR has not established any basis to modify or revoke the Rent Administrator's determination.

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

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

ISSUED: JAN 13 2023

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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IN THE MATTER OF THE ADMINISTRATIVE APPEAL OF

ESCO ASSOCIATES LLC

PETITIONER

ADMINISTRATIVE REVIEW DOCKET NO.: KW110014RO

RENT ADMINISTRATOR'S DOCKET NO.: KN110048OR

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ORDER AND OPINION DENYING PETITION FOR ADMINISTRATIVE REVIEW

On November 4, 2022, the above-named Petitioner-owner filed a Petition for Administrative Review ("PAR") challenging KN110048OR, an order the Rent Administrator issued on September 30, 2022 (the "order"), concerning the housing accommodation known as 94-26 34th Road, Apartment [redacted] Jackson Heights, New York, wherein the Rent Administrator granted the owner's rent restoration application effective February 15, 2022.

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 modification of the Rent Administrator's order asserting that the order is erroneous, capricious, arbitrary, egregious, unjust, inequitable, and deviates from the DHCR precedent, policy, and procedure by establishing the effective date of restoration as February 15, 2022 (the date the Petitioner-owner filed the rent restoration application). The Petitioner argues that the rent should have been restored as of June 14, 2006, (the date the Vacate Order #23827 was lifted); that the subject unit was restored as of May 5, 2005, the date the New York City Housing Preservation and Development ("HPD") inspected the apartment, as noted by a letter issued on June 14, 2006 by HPD rescinding the Vacate Order; that the Petitioner provided the Administrator with documentation of when the tenant resumed occupancy and the date that HPD lifted the vacate order, and the Rent Administrator ignored the evidence; that upon restoring the subject apartment to habitability, the subject tenant resumed occupancy; that the rent reduction order is devoid of any instruction to the owner concerning the

filing of a rent restoration application; that establishing the rent at $1.00 is not meant to be punitive but rather to maintain the landlord/tenant relationship until the tenant is restored to occupancy; that the owner made necessary repairs to return the apartment to habitability by May 5, 2005, and that the February 15, 2022 effective date unfairly creates rent overcharge exposure due to a decrease in services which was corrected years earlier; that there has been no harm or inequity to the tenant as a result of the owner's delay; and the reason the owner did not file was because the owner at the time was not aware that an application was required to restore the rent. The owner attached a letter from HPD dated June 14, 2006 stating that Vacate Order #23827 was rescinded, and a purported affidavit of Talin Eshagoff dated September 30, 2021 wherein the affiant claims to be the managing member of the owner, ESCO Associates LLC, as well as the previous (now deceased) owner's son, claiming that he had no prior involvement with the management of the building, and that he does not know why his father did not file the rent restoration applications after the apartments were restored to habitability, and that after Talin Eshaghoff learned of the requirement to file the rent restoration applications, the owner retained counsel to assist the Petitioner-owner with the filing of the said application. The owner also references the following cases to corroborate the Petitioner-owner's contentions that the Agency set the effective date of the rent restoration as of the date the tenant resumed occupancy, or the date the apartment was restored to habitability: Matter of 44 North Grove LLC, Rent Administrator's Docket No. GN710043OR; Matter of Haidt, Docket No. HD410378RT; Matter of Franklin, Docket No. XH410005RT; Matter of Goos, Docket No. VA410061RT; Matter of Bush/Amiet Corp, Docket No. BK410289RO; Matter of 2070 LLC, Docket No. AS610002RO; Matter of B.M.H. Realty, Ltd, Docket No. ET420024RO.

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

Pursuant to Section 2522.6 of the Rent Stabilization Code ("RSC" or "the Code"), where a tenant was forced to vacate their apartment because it is legally uninhabitable, it is the Division's policy to establish the rent at $1.00 per month to maintain the landlord/tenant relationship between the parties until such time as the apartment is restored to habitability and the subject tenant is restored to occupancy or refused an offer to reoccupy the subject apartment.

It is the general practice of the Agency to restore the rent for rent stabilized apartments effective the first day of the month following the date the tenant was served with the rent restoration application. However, DHCR's policy and practice further dictates that if an owner restores a fire-related damaged apartment to habitability after a $1.00 order has been issued and the tenant advises that occupancy has resumed, the Rent Administrator may grant the owner's rent restoration application to the level in effect prior to the date of the fire, effective the date the tenant is restored to occupancy. On the contrary, the failure to file a timely rent restoration application may affect the effective date of the rent restoration.

According to the Agency's records, pursuant to Section 2522.6 of the RSC, the rent for the subject apartment was determined to be $1.00 per month as of March 20, 2005, the date of the fire that caused the tenant to vacate the subject premises involuntarily (see Docket No. TC110193S issued on May 4, 2005).

In the proceeding below, Docket No. KN110048OR, the owner filed an application to restore the rent on February 15, 2022, wherein the owner asserted that the apartment was restored for occupancy on May 5, 2005, and the tenant resumed occupancy later in 2005. The owner's rent restoration application was submitted along with the a letter from HPD dated June 14, 2006 rescinding Vacate Order #23827 (Vacate Order #23827 was issued on April 7, 2005 for the subject premises) based on an inspection conducted on May 5, 2005; the Tenant's Statement of Consent (Part B of the owner's rent restoration application) purported to be signed by the "current tenant" on April 28, 2021; and copies of rent rolls from December 2005 to March 2006, purporting to contend that the tenant consented to the restoration of rent.

The owner's application with the accompanied documents were served on the tenant on February 17, 2022. The tenant in their answer received by the DHCR on February 28, 2022 did not dispute the owner's claims, but rather asserted that the owner never granted the tenant the rent reduction as ordered by the Division.

The record shows that on April 26, 2022, the Administrator requested from the owner the reason for the delay in filing their application. The owner responded on May 13, 2022 and indicated that the building was previously owned by their father at the time the Vacate Order was lifted, and that the current owner does not know the reason the former owner did not file for rent restoration but that the owner believes the former owner was unaware of the requirement as the rent reduction order did not provide such instruction.

Based on the totality of the evidence, including the owner's submissions, the Rent Administrator, on September 30, 2022, granted the owner's rent restoration application finding that the restoration of rent was warranted, and that the services were restored. The Administrator determined that the rent be restored to the level in effect prior to the rent reduction plus all lawful increases, effective February 15, 2022, the date the owner filled the rent restoration application asserting that services were restored.

The Commissioner, having reviewed the record herein, finds that the owner's PAR is without merit and the owner has not presented any allegations of error of fact or law to warrant a modification of the Rent Administrator's order. The Commissioner in this case rejects the owner's claim that the effective date of the Rent Administrator's order must be modified to reflect an effective date fifteen (15) years prior to when the owner filed the subject rent restoration application. An owner is required to complete an application for rent restoration upon restoration of the apartment to a habitable condition and that a timely filing is essential for the tenant's rent to be restored as of the date of re-occupancy.

Here, the Commissioner notes that it is undisputed that on April 7, 2005, Vacate Order #23827 for the subject premises was issued by HPD, that under Docket No. TC110193S, issued on May 4, 2005, the rent was set at $1.00 per month as of March 20, 2005, the date of the fire which caused the tenant to vacate the premises involuntarily, that on June 14, 2006, HPD rescinded Vacate Order #23827 based on an HPD vacant building survey inspection conducted on May 5, 2005, and that the owner failed to file a rent restoration application until more than sixteen (16) years later, on February 15, 2022.

The record below establishes that the Rent Administrator took into account the entire record and that after consideration, concluded that it would be inequitable to restore the rent back to June 14, 2006 as the owner requested, considering that the owner failed to submit a rent restoration until February 15, 2022, sixteen (16) years after the owner claims the former tenant was restored to occupancy in 2005. Under the circumstances in this case, the Commissioner finds that the Rent Administrator properly determined that the effective date be February 15, 2022, the day the owner filed a rent restoration application asserting that services had been restored.

The longstanding policy of DHCR is that an owner is responsible for knowing whether or not there are outstanding rent reduction orders in effect. The purchaser of a building, or a new owner of a building, steps into the shoes of its predecessor in interest and assumes all the liabilities as well as assets of the previous owner, including those outstanding rent reduction orders that were issued prior to the purchase of the building. The existence of all DHCR orders and proceedings is available to purchasers and new owners of buildings upon request of the Agency. In this case, the previous owner failed to adhere to Agency policy and procedures and apply for the restoration. The current owner fails to offer a reasonable explanation for such lack of filing a rent restoration application that would provide for a different effective date. Furthermore, the Commissioner notes that the responsibility of the owner to file a rent restoration does not change just because the owner is unaware of the requirement to file a rent restoration application.

The Commissioner finds that the tenant should not be made to bear the brunt of the owner's choice to not file a rent restoration application for fifteen (15) years from the time that the owner claims the effective date should be (the date the Vacate Order was rescinded).[1] This Agency has a duty to ensure that its decisions are not inconsistent with the spirit and intent of the rent laws. See Matter of 305 Realty NY LLC v. DHCR, Supreme Court of the State of New York, County of Kings, Index No. 5044/2010, wherein the Court found that although it may seem unfair to the owner that the tenant was able to occupy the apartment and continue to pay the reduced rent of $1.00, "it would be just as unfair to raise the tenant's rent retroactively" because of the owner's failure to timely file the application for rent restoration. The Court also found that, "here, equity does not weigh in petitioner[-owner]'s favor in that petitioner is requesting that the court remedy petitioner's error, not [the Agency's] mistake." Accordingly, the Commissioner finds that the owner's claim that the rent should be restored to June 14, 2006, more than fifteen (15) years prior to the filing of the rent restoration application is without merit and is merely self-serving.

Regarding the cases cited by the Petitioner, the Commissioner finds the decisions in those cases are not determinative of the issues herein as the facts in those cases are distinguishable, and therefore not applicable to the instant case. For Docket No. HD410378RT, the relevant facts pertained to a previously filed rent restoration application, which is not the case herein. As for the rest of the cases cited by the owner, as mentioned above, the facts are distinguishable from the facts of the subject case as the cited cases do not relate to the owner's protracted delay in filing their rent restoration application. Furthermore, Docket No. VA410061RT was remitted to DHCR, and in an order issued on February 24, 2010 under Docket No. XH410001RP, the Commissioner granted the tenant's appeal on remand, modifying the effective date due to the owner's delay in filing their rent restoration application.

[1] See Docket Nos. CQ410024RO and XH410001RP.

Based on the foregoing, the Commissioner finds that the Rent Administrator's order is correct as issued, and the effective date of February 15, 2022, the date the owner filed the rent restoration application asserting that services had been restored, is proper under the circumstances herein, and the owner's PAR has not established any basis to modify or revoke the Rent Administrator's determination.

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

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

ISSUED: JAN 13 2023

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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There is no other method of appeal.

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IN THE MATTER OF THE ADMINISTRATIVE APPEAL OF

ESCO ASSOCIATES LLC

PETITIONER

ADMINISTRATIVE REVIEW DOCKET NO.: KW120013RO

RENT ADMINISTRATOR'S DOCKET NO.: KN120062OR

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ORDER AND OPINION DENYING PETITION FOR ADMINISTRATIVE REVIEW

On November 4, 2022, the above-named Petitioner-owner filed a Petition for Administrative Review ("PAR") challenging KN120062OR, an order the Rent Administrator issued on September 30, 2022 (the "order"), concerning the housing accommodation known as 94-26 34th Road, Apartment [redacted], Jackson Heights, New York, wherein the Rent Administrator granted the owner's rent restoration application effective February 23, 2022.

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 owner, through counsel, requests a modification of the Rent Administrator's order asserting that the order is erroneous, capricious, arbitrary, egregious, unjust, inequitable, and deviates from the DHCR precedent, policy, and procedure by establishing the effective date of restoration as February 23, 2022 (the date the Petitioner-owner filed the rent restoration application). The Petitioner argues that the rent should have been restored as of June 14, 2006, (the date the Vacate Order was lifted); that the subject unit was restored as of May 5, 2005, the date the New York City Housing Preservation and Development ("HPD") inspected the apartment, as noted by a letter issued on June 14, 2006 by HPD rescinding the Vacate Order; that upon restoring the subject apartment to habitability, the subject tenant resumed occupancy; that the Petitioner provided the Administrator with documentation of when the tenant resumed occupancy and the date that HPD lifted the vacate order, and the Rent Administrator ignored the evidence; that the rent reduction order is devoid of any instruction to the owner concerning the

filing of a rent restoration application; that establishing the rent at $1.00 is not meant to be punitive but rather to maintain the landlord/tenant relationship until the tenant is restored to occupancy; that the owner made necessary repairs to return the apartment to habitability by May 5, 2005, and that the February 23, 2022 effective date unfairly creates rent overcharge exposure due to a decrease in services which was corrected years earlier; the tenant "received the full benefit of the $1.00 order"; and the reason the owner did not file was because the owner at the time was not aware that an application was required to restore the rent.

The owner attached a letter from HPD dated June 14, 2006 stating that Vacate Order #23827 was rescinded, and a purported affidavit of Talin Eshagoff dated September 30, 2021 wherein the affiant claims to be the managing member of the owner, ESCO Associates LLC, as well as the previous (now deceased) owner's son, claiming that he had no prior involvement with the management of the building, and that he does not know why his father did not file the rent restoration applications after the apartments were restored to habitability, and that after Talin Eshaghoff learned of the requirement to file the rent restoration applications, he retained counsel to assist him with the filing of the applications.

The owner also references the following cases to purportedly substantiate the Petitioner-owner's assertions that the Agency set the effective date of the rent restoration as of the date the tenant resumed occupancy, or the date the apartment was restored to habitability: Matter of 44 North Grove LLC, Rent Administrator's Docket No. GN710043OR; Matter of Haidt, Docket No. HD410378RT; Matter of Franklin, Docket No. XH410005RT; Matter of Goos, Docket No. VA410061RT; Matter of Bush/Amiet Corp, Docket No. BK410289RO; Matter of 2070 LLC, Docket No. AS610002RO; and Matter of B.M.H. Realty, Ltd, Docket No. ET420024RO.

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

Pursuant to Section 2202.22(c) of the New York City Rent and Eviction Regulations ("Rent Control Regulations") where a tenant was forced to vacate their apartment because it is legally uninhabitable, it is the Division's policy to establish the rent at $1.00 per month to maintain the landlord/tenant relationship between the parties until such time as the apartment is restored to habitability and the subject tenant is restored to occupancy or refused an offer to reoccupy the subject apartment.

It is the general practice of the Agency that if an owner restores a fire-related damaged apartment to habitability after a $1.00 order has been issued and the tenant advises that occupancy has resumed, the Rent Administrator may grant the owner's rent restoration application to the level in effect prior to the date of the fire, effective the date the tenant is restored to occupancy. On the contrary, the failure to file a timely rent restoration application may affect the effective date of the rent restoration.

According to the Agency's records, pursuant to Section 2202.22(c), the rent for the subject apartment was determined to be $1.00 per month as of March 20, 2005, the date of the fire that caused the tenant to vacate the subject premises involuntarily (see Docket No. TD120019S issued on April 7, 2005).

In the proceeding below, Docket No. KN120062OR, the owner filed an application to restore the rent on February 23, 2022, wherein the owner asserted that the apartment was restored for occupancy on May 5, 2005, and the tenant resumed occupancy later in 2005. The owner's rent restoration application was submitted along with a letter from HPD dated June 14, 2006 rescinding Vacate Order #23827 (Vacate Order #23827 was issued on April 7, 2005 for the subject premises) based on an inspection conducted on May 5, 2005; the Tenant's Statement of Consent (Part B of the owner's rent restoration application) purported to be signed by the "current tenant" on April 28, 2021; and copies of rent rolls from January 2006 to March 2006.

The owner's application with the accompanied documents were served on the tenant on February 25, 2022. There is no evidence in the record that the tenant rebutted the owner's claims.

The record shows that on April 26, 2022, the Administrator requested from the owner the reason for the delay in filing their application. The owner responded on May 13, 2022 and indicated that the building was previously owned by their father at the time the Vacate Order was lifted, and that the current owner does not know the reason the former owner did not file for rent restoration but that the owner believes the former owner was unaware of the requirement as the rent reduction order did not provide such instruction.

Based on the totality of the evidence, including the owner's submissions, the Rent Administrator, on September 30, 2022, granted the owner's rent restoration application finding that the restoration of rent was warranted, and that the services were restored. The Administrator determined that the rent be restored to the level in effect prior to the rent reduction plus all lawful increases, effective February 23, 2022, the date the owner filled the rent restoration application asserting that services had been restored.

The Commissioner, having reviewed the record herein, finds that the owner's PAR is without merit and the owner has not presented any allegations of error of fact or law to warrant a modification of the Rent Administrator's order. The Commissioner in this case rejects the owner's claim that the effective date of the Rent Administrator's order must be modified to reflect an effective date more than fifteen (15) years prior to when the owner filed the subject rent restoration application. An owner is required to complete an application for rent restoration upon restoration of the apartment to a habitable condition and that a timely filing is essential for the tenant's rent to be restored as of the date of re-occupancy.

Here, the Commissioner notes that it is undisputed that on April 7, 2005, Vacate Order #23827 for the subject premises was issued by HPD, that under Docket No. TD120019S, issued on May 4, 2005, the rent was set at $1.00 per month as of March 20, 2005, the date of the fire which caused the tenant to vacate the premises involuntarily, that on June 14, 2006, HPD rescinded Vacate Order #23827 based on an HPD vacant building survey inspection conducted on May 5, 2005, and that the owner failed to file a rent restoration application until more than sixteen (16) years later, on February 23, 2022.

The record below establishes that the Rent Administrator took into account the entire record and that after consideration, concluded that it would be inequitable to restore the rent back to June

2006 as the owner requested, considering that the owner failed to submit a rent restoration until February 23, 2022, more than sixteen (16) years after the owner claims the former tenant was restored to occupancy in 2005. Under the circumstances in this case, the Commissioner finds that the Rent Administrator properly determined that the effective date be February 23, 2022, the day the owner filed a rent restoration application asserting that services had been restored.

The longstanding policy of DHCR is that an owner is responsible for knowing whether or not there are outstanding rent reduction orders in effect. The purchaser of a building, or a new owner of a building, steps into the shoes of its predecessor in interest and assumes all the liabilities as well as assets of the previous owner, including those outstanding rent reduction orders that were issued prior to the purchase of the building. The existence of all DHCR orders and proceedings is available to purchasers and new owners of buildings upon request of the Agency. In this case, the previous owner failed to adhere to Agency policy and procedures and apply for the restoration. The current owner fails to offer a reasonable explanation for such lack of filing a rent restoration application that would provide for a different effective date. Furthermore, the Commissioner notes that the responsibility of the owner to file a rent restoration does not change just because the owner is unaware of the requirement to file a rent restoration application.

The Commissioner finds that the tenant should not be made to bear the brunt of the owner's choice to not file a rent restoration application for sixteen (16) years from the time that the owner claims the effective date should be.[1] This Agency has a duty to ensure that its decisions are not inconsistent with the spirit and intent of the rent laws. See Matter of 305 Realty NY LLC v. DHCR, Supreme Court of the State of New York, County of Kings, Index No. 5044/2010, wherein the Court found that although it may seem unfair to the owner that the tenant was able to occupy the apartment and continue to pay the reduced rent of $1.00, "it would be just as unfair to raise the tenant's rent retroactively" because of the owner's failure to timely file the application for rent restoration. The Court also found that, "here, equity does not weigh in petitioner[-owner]'s favor in that petitioner is requesting that the court remedy petitioner's error, not [the Agency's] mistake." Accordingly, the Commissioner finds that the owner's claim that the rent should be restored to June 14, 2006, more than fifteen (15) years prior to the filing of the rent restoration application is without merit and is merely self-serving.

Regarding the cases cited by the Petitioner, the Commissioner finds the decisions in those cases are not determinative of the issues herein as the facts in those cases are distinguishable, and therefore not applicable to the instant case. For Docket No. HD410378RT, the relevant facts pertained to a previously filed rent restoration application, which is not the case herein. As for the rest of the cases cited by the owner, as mentioned above, the facts are distinguishable from the facts of the subject case as the cited cases do not relate to the owner's protracted delay in filing their rent restoration application. Furthermore, Docket No. VA410061RT was remitted to DHCR, and in an order issued on February 24, 2010 under Docket No. XH410001RP, the Commissioner granted the tenant's appeal on remand, modifying the effective date due to the owner's delay in filing their rent restoration application.

Based on the foregoing, the Commissioner finds that the Rent Administrator's order is correct as issued, and the effective date of February 23, 2022, the date the owner filed the rent restoration

[1] See Docket Nos. CQ410024RO and XH410001RP.

application asserting that services had been restored, is proper under the circumstances herein, and the owner's PAR has not established any basis to modify or revoke the Rent Administrator's determination.

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

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

ISSUED: JAN 13 2023

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:	:	
[redacted] (Managing Agent for Owner)	:	**ADMINISTRATIVE REVIEW DOCKET NO.: KW410010RO**
	:	**RENT ADMINISTRATOR'S DOCKET NO.: JV410099OR**
PETITIONER	:	

ORDER AND OPINION DENYING PETITION FOR ADMINISTRATIVE REVIEW

On November 1, 2022, the above-named Managing Agent filed a Petition for Administrative Review ("PAR") of an order the Rent Administrator issued on September 27, 2022 (the "Order"), concerning the housing accommodation known as 205 West 95th Street, Apt [redacted] New York, NY 10025, wherein the Rent Administrator denied the owner's application to restore rent for the subject apartment after a DHCR inspector visited the subject premises on February 9, 2022 and observed that the radiator in the kitchen, the bathtub enamel, the plumbing of the bathroom sink, and the paint/plaster apartment wide were not restored.

The Commissioner has reviewed all of the evidence in the record and has carefully considered that portion of the record that is relevant to the issue(s) raised by the PAR.

In the PAR, the Managing Agent claims that the services were completely restored prior to November 2021; that the landlord paid a licensed contractor $2,650 to repair and/or restore all conditions in the apartment; that the work was completed July 12th 2021 and paid in full July 19th 2021; and that the owner filed for the rent restoration on October 29, 2021 which was filed with the "consent" of the tenant and included Part B, the Tenant's Statement of Consent" in the application.

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" or "RSC"), 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.

In the proceeding below, the Owner filed an application to restore rent with this Agency on October 29, 2021, alleging the restoration of those services previously found not maintained under Docket No. IN410128S, including the kitchen cabinet condition, the kitchen floor/covering, the kitchen radiator, the kitchen sink enamel, the leak stains in the kitchen, the bathtub enamel, the plumbing for the bathroom sink, and the paint/plaster apartment wide. The Tenant was served with Notice of the Owner's application (the "Initial Notice") on November 1, 2021. The Agency records indicate that the Tenant responded to the Initial Notice on November 12, 2021 when the Tenant submitted his Answer to Notice and/or Application and averred, "I agree that all conditions listed by the Owner in this application have been restored."

On February 9, 2022, in accordance with Section 2527.5(b) of the Rent Stabilization Code which says, "At any stage of a proceeding the DHCR may (b) make investigations of the facts, conduct inspections, hold conferences, and require the filing of reports, evidence, affidavits, or other material relevant to the proceeding," this Agency conducted an inspection of the subject premises, and the impartial DHCR inspector made the following observations: (1) The kitchen radiator has rust; (2) The bathtub has chipped/rust spots around the drain; (3) The bathroom sink has rust spots and the water is draining slow; (4) The south wall and bathroom have peeling paint/cracks at various areas in the apartment, and (5) the bathroom riser is missing the escutcheon plate. After receiving the report with these findings, the Rent Administrator issued an order denying the owner's rent restoration request on September 27, 2022, under Docket No. JV410099OR.

The Commissioner finds that the Rent Administrator correctly denied the Owner's application to restore rent for the subject apartment based on the observations of the Agency's impartial inspector. The claim that the rent restoration should be granted because the owner purports that the tenant of record "consented" to the restoration of rent is also rejected based on the results of the Agency inspection which confirmed that all services underlying the rent reduction order were not restored as claimed by the owner. As noted above, the 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, and in this case, the Agency inspection revealed otherwise.

The Commissioner notes that the owner has filed a new application to restore the rent which is currently pending under Docket No. KW410042OR.

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

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

ISSUED:

JAN 20 2023

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

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IN THE MATTER OF THE ADMINISTRATIVE APPEAL OF	:	ADMINISTRATIVE REVIEW DOCKET NO.: KW410016RO
306 West 112th Owner, LLC	:	
	:	RENT ADMINISTRATOR'S DOCKET NO.: KN410012OR (IM410049B)
PETITIONER		

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ORDER AND OPINION GRANTING PETITION FOR ADMINISTRATIVE REVIEW

On November 16, 2022, the above-named petitioner-owner filed a Petition for Administrative Review (PAR) against an order of the Rent Administrator issued on October 12, 2022, concerning the housing accommodations located at 306 West 112th Street, New York, NY, wherein the Administrator denied the owner's rent restoration application.

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 petition.

The owner requests a reversal of the Rent Administrator's order and alleges that the photographs accompanying the April 25, 2022 DHCR inspection report contradicts the condition cited in the Rent Administrator's order (cracks in cement steps leading to building entry) as the photographs did not depict the described condition; and that the conditions cited are *de minimis* pursuant to 2523.4(e) of the Rent Stabilization Code.

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. 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 granted.

The Commissioner notes that in the initial proceeding, Docket No. IM410049B, the Rent Administrator, on March 16, 2021, granted the tenants a rent reduction based on a finding of a decrease in various services, including the building entrance stair condition herein under review, which was found not maintained as the inspector observed the first step of the building entrance to be cracked during the Agency's inspection of September 3, 2020.

The records indicate that prior to the instant rent restoration ("OR") proceeding, the owner had filed an OR application, Docket No. JQ410043OR, wherein the Rent Administrator found all items found not maintained during the initial proceeding restored, except for the building entrance stairs condition, the subject of the instant proceeding.

Subsequently, on February 7, 2022, the owner commenced the rent restoration proceeding herein below, wherein the owner indicated that the outstanding building entrance stairs condition found not maintained under Docket Nos. IM410049B and JQ410043OR had been restored. Said application was served on the tenants on February 9, 2022.

During the OR proceeding herein below, the Rent Administrator requested the Inspections Unit to perform an inspection of said building entrance condition. The Agency's inspection was conducted on April 25, 2022. The inspector noted in the inspection report that cracks were observed in the cement *steps* leading to the building entry at the time of the inspection, accompanying the report with photographs of the steps leading into the subject premises.

On October 12, 2022, the Rent Administrator, based on the Agency inspection conducted on April 25, 2022, found the stairs to the building entrance not restored, thereby denying the subject owner's OR application.

The Commissioner notes that a review of the inspection reports from the initial proceeding, Docket No. IM410049B, to the inspection report under Docket No. JQ410043OR indicate that the outstanding condition was specifically the *first step* at the entrance of the building. Thus, during the PAR proceeding herein, the Commissioner requested another inspection, of the first step at the building entrance.

On December 22, 2022, the Agency's inspection was conducted. The inspector, augmenting the inspection report with a photograph of the first step at the building entrance, indicated in the report that the inspected area had been repaired as there were no defects/damages/ cracks/peeling cement found on the first step in front of the building.

Thus, pursuant to the Agency's inspection report of December 22, 2022, which clarified that the outstanding condition, the first step at the building entrance had been repaired, the Commissioner is of the opinion that the owner's PAR should be granted, thereby granting the owner's rent restoration application as all conditions found not maintained under the initial rent reduction order, Docket No. IM410049B, are herein restored.

Based on the foregoing, the Commissioner finds that the Rent Administrator's order under Docket No. **KN410012OR** is hereby reversed, and that the owner's rent restoration application is herein granted, as the first step at the building entrance was found maintained by the Agency's inspector on December 22, 2022.

Pursuant to DHCR Policy Statement 90-2, when DHCR issues an order restoring rent, the retroactive date will be the first of the month following the date of service on the tenant of the owner's application to restore rent. Accordingly, the effective date of the rent restoration order under Docket No. **KN410012OR** is March 1, 2022, the first of the month following the date of service on the tenant of the owner's application to restore rent, which was February 9, 2022.

Any arrears owed as a result of this Commissioner's Order and Opinion may be paid in equal monthly installments equal to the monthly rent reduction taken.

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, granted, and that the Rent Administrator's order be, and the same hereby is, reversed; and it is further

ORDERED, that the Rent Administrator's order pursuant to Docket No. **KN410012OR** is hereby reversed to grant the owner's rent restoration application, effective March 1, 2022.

ISSUED:

JAN 20 2023

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.

Se4STATE 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.: KW410024RO

HPH Lenox, LLC :

RENT ADMINISTRATOR'S
: DOCKET NO.: JX410107OR
(HQ410129S)

PETITIONER

---------- X

ORDER AND OPINION DENYING PETITION FOR ADMINISTRATIVE REVIEW

On November 16, 2022, the above-named petitioner-owner filed a petition for administrative review (PAR) against an order issued by the Rent Administrator on October 14, 2022, concerning the housing accommodations known as 539 Lenox Avenue, Apartment [redacted] New York, NY, wherein the Administrator denied the owner's rent restoration application.

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, in substance, that the sole condition at issue, based on which the Rent Administrator denied the owner's rent restoration application was "floor covering hallway", which was inspected on April 25, 2022 under a DHCR follow-up inspection; that the inspector noted that the floor covering was not cracked or ripped but had inadequate glue; that it is unclear how the inspector made the determination, and that no further explanation was given in the order or the inspection report; that the initial order found that the flooring was "worn out flooring in hallways/foyer", and a prior rent restoration application, Docket No. IR410054OR was denied on September 17, 2021 with the notation that there were "defective and loose vinyl tiles on...hallway floors..."; that the challenged order is outside the ambit of the original condition found, of worn out flooring in the hallway/foyer since the hallway/foyer floor tiles were replaced and were neither "worn out" nor "defective or loose";

and that the Rent Administrator's order denying the owner a rent restoration should thus be reversed.

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. 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.

In the initial proceeding under Docket No.: HQ410129S, the tenant filed a complaint on May 21, 2019, alleging a diminution in services. On February 13, 2020, the Administrator issued a rent reduction order, which found various services[1] not maintained.

Prior to the filing of the rent restoration application herein below, the Commissioner notes that the owner filed a rent restoration application, Docket No. IR410054OR, which was denied on September 17, 2021 as the Agency's inspector indicated, pursuant to the DHCR inspection of June 28, 2021, that none of the items found not maintained in the initial proceeding had been restored. Specifically, with respect to the hallway floor/covering, the inspector noted that same was worn, with "defects/damaged/cracked/loose vinyl tiles on floor surface of the hallways."

On December 17, 2021, the owner commenced the rent restoration proceeding herein below, under Docket No. JX410107OR, which was served on the tenant on January 27, 2022. The tenant responded, objecting to the owner's claim that the floors were restored. Said rent restoration application was denied on October 14, 2022, based on the Agency's follow-up inspection of April 21, 2022, which confirmed the hallway floor/covering not restored, in that there was no evidence of cracks/rips[2] on the floor tiles in the hallway, but there was evidence of inadequate glue (while the other items underlying the rent reduction were found restored). While the inspector, during the inspection of April 21, 2022, noted that the work performed in all other areas where flooring was found not maintained during the initial proceeding (Docket No. HQ410129S) were completed in a workmanlike manner, the hallway flooring work was not deemed completed due to inadequate application of glue to the new floor, and was thus not indicated as work performed in a workmanlike manner. The Commissioner notes that it is specious for the owner to refer to this as a new condition when essentially the repair work performed has not completely remedied the floor issue as the replacement floor, aimed at correcting the floor defect, was not properly completed.

Based on the foregoing, the Commissioner finds that the Rent Administrator's order was correct as issued, based on the inspector's report of the follow-up inspection of April 21, 2022, by the Agency's impartial inspector who is not a party to the proceeding, which confirmed uncompleted and an unworkmanlike repair to the hallway flooring in the subject apartment.

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[1] During the Agency's inspection of October 25, 2019, the following services were found not maintained: bathroom radiator, floor/covering bedroom 1, floor/covering bedroom 2, floor/covering living room, floor/covering hallway, and the hall/foyer window; and that there was evidence of worn-out flooring throughout the entire apartment.

[2] A condition noted during the agency's inspection of April 14, 2022, for which the April 21, 2022 inspection was a follow-up.

Accordingly, the Commissioner finds that there is no basis to revoke or modify the Rent Administrator's order.

The Commissioner notes that the Agency's records indicate that on December 09, 2022, the owner filed a rent restoration application, Docket No. KX410035OR, which is pending.

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: JAN 27 2023

WOODY PASCAL
Deputy Commissioner

State of New York
Division of Housing and Community Renewal
Office of Rent Administration
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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

IN THE MATTER OF THE ADMINISTRATIVE APPEAL OF:	:	
FONTANA, LLC	:	**ADMINISTRATIVE REVIEW DOCKET NO.: KT110009RO**
PETITIONER	:	**RENT ADMINISTRATOR'S DOCKET NO.: JV110069OR**

ORDER AND OPINION DENYING PETITION FOR ADMINISTRATIVE REVIEW

On August 5, 2022, the above-named Petitioner-owner filed a Petition for Administrative Review ("PAR") challenging JV110069OR, an order the Rent Administrator issued on July 1, 2022 (the "order"), concerning the housing accommodation known as 28-18 38th Avenue, [redacted] Long Island City, New York, wherein the Rent Administrator denied the owner's rent restoration application finding the service conditions cited in the order reducing rent had not been corrected as an Agency inspection revealed the owner had not restored the bathroom walls that needed plastering/sanding and painting.

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, seeks a reversal of the Rent Administrator's order asserting the order is not supported by substantial evidence. The owner claims that to the extent that the underlying rent reduction order, Docket No. ZL110072S, could have included the wall around the window, the said order is "too vague and unclear" to give the owner notice of the remaining condition needed to be corrected. The Petitioner further claims that the accuracy of the inspection report is questionable as the report failed to include that the owner's agent and the building superintendent were also present at the said inspection, and that at the time of inspection, the tenant only complained about the ceiling, and the owner's agent did not observe any defects to the bathroom walls. Similarly, the owner claims that that the New York City Housing Preservation and Development's ("HPD") inspection of April 18, 2022 did not result in

a violation for paint on any walls, and that no work was performed in the subject apartment between January 24, 2022 and April 18, 2022.

The owner also claims that the condition of the paint on the wall around the bathroom is a new condition and cannot be a basis for the denial of a rent restoration application; and that the 2012 rent reduction order only mentioned the bathroom wall but made no specific mention of the wall around the window, the 2016 inspection found only one wall above the tub in need of repair, and the 2018 inspection also found one wall that needed repair.

The Petitioner further asserts that the said bathroom wall condition is *de minimis* as the bathroom window is surrounded on all sides by ceramic tiles halfway up the height of the window, and as such, any defect reported by the inspector is minimal. The owner annexed photographs purportedly supporting their claims.

The tenant responded to the owner's petition opposing same and attached photographs purporting to corroborate the tenant's rebuttal to the Petitioner's claims.

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 ("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. 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. Furthermore, 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.

On December 23, 2011, the tenant commenced the initial proceeding, Docket No. ZL110072S, by the filing of a complaint, alleging a decrease in apartment-wide services including the subject bathroom walls' condition. By order dated September 19, 2012, the tenant was granted a rent reduction due to the finding of decrease in various services, including the subject bathroom wall condition wherein the Administrator specified in the subject rent reduction order that the bathroom walls were in need of plaster/sanding and painting.

The Commissioner notes that the owner previously filed a rent restoration application assigned Docket No. ES110059OR, denied on November 7, 2016 (which was affirmed on appeal on July 18, 2017, under Docket No. EX110017RO) predicated upon a DHCR inspection conducted on October 5, 2016, which disclosed that the bathroom walls were not maintained and evidence of peeling paint and crack on the bathroom wall above the tub. The owner filed a second rent restoration application, assigned Docket No.GQ110135OR, which was denied on September 20, 2018 for the failure to restore the bathroom walls' condition, based on an Agency's inspection on September 6, 2018 which revealed that there were peeling paint and

plaster, cracks, and blistering paint on the bathroom walls, and the bathroom walls needed to be properly plastered, sanded, and painted.[1]

Subsequently, on October 22, 2021, the Petitioner-owner commenced the underlying rent restoration proceeding herein, Docket No. JV110069OR, based on the restoration of the remaining outstanding service condition underlying the rent reduction, specifically the walls in the bathroom. The tenant was afforded an opportunity to respond to the owner's application by service on the tenant on October 25, 2021. The tenant submitted an answer to the owner's rent restoration application on November 18, 2021, refuting the owner's claim that it had restored services.

Pursuant to the above claim by the owner, and rebuttal by the tenant, the need for an inspection was prompted, hence, an inspection of the subject premises was conducted by the Agency's impartial inspector on January 24, 2022. The report of the inspection and photographic evidence revealed that the following services were found not maintained at the time of inspection, the bathroom walls: there was peeling paint around the bathroom window, the wall around the bathroom window needed proper repairs/plastering/sanding and painting. The Commissioner notes that the impartial Agency inspector reported that at the time of the inspection, the manager Ward and two workers were present for the inspection.

Thereafter, on July 1, 2022, based on the inspection's findings, the Rent Administrator denied the owner's rent restoration application Docket No. JV110069OR.

Foremost, the Commissioner finds that the owner may not collaterally attack the underlying rent reduction order, Docket No. ZL110072S, by way of the instant appeal. The Rent Administrator's order under Docket No. ZL110072S was granted on September 19, 2012 and no appeal was filed, therefore the rent reduction order under Docket No. ZL110072S is considered final and binding on the parties.

The Commissioner notes the owner's contention that the finding of the bubbling/peeling paint around the bathroom window is entirely a new condition, not part of the original order. However, the Commissioner rejects this owner's unsubstantiated contention and finds such claim to lack merit because a diligent review of the record indicates that the tenant specifically alleged defects to the walls of the subject bathroom and a rent reduction was granted under Docket No. ZL110072S for the bathroom walls as they were in need of plaster/sanding and painting at the time of the Agency inspection. Furthermore, the record reveals that the walls were not maintained or were not repaired in a workmanlike manner warranting a rent restoration at the time of the prior rent restoration proceedings as evinced from the inspections conducted under Docket Nos. ES110059OR and GQ110135OR, wherein each inspection confirmed evidence of peeling paint and plaster, cracks, and blistering paint on the bathroom walls, with the inspector noting under Docket No. GQ110135OR that the bathroom walls needed to be properly plastered, sanded, and painted. As such, the owner's claim that the bathroom wall condition is a "new" condition is merely self-serving and unpersuasive as the bathroom walls were found to not be

[1] The Commissioner notes that the floor/covering kitchen condition was found restored under Docket No. ES110059OR and the bedroom 1 closet condition was found restored under Docket No. GQ110135OR.

restored previously, but instead were found to be lacking proper maintenance and repair work just like in the instant case.

As for the owner's claim that the unmaintained bathroom wall is de minimis, the Commissioner finds this claim to be baseless. Here, there is no merit to the owner's argument that the peeling paint around the bathroom window herein should be treated as a de minimis condition; the bathroom is an area frequently used by the tenant and is not a discrete area.

As for the Petitioner's claim that the Agency's inspection is questionable because HPD did not issue a violation for the painting issue in the bathroom when the subject apartment was inspected by HPD, the Commissioner notes that pursuant to DHCR Policy Statement 90-2 and long-standing Agency policy and procedure, the Administrator may rely on DHCR's inspection when making a determination. See Matter of 113-117 Realty, LLC v. DHCR, 199 AD3d 506 [1st Dept. 2021] citing to Matter of Sherman v. DHCR, 210 AD2d 486 [2nd Dept. 1994]. Any observable condition reported by the Agency's impartial inspector for which no alternative expertise is required can properly be relied upon by the Agency.

Based on the foregoing, the Commissioner finds that the Rent Administrator correctly denied the owner's rent restoration application by predicating their decision on the inspection report in accordance with the RSC, established principles and procedures, and the Division's Policy Statement 90-2. 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 and taking photographs depicting the bathroom wall condition was reasonable and in accordance with the Code and Policy Statement 90-2. Accordingly, the owner's PAR has not established any basis to modify or revoke the Rent Administrator's determination.

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

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

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

ISSUED: FEB 3 2023

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

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IN THE MATTER OF THE ADMINISTRATIVE APPEAL OF

ADMINISTRATIVE REVIEW DOCKET NO.: KW210020RT
(REFILING KV210019RT)

[redacted]

PETITIONER

RENT ADMINISTRATOR'S DOCKET NO.: KS210005OR

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ORDER AND OPINION DENYING PETITION FOR ADMINISTRATIVE REVIEW

On November 22, 2022, the above-named petitioner-tenant re-filed a Petition for Administrative Review ("PAR") challenging KS210005OR, an order the Rent Administrator issued on September 23, 2022 (the "order"), concerning the housing accommodation known as 33 Howard Avenue, Apartment [redacted], Brooklyn, New York, wherein the Rent Administrator restored the rent effective August 1, 2022, after the Petitioner-tenant confirmed that services had been restored in a telephone conversation with the Agency Inspection Unit on April 20, 2022.

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 a reversal of the Rent Administrator's order and claims that: (1) the owner's management is making a misleading request for an incomplete work; (2) that per the rent reduction order, the reduced rent should stay in full force due to unworkmanlike repairs; (3) that conditions still exist; (4) that as revealed in the inspection on September 21, 2021, work is still not completed, and that the tenant opposes the rent restoration based on the delineated facts.

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. 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. Policy Statement 90-2 provides that if the tenant confirms that the required services underlying the rent reduction have been restored, then the rent will be restored. Section 2527.5 (b) of the RSC gives the Administrator the authority to determine when and if an inspection is necessary at any stage during a DHCR proceeding, and Courts have consistently held that the DHCR has broad discretion to decide if an inspection is necessary.

In the initial DHCR proceeding, rent was reduced by an order issued by the Rent Administrator on August 18, 2021 under Docket JR210079S, after finding that the apartment entry door lock cited in the complaint was defective.[1]

A review of the record reveals that a Non-Compliance proceeding pertaining to Docket No. JR210079S was filed on February 4, 2022. Thereafter, a Notice of Compliance ("NOC") dated June 29, 2022 indicated that "the owner has complied with the conditions listed on the tenant's affirmation of non-compliance" and that "[i]t is noted that pursuant to a phone call from the tenant to the inspection unit on April 20, 2022, the repairs had been completed".

Thereafter, on July 5, 2022, the subject rent restoration proceeding was opened. The Rent Administrator, based on the tenant's affirmation that the alleged defects had been corrected, determined that a rent restoration was warranted, thereby granting the subject rent restoration under Docket No. KS210005OR, effective August 1, 2022.

At the outset, the Commissioner notes the tenant's contention that the Rent Administrator's order is incorrect in determining that a rent restoration was warranted. However, the Commissioner finds that the Rent Administrator's order is in accordance with the Agency's Policy Statement 90-2 that states that the Rent Administrator, upon confirmation that services have been restored, will grant the owner a rent restoration. Here, the record indicates that on April 20, 2022, the tenant called the Division's inspection unit and confirmed that the owner had restored services (the tenant stated that the repair to the entry door was done and there was no need for an inspection). As a result, the Rent Administrator, in compliance with the RSC and Policy Statement 90-2, made the determination to grant a rent restoration as the services underlying the rent reduction order, Docket No. JR210079S, had been restored based on the tenant's telephone call confirming the same.

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

The tenant is advised to file a fresh service application and/or an overcharge complaint if the facts so warrant.

[1] The Rent Administrator, during the initial rent reduction proceeding, noted that the rest of the service issues raised by the tenant would be considered under Docket number JR210078S, as only the emergency condition (apartment entry door lock) was determined under Docket Number JR210079S.

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: FEB 3 2023

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

IN THE MATTER OF THE ADMINISTRATIVE APPEAL OF:	:	
[redacted]	:	ADMINISTRATIVE REVIEW DOCKET NO.: KW230018RT
	:	RENT ADMINISTRATOR'S DOCKET NO.: KS230072OR
PETITIONER	:	

ORDER AND OPINION DENYING PETITION FOR ADMINISTRATIVE REVIEW

On November 30, 2022, the above-named petitioner-tenant filed a Petition for Administrative Review ("PAR") challenging Docket No. KS230072OR, the order the Rent Administrator issued on September 28, 2022 (the "Order"), concerning the housing accommodation known as 315 Fenimore Street, [redacted] Brooklyn, NY 11225, wherein the Agency's Rent Administrator issued an order restoring rent for various apartments in the building, including [redacted]

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 restoring rent be reversed (cancelled completely). The tenant claims: "That the intercom/buzzer is not working properly. Thus, the rent restoration is not warranted."

The owner's representative responded to the tenant's PAR on December 21, 2022 and claimed that the tenant offers no evidence or rationale as to why the order should be disturbed, and that an inspection found the vestibule door condition maintained.

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

Pursuant to Section 2202.16 of the NYC Rent and Eviction Regulations and 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. DHCR Policy Statement 90-2 states that the Rent Administrator may rely on an Agency inspection when making the determination in a matter. Likewise, an

owner is entitled to a restoration of rent when it is established that the required services that were cited in the rent reduction order have been restored.

In the proceeding below, the owner filed an application with this Agency on July 13, 2022, alleging the restoration of the door services in the subject building that was found previously not maintained (the Commissioner notes that the vestibule door was found not maintained under Docket No. KD230019RK, which modified the original rent reduction ordered under Docket No. IC230127B). The affected tenants were served with notices of the owner's application (the "Initial Notices") on July 18, 2022. The Agency records show that no tenant responded to the Initial Notices.

An inspection of the subject building was requested on September 1, 2022, and on September 2, 2022 an Agency inspection was conducted by a DHCR inspector who went to the building and observed that the building buzzer system was working properly. The inspector was able to gain access to the building after using the buzzer for [redacted] The inspector also observed that the building's vestibule door opens/closes/locks properly and the vestibule door buzzer was working properly.

Based on the foregoing details, on September 28, 2022, the Rent Administrator issued an order granting the owner a rent restoration that was based on the fact that the vestibule door opens/closes/locks properly, the intercom/buzzer located to the left of the vestibule door was working properly, and the building main entry door open/closes properly.

The Commissioner notes the tenant's contention herein that the intercom/buzzer is not working properly and finds that this unsubstantiated claim by the tenant is without merit. The tenant's claim contradicts the findings of the impartial DHCR inspector who was able to successfully use the intercom to access the building and conduct the inspection on September 2, 2022. The Commissioner finds that the Administrator, pursuant to DHCR Policy Statement 90-2, properly and reasonably relied upon the Agency's impartial inspector when making the determination in this matter.

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

The tenant is advised to file a fresh rent reduction application if the facts so warrant.

THEREFORE, in accordance with the applicable provisions of the Rent Stabilization Law and Code and the New York City Rent and Eviction Regulations, it is

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

ISSUED: FEB 3 2023

Woody Pascal
Deputy Commissioner

State of New York
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Office of Rent Administration
Gertz Plaza, 92-31 Union Hall Street
Jamaica, NY 11433
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GERTZ PLAZA
92-31 UNION HALL STREET
JAMAICA, NEW YORK, 11433

IN THE MATTER OF THE ADMINISTRATIVE APPEAL OF:	:	**ADMINISTRATIVE REVIEW DOCKET NO.: KS210028RO**
MARTAN PROPERTIES LLC,	:	**RENT ADMINISTRATOR'S DOCKET NO.: KN210093OR**
PETITIONER	:	

ORDER AND OPINION GRANTING PETITION FOR ADMINISTRATIVE REVIEW

On July 28, 2022, the above-named petitioner-owner filed a Petition for Administrative Review ("PAR") against an order the Rent Administrator issued on June 23, 2022 (the "Order"), concerning the housing accommodation known as 5422 4th Ave., Brooklyn, NY, wherein the Rent Administrator denied the owner's application to restore rent.

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.

On September 16, 2015, the tenant of apartment [redacted] filed an application for a rent reduction based on building-wide decreased services, which the Rent Administrator granted on August 18, 2016, under Docket No. DU210021B, after the record revealed that there were inadequate janitorial services in the public areas of the subject building.

On February 28, 2022, the petitioner-owner filed an application to restore the rent; however, on June 23, 2022, the Rent Administrator issued an order under Docket No. KN210093OR, denying the application based on janitorial services not being maintained on the stairs and landing leading to the bulkhead.

In the PAR, the petitioner seeks a reversal of the Rent Administrator's order, asserting that the inspector's report relating to the Agency inspection on April 29, 2022, indicated that there were adequate janitorial services kept throughout the public areas in the subject building at the time of inspection.

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

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, Policy Statement 90-2 states that the Rent Administrator may rely on an agency inspection when making a determination. 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.

Here, the record supports that an Agency inspection was conducted on April 29, 2022, whereby the inspector noted that there were "[a]dequate janitorial services kept throughout building public areas at time of inspection." Based on evidence contained in the record, the Commissioner finds that the Rent Administrator erroneously denied the owner's application to restore the rent.

Based on the foregoing, the Commissioner finds that the Rent Administrator's order under Docket No. KN210093OR is hereby reversed, and that the owner's rent restoration application is herein granted.

Pursuant to DHCR Policy Statement 90-2, when DHCR issues an order restoring rent, the retroactive date will be the first of the month following the date of service on the tenant of the owner's application to restore rent. Accordingly, the effective date of the rent restoration order under Docket No. KN210093OR is April 1, 2022, the first of the month following the date of service on the tenant of the owner's application to restore rent, which was March 7, 2022.

Any arrears owed as a result of this Commissioner's Order and Opinion may be paid in equal monthly installments equal to the monthly rent reduction taken.

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

ORDERED, the petition is granted, and the Rent Administrator's order under Docket No. KN210093OR is reversed to grant the owner's rent restoration application, effective April 1, 2022.

ISSUED: FEB 16 2023

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

IN THE MATTER OF THE ADMINISTRATIVE APPEAL OF:	:	
[redacted]	:	**ADMINISTRATIVE REVIEW DOCKET NO.: KS420004RT**
PETITIONER	:	**RENT ADMINISTRATOR'S DOCKET NO.: JR410059OR**

ORDER AND OPINION DENYING PETITION FOR ADMINISTRATIVE REVIEW

On July 6, 2022, the above-named Petitioner-tenant re-filed a Petition for Administrative Review ("PAR") against JR410059OR, an order the Rent Administrator issued on April 15, 2022 (the "Order"), concerning the housing accommodation known as 148 West 67th Street, Apartment [redacted], New York, New York, wherein the Rent Administrator granted the owner's rent restoration application based upon the tenant's affirmation that the owner restored the services and a review of the New York City Department of Housing Preservation and Development ("HPD") records which revealed that Vacate Order #159091 issued for the subject premises on January 6, 2021 was rescinded on June 15, 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 tenant objects to the Rent Administrator's order, averring that the owner moved the Petitioner from the Petitioner's apartment [redacted] to apartment [redacted] after a fire caused damage to the Petitioner-tenant's apartment [redacted]; that the tenant thought they would be returned to their apartment [redacted] upon the restoration of the subject apartment [redacted] to a habitable condition; that the owner, after restoring the subject apartment [redacted] to habitability, rented the said apartment to a new tenant; and that the subject Petitioner-tenant was not returned to occupancy of the subject apartment [redacted] after receiving notification from the owner that the apartment was ready for occupancy despite the tenant's repeated demands from the owner to advise the tenant on when the tenant can move back into apartment [redacted]. The tenant also avers that apartment [redacted] may be rent

stabilized, while apartment [redacted] may be market rate. Additionally, the tenant claims that the owner failed to roll over the tenant's security deposit from apartment [redacted] but demanded a new security deposit for apartment [redacted]; that the owner received Emergency Rent Relief Funds (ERAP) and is trying to "double dip" on months; that apartment [redacted] has "considerable habitability issues"; that if the tenant cannot return to apartment [redacted], the Petitioner-tenant seeks a rent abatement for the months the tenant had to live under the uninhabitable conditions in apartment [redacted]; and that the tenant requests an inspection by the HPD.

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

Pursuant to Section 2522.6 of the New York City Rent Stabilization Code ("RSC" or the "Code"), where a tenant was forced to vacate their apartment because it is legally uninhabitable, it is the Division's policy to establish the rent at $1.00 per month to maintain the landlord/tenant relationship between the parties until such time as the apartment is restored to habitability and the subject tenant is restored to occupancy or refused an offer to reoccupy the subject apartment. DHCR policy and practice further dictates that if an owner restores a fire damaged apartment to habitability after a $1.00 order has been issued and has advised the tenant that they may resume occupancy of the subject apartment and the tenant advises that occupancy has been restored, the Rent Administrator may grant the owner's rent restoration application to the level in effect prior to the date of fire.

In the initial proceeding under Docket No. IX420036S, the tenant filed a rent reduction application, based on a fire incident which occurred on December 8, 2020. The tenant's rent reduction application under Docket No. IX420036S was granted on February 22, 2021 wherein the Rent Administrator noted that Vacate Order #159091 for the subject apartment [redacted] was still active, and that the findings of the Rent Administrator's order applied if the subject apartment was subject to the Rent Stabilization Law and Code.

On June 24, 2021, the owner filed the rent restoration application herein below, and asserted that the subject apartment [redacted] was restored for occupancy on June 16, 2021, and included a letter dated June 17, 2021 sent to the tenant by certified mail, advising the tenant that the apartment was "now ready to be occupied" and that the vacate order issued by HPD for apartment [redacted] was removed as of June 16, 2021. The tenant was afforded an opportunity to respond by service of the owner's application on the tenant on June 28, 2021. The tenant responded in a correspondence dated July 8, 2021 and agreed that all conditions were restored. The tenant also claimed that management needed to give the tenant a copy of the new lease for apartment [redacted] and requested that the rent be the "preferential rent" from when the tenant moved into the apartment.

A review of the HPD records by the Rent Administrator revealed that the Vacate Order #159091, issued for the subject premises on January 6, 2021, was rescinded on June 15, 2021.

On April 15, 2022, based on the record, including the tenant's confirmation that the subject apartment's conditions had been restored, the letter addressed to the tenant from the owner advising the tenant that apartment [redacted] is now ready to be occupied, and the HPD records

that revealed that the Vacate Order #159091 had been rescinded, the Rent Administrator determined that a rent restoration was warranted and granted the owner's application, Docket No. JR410059OR. The Rent Administrator advised that the tenant may file a "Tenant's Complaint of Owner's Failure to Renew Lease and/or Failure to Furnish a copy of a Signed Lease" (DHCR form RA-90) with the Agency.

The Commissioner finds the tenant's PAR does not establish any basis to modify or revoke the Rent Administrator's determination which was based on the entire record, including the report from the HPD's records revealing that the Vacate Order #159091 was rescinded and that the tenant did not contest the owner's statement that the tenant was able to resume occupancy. Furthermore, the tenant submitted an answer dated July 8, 2021 that asserted that the tenant agreed that all the conditions had been restored.

As mentioned above, the Commissioner notes that the RSC permits the DHCR to issue an order restoring the rent where there is a finding that the owner has restored the premises to habitability and the tenant to occupancy, or the tenant surrendered their rights to the apartment. Here, the tenant was served with the owner's application to restore rent, wherein, the owner affirmed that the subject apartment had been restored on June 16, 2021, that the HPD vacate order was removed, and that the owner provided a letter to the tenant that the apartment was ready. Moreover, the record shows that the tenant had the opportunity to challenge the owner's claim, rather the tenant acknowledged that the subject apartment had been restored and requested that the owner offer the Petitioner a new lease for the said apartment [redacted] and include the preferential rate that was in effect when the Petitioner-tenant took occupancy of the unit. Thus, the Commissioner finds the Rent Administrator conducted the underlying proceeding in accordance with established law, Agency practice and principles of due process, and that the Rent Administrator properly granted the owner's rent restoration application.

The Commissioner further finds that the Commissioner's review of evidence is limited to the evidence or facts in the record below. As such, new issues submitted by the Petitioner on appeal, including service conditions pertaining to apartment [redacted], are outside of the Commissioner's scope of review, and therefore, cannot be herein entertained as the Commissioner is limited to the facts, evidence, and issues in the underlying proceeding, Docket No. JR410059OR.

Based on the foregoing, the Commissioner finds that the tenant's PAR has not presented any allegations of error of fact or law to warrant a reversal of the Rent Administrator's decision.

The Commissioner advises the tenant to file a new application for the service issues raised in their PAR if the facts so warrant. The Commissioner notes that the tenant has filed a Tenant's Complaint of Owner's Failure to Renew Lease and/or Failure to Furnish a Copy of a Signed Lease on July 6, 2022, which is currently pending. The tenant is also not precluded from seeking relief from a court of competent jurisdiction, if the facts warrant.

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

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

ISSUED: FEB 16 2023

Woody Pascal
Deputy Commissioner

State of New York
Division of Housing and Community Renewal
Office of Rent Administration
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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

IN THE MATTER OF THE ADMINISTRATIVE APPEAL OF:	:	
MARTAN PROPERTIES LLC	:	**ADMINISTRATIVE REVIEW DOCKET NO.: KT210031RO**
PETITIONER	:	**RENT ADMINISTRATOR'S DOCKET NO.: KN210095OR**

ORDER AND OPINION DENYING PETITION FOR ADMINISTRATIVE REVIEW

On August 31, 2022, the above-named Petitioner-owner timely re-filed a Petition for Administrative Review ("PAR") challenging KN210095OR, an order the Rent Administrator issued on June 28, 2022 (the "order"), concerning the housing accommodations known as 5422 4th Avenue, Various Apartments, Brooklyn, New York, wherein the Rent Administrator denied the owner's application to restore rent previously reduced under Docket No. FS210009B.

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 requests a modification of the Rent Administrator's order, contending that contrary to the inspector's finding regarding the janitorial condition of the subject premises, the Agency's previous inspection under Docket No. KN210093OR found adequate janitorial services throughout the building's public areas. The owner submitted a copy of the inspection for Docket No. KN210093OR report as proof of the Petitioner's claim.

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. Likewise, an owner is entitled to a restoration of rent when it is established that the required services that were cited in the rent reduction order have been restored.

In the initial proceeding, under Docket No. FS210009B, the Rent Administrator on May 21, 2018, granted the tenants a rent reduction based on decrease in services. The Administrator found the said decrease in services pursuant to an Agency inspection which revealed that: (1) the windows in the public area throughout the building were stuck/misaligned and had broken latches, did not open/close/lock properly; (2) there were inadequate janitorial services throughout the building hallways and staircases, and needed to be properly swept and moped; (3) the mailboxes/locks were not secure, a hazardous condition; and (4) there was evidence of obstruction on fourth floor fire escape landing on western side of the building.

On February 28, 2022, the owner commenced the rent restoration proceeding herein below, wherein the owner indicated that the necessary repairs had been performed, and annexed pictures purporting to depict the said conditions. The tenants were served with a copy of the owner's rent restoration application on March 7, 2022. On March 24 and 28, 2022, tenants of apartments [redacted] and [redacted] responded to the owner's application and acknowledged that the owner had cured the defects.

The Agency records show that the Rent Administrator requested an Agency inspection during the subject rent restoration proceeding, and on May 5, 2022, the Agency's inspection was conducted. The inspection report indicates that: the first floor window was stuck in the open position, the second and fourth floor windows were stuck in the close position, and the third floor window did not lock; there were inadequate janitorial services on stairs landing and leading to bulkhead; the mailboxes on upper/lower right side were not secured to the wall/frame and were missing doors/locks, a hazardous condition; and there was no evidence of obstruction on the fourth floor fire escape. The Commissioner notes that the Agency's impartial inspector substantiated such findings with photographic evidence.

On June 28, 2022, the Rent Administrator denied the owner's rent restoration application pursuant to the Agency inspection conducted on May 5, 2022 which revealed that the windows, the janitorial services building-wide, and the mailboxes/locks were not restored.

After a review of the entire record of proceedings, the Commissioner finds that the owner's application should be denied. Pursuant to Policy Statement 90-2, where there is a dispute as to where required services have been provided or being properly maintained, the Rent Administrator may rely on the results of an agency inspection. Furthermore, Section 2527.5(b) of the Code provides that the Agency may make investigations of the facts and conduct inspections at any stage of a DHCR proceeding. See also Matter of 113-117 Realty, LLC v. DHCR, 199 AD3d 506 [1st Dept. 2021] citing to Matter of Sherman v. DHCR, 210 AD2d 486 [2nd Dept. 1994].

As for the Petitioner-owner's argument that a previous DHCR inspection under Docket No. KN210093OR found "adequate janitorial services throughout the building's public areas", the Commissioner notes that a previous inspection for janitorial services conducted on a different date does not negate the inspector's finding of the inadequacy of the said janitorial

services in the instant proceeding. In this case, the underlying service is inadequate janitorial services in the public areas of the building. Accordingly, the Rent Administrator requested an inspection of the subject premises and the janitorial services building-wide, and the Agency inspection was conducted on May 5, 2022, which revealed that there were inadequate janitorial services on the stairs and landing leading to the bulkhead. It was proper for the Rent Administrator to rely on such Agency inspection conducted on May 5, 2022 as the inspection report revealed that there were inadequate routine janitorial services in the building. A previous inspection reporting on janitorial services, conducted pursuant to another proceeding, does not preclude the Agency from conducting any subsequent inspections for evidence of routine janitorial services building-wide. Moreover, as highlighted in the subsequent inspection report from May 5, 2022, the janitorial services are not being maintained. As such, the Petitioner's contention in this regard is unpersuasive and is merely self-serving.

Based on the foregoing, the Commissioner finds that the Rent Administrator's determination was appropriate and was supported by a rational basis, namely the inspector's report and time/date stamped photographs dated May 5, 2022 that showed the subject conditions, including the building-wide janitorial services, were not being maintained. 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 accordance with the Code and Policy Statement 90-2.

The Commissioner finds that the Petitioner-owner has not established any basis to modify the Rent Administrator's order below.

The owner filed a new rent restoration application which is currently pending under Docket No. KW210055OR.

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

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

ISSUED: FEB 16 2023

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.

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**
VIKTORIA KOVRIG	:	**DOCKET NO.: KW110029RO**
(Owner)	:	
	:	**RENT ADMINISTRATOR'S**
	:	**DOCKET NO.: KP110104OR**
PETITIONER	:	

ORDER AND OPINION DENYING PETITION FOR ADMINISTRATIVE REVIEW

On November 29, 2022, the above-named petitioner-owner filed a Petition for Administrative Review ("PAR") challenging Docket No. KP110104OR, the order the Rent Administrator issued on October 27, 2022 (the "Order"), concerning the housing accommodation known as 70-19 65th Place, [redacted] Glendale, NY 11385, wherein the Rent Administrator denied the owner's application to restore the rent for the subject apartment after a DHCR inspector visited the premises on June 21, 2022 and observed that the paint and plaster apartment-wide has the following defects: (i) the wall around the kitchen window has bubbled paint; (ii) the bathroom ceiling has water damage and mold/stains; (iii) the bathroom window sill has water damage and chipped paint; (iv) the dining room ceiling has water marks/stains; (v) the living room walls have chipped paint; and (vi) the window frame in bedroom #2 needs to be painted. The inspector also noted that the kitchen door has uneven patches, a loose door hinge, and was repaired in an unworkmanlike manner.

The Commissioner has reviewed all of the evidence in the record and has carefully considered that portion of the record that is relevant to the issue(s) raised by the PAR.

In the PAR, the owner claims that the tenant refused access to landlord on numerous occasions; the bathroom repairs "completed by HPD" when access was permitted; and the tenant/occupant is damaging the premises.

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. Similarly, an owner is entitled to the

restoration of rent when this Agency establishes that the required services that were cited in the rent reduction order have been restored. 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 owner filed an application to restore rent for the subject apartment on April 27, 2022, alleging the restoration of services that were previously found not maintained under Docket No. HT110079S, which included paint/plaster apartment-wide and the kitchen door. The tenant was served with the notice of the owner's application (the "Initial Notice") on May 3, 2022. The Agency records show that the tenant responded to the Initial Notice on May 23, 2022 when the tenant said that she did not agree that all the conditions listed in the owner's rent restoration application were restored. Therefore, on June 21, 2022 a DHCR inspector visited the subject apartment and saw the following conditions: (1) The paint/plaster apartment-wide was defective as follows: (a) The kitchen wall around the window had bubbled paint. (b) The bathroom ceiling had water damage and mold/stains. The bathroom windowsill had water damage and chipped paint. (c) The dining room ceiling had water marks/stains. (d) The living room walls had chipped paint. (e) The window frame in bedroom #2 needs to be painted. (2) The kitchen door had uneven patches, a loose door hinge and was repaired in an unworkmanlike manner. Based on these details, the Rent Administrator issued an order denying the owner's rent restoration application on October 27, 2022.

The Commissioner notes the owner's unsubstantiated contentions that the tenant refused to grant the landlord access to the subject apartment on numerous occasions; bathroom repairs were completed by HPD when access was permitted; and the tenant/occupant is damaging the premises. The Commissioner finds that the owner has not presented any allegations of errors of fact and/or law against the Rent Administrator's determination in the matter below. In this case, the owner alleged in their rent restoration application that they restored the painting and the door, and yet, when an Agency inspector conducted an inspection of the subject premises on June 21, 2022, the painting and kitchen door were found not restored. Accordingly, a rent restoration was not warranted in this case.

The owner is advised that it may file a fresh "Owner's Application to Restore Rent" for the subject apartment if the facts so warrant. The Commissioner notes that if the owner is having access issues, Section 2523.4(d)(2) of the Code provides that the owner should advise the Agency that the tenant has denied access and annex copies of two (2) letters sent to the tenant trying to arrange access, each of which must have been sent certified mail, return receipt requested at least eight (8) days before the proposed access date.

Based on the foregoing, the Commissioner finds that the Rent Administrator correctly denied the owner's rent restoration request which was based on the conditions that the Agency's impartial inspector observed in the subject apartment on June 21, 2022. The Commissioner finds that the owner's PAR has not established any basis to modify or revoke the Rent Administrator's determination in the matter below.

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

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

ISSUED: FEB 16 2023

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

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IN THE MATTER OF THE
ADMINISTRATIVE APPEAL OF :

ADMINISTRATIVE REVIEW
DOCKET NO.: KW430012RT

Various Tenants of :
160 West 71st Street, New York, NY

RENT ADMINISTRATOR'S
: DOCKET NO.: KR430007OR
(DT430018B)

PETITIONER

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ORDER AND OPINION DENYING PETITION FOR ADMINISTRATIVE REVIEW

On November 16, 2022, the above-named petitioner-tenants filed a Petition for Administrative Review (PAR) against an order of the Rent Administrator issued on October 12, 2022, concerning the housing accommodations located at 160 West 71st Street, New York, NY, wherein the Administrator granted the owner's rent restoration application.

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 petition.

The tenants request a reversal of the Rent Administrator's order and allege that the inspector did not show up on the inspection scheduled date and time, August 15, 2022, between 10am and 2pm; that the Rent Administrator, in error, found that based on the complete record, the conditions cited had been corrected, even without the inspector's visit to the tenants' individual apartments and without contacting any of the tenants using the intercom during the inspector's visit; that the new intercom system, which is not an adequate substitute for the previous bell and buzzer system, was not tested or proved to work during the inspector's visit; that the system either does not work, or works inconsistently, depending on the apartment; that during an emergency, the tenants are not able to reach the doorman via the phone-based intercom system if overloaded,

or the tenant does not have a phone, or the phone lines are down for some reason; that the buzzer and bell remain in most apartments affected by this order, and restating the diminished service would thus not be difficult; and that the tenants involved in the rent reduction should have the choice whether to have the bell and buzzer system restored.

The owner, through counsel, opposed the tenants' petition, arguing, essentially, that the intercom system is the only item of concern in the instant tenants' PAR, and that the system was working properly and functioning in all inspected apartments; that whenever there is a temporary outage as is customary with electronic devices, the owner expeditiously addresses the issue; and that the tenants' petition should be denied.

Pursuant to Section 2523.4 of the Rent Stabilization Code (the "Code") and Section 2202.16 of the New York City Rent and Eviction Regulations, 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. 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.

The Commissioner notes that in the initial proceeding, Docket No. DT430018B, the Rent Administrator, on March 15, 2016, granted the tenants a rent reduction based on a finding of a decrease in various services[1], including the issue of building-wide wiring, intercom, hall walls having holes and in need of painting, and stairwells' step and threads found not maintained.

The records indicate that prior to the instant rent restoration ("OR") the owner had filed rent restoration applications, Docket Nos. EP430106OR and JN410052OR. In the proceeding under EP430106OR, the Rent Administrator found building-wide wiring, holes in wall/painting, and the intercom system services not restored on October 13, 2016 (the Rent Administrator noted that the owner had not filed an application for modification of services for the new intercom system); and the owner withdrew its rent restoration application under Docket No. JN410052OR on February 22, 2021.

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[1] According to the inspection report, electrical wires were exposed on the 16th floor public hallway wall near apartment [redacted], and on the 19th floor public hallway ceiling near apartments [redacted] and [redacted] Regarding the building intercom system, that the lobby front desk concierge had to call tenants' telephone numbers in the file to notify them concerning visitors; that the inspector verified the intercom service by inspecting apartments [redacted] [redacted] [redacted] and [redacted] that the intercom panels found inside apartments were no longer in use, and the tenants were using personal phones to communicate with the front desk; and that there was no longer a building intercom panel at the building entrance. The inspector also found that there were holes on the 16th floor wall near apartment [redacted] that all walls on the 2nd floor needed to be painted, and that there was peeling paint on a wall near apartment [redacted] while all the remaining walls throughout the building hallways were in good (paint) condition. Additionally, the inspector found that there was a cracked step found at the edge of the 1st floor staircase (staircase "A") to the basement, which presented a trip hazard; and that the stairwells had no treads throughout building and did not present a hazardous condition.

Thereafter, on June 3, 2022, the owner commenced the rent restoration proceeding herein below, wherein the owner indicated that the services found not maintained below had been restored. The owner asserted in their application, in pertinent part, that the telephone-based intercom system that was the basis of the underlying rent reduction was removed, and the old audio-based intercom system has been reinstalled. Said application was served on the tenants on June 9, 2022.

The records indicate that the Rent Administrator requested an Agency inspection of the reduced services during said rent restoration proceeding, and on August 15, 2022, the agency's inspection was conducted. The inspection report shows that at the time of inspection, there were no exposed wires on the 16th floor (near apartment [redacted]), and the 19th floor hallways and near apartments [redacted] [redacted] in the hallway; that the intercom system was inspected and found properly operable in the building for all apartments, with the system appearing as a special screened phone at the concierge desk (24/7) with an intercom control panel in every apartment; and that the intercom system did not require the use of personal phone/line of tenants. Additionally, there was no peeling paint and plaster found in the hallways of the 16th and the 19th floor hallways (near apartments [redacted] and [redacted]); and the painting on the 2nd floor hallway walls was found to be in a workmanlike manner.

Section 2527.5(b) of the Rent Stabilization Code and Section 2207.5(b) of the New York City Rent and Eviction Regulations authorize the Rent Administrator to make investigations of the facts and conduct inspections at any stage of a DHCR proceeding. Additionally, 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 Commissioner notes, as supported by the records, that during the Agency's inspection of August 15, 2022, in the underlying rent restoration proceeding herein, the inspector found restored all outstanding services found not maintained in the initial proceeding, Docket No. DT430018B, including the subject intercom service. Moreover, the Agency inspection revealed that at the time of the inspection on August 15, 2022, the intercom was operable for all apartments, that the intercom system does not require the use of the tenants' personal phone or line, and there is an intercom control panel located in every apartment with a special screened phone at the 24/7 concierge desk.

Based on the foregoing, the Commissioner finds that the Administrator and Agency staff conducted the proceeding below in accordance with established law, Agency practice, and principles of due process, and that the Administrator properly granted the owner's rent restoration application based upon the Agency inspection conducted on August 15, 2022.

The Commissioner notes that the tenants may file a fresh complaint, individually or building-wide, 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: FEB 17 2023

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.:KU210004RP (JW210011RT)

VARIOUS TENANTS OF 201 EAST 18TH STREET, BROOKLYN, NEW YORK

PETITIONER

RENT ADMINISTRATOR'S DOCKET NO.: IS210011OR

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ORDER AND OPINION, ON REMAND, DENYING PETITION FOR ADMINISTRATIVE REVIEW

On November 1, 2021, the Petitioner-tenant of apartment [redacted] filed a Petition for Administrative Review ("PAR") against IS210011OR, an order the Rent Administrator issued on September 28, 2021 (the "order"), concerning the housing accommodations known as 201 East 18th Street, Various Apartments, Brooklyn, New York, wherein the Rent Administrator granted the owner's rent restoration application finding the elevator condition was restored.

By order issued on June 24, 2022 under Docket No. JW210011RT, the Commissioner affirmed the Rent Administrator's order.[1] Subsequently, the tenants, through their representative, filed a reconsideration request with this Agency on August 23, 2022. Such reconsideration request was granted by the Commissioner on September 7, 2022, and notice of the reopening of Docket No. JW210011RT for further processing was provided to the tenant's representative and owner.[2]

Thereafter, the owner was afforded an opportunity to respond to the tenants' "Amended PAR" on October 13, 2022. The Commissioner notes that the owner and tenants or their respective representatives have not further commented on the instant reopened proceeding.

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[1] The Commissioner notes that the underlying facts and findings are delineated in the Commissioner's order and opinion pursuant to Docket No. JW210011RT and as such are not recited herein.

[2] On September 15, 2022, the owner's representative requested an extension to respond to the re-opening, however, no further response was received. The Commissioner notes that an administrative proceeding is not an open-ended process.

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 tenants' "Amended PAR" dated August 19, 2022, the Petitioners, through their representative, request that five affected tenants be added as petitioners and supplied written authorization for the representative to represent the five additional tenants in the instant PAR, claiming that the subject tenants were all impacted by the underlying rent restoration order. The Petitioners further claim that the Rent Administrator's order contains errors of fact and law, contending that the inspector failed to inspect the entirety of the bottom of the door, thereby the inspector "incorrectly determined" that the rust had been corrected. The tenants argue that a photograph purportedly taken of the subject elevator by the Petitioners, which the tenants attached to this PAR, contradict the inspector's finding as the purported tenants' photograph depicts the rusty condition of the subject elevator door. Lastly, the tenants assert that "little credence" should be given to the owner's invoice for the scraping and refinishing of the elevator door as the contractor resides at another property owned by the owner

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. Likewise, an owner is entitled to a restoration of rent when it is established that the required services that were cited in the rent reduction order have been restored. Furthermore, pursuant to Policy Statement 90-2, where there is a dispute as to whether required services have been restored or being properly maintained, the Rent Administrator may rely on the result of an Agency inspection conducted by the Agency's impartial inspector who is not a party to the proceeding. See Matter of 113-117 Realty, LLC v. DHCR, 199 AD3d 506 [1st Dept.2021] citing to Matter of Sherman v. DHCR, 210 AD2d 486 [2nd Dept. 1994].

In this case, rent was previously reduced by an order issued on April 15, 2019, under Docket No. GU210027B based on decrease in various building-wide services, specifically vermin control in the public areas, and evidence of rust on the door frame and lower portion of the elevator cab (noted as a hazardous condition). On June 25, 2020, the Rent Administrator denied the owner's first rent restoration application under Docket No. HQ210032OR based on the inspection report from January 14, 2020 that revealed there was still rust on the bottom of the elevator door, however, such condition was noted by the inspector as not hazardous at the time of this inspection (the Commissioner notes that the vermin control was found restored under Docket No. HQ210032OR).

Thereafter on September 28, 2021, the Rent Administrator determined that the rusty elevator cab door condition cited in the order reducing rent had been restored based upon the Agency inspection conducted on May 26, 2021 and granted the owner's application to restore rent under Docket No. IS210011OR, the subject of this appeal.

The Commissioner notes the Petitioners' dispute with the Rent Administrator's rent restoration order under Docket No. IS210011OR. However, the Commissioner finds that the Rent Administrator's determination was proper and supported by a rational basis, namely the inspector's report that revealed there was no evidence of rust on the lower portion of the elevator cab door at the time of the Agency inspection on May 26, 2021. 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 and reporting his observations of the subject elevator cab door was reasonable and in compliance with Section 2523.4 of the RSC, and Policy Statement 90-2. As noted above, the May 26, 2021 inspection report revealed that there was no evidence of rust on the bottom of the subject building's elevator cab door at the time of the inspection.

In the light of the foregoing, the Commissioner finds that the Rent Administrator appropriately granted the owner a rent restoration for the elevator cab door condition and the tenant's PAR has not established any basis to modify or revoke the Rent Administrator's determination.

The tenants are advised to file a fresh complaint regarding any current issues with the subject elevator, should the facts so warrant.

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

ORDERED, that this petition be, and the same hereby is, denied, after reconsideration, and that the Rent Administrator's order under Docket No. IS210011OR be affirmed.

ISSUED: MAR 3 2023

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.: KX410016RT
[redacted]	
PETITIONER	RENT ADMINISTRATOR'S DOCKET NO.: KR410012OR

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ORDER AND OPINION DENYING PETITION FOR ADMINISTRATIVE REVIEW

On December 16, 2022, the above-named petitioner-tenant filed a Petition for Administrative Review ("PAR") against an order the Rent Administrator issued on December 2, 2022 (the "order"), concerning the housing accommodation known as 16 East 82nd Street, New York, New York, wherein the Rent Administrator granted the owner's rent restoration application upon finding the owner had restored the outstanding unmaintained janitorial service condition, to wit, the obstruction of the handicapped ramp in front of the building with garbage and recyclables.

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, the tenant, by counsel, asserts *inter alia*, that the owner failed to restore the janitorial services to the subject building; that the basement floor was not inspected in the proceeding below, although the basement area had been found "dirty, unclean and containing dead rodents" in the underlying rent reduction order; that the front entrance way of the subject apartment building remains filthy and has not been cleaned since the tenant commenced her

initial decrease in services complaint in 2015; that the owner has filed numerous unsuccessful rent restoration applications; and that the New York City Department of Building ("DOB") issued a violation pertaining to the building's boiler located in the basement, and that the building is not currently registered with the New York City Department of Housing Preservation and Development ("HPD").

Pursuant to Section 2523.4 of the Rent Stabilization Code ("RSC" or "the Code"), following a complaint by a tenant, DHCR is authorized to order a rent reduction where it is found that the owner has failed to maintain required or essential services. Likewise, an owner is entitled to the restoration of rent once it is established that all the required services cited in the rent reduction order have been restored. Policy Statement 90-2 permits the Rent Administrator to rely on an Agency inspection when making a decision. Section 2527.5(b) of the RSC gives the Administrator the authority to request an inspection at any stage of a DHCR proceeding and New York Courts have consistently recognized the reliability of DHCR inspections.

The Agency records show that the tenant filed a complaint alleging a diminution of various building-wide services, assigned under Docket No. DW410040B. On September 1, 2016, the Administrator issued a rent reduction order, based on an Agency inspection that had revealed that the building's janitorial services were not being maintained, specifically, the handicapped ramp in front of the building was blocked with garbage and recyclables; and the basement floor had water stains and there was excessive dust in the basement. (Docket No. DW410040B was affirmed on appeal on March 29, 2017 under consolidated Docket Nos. EU410043RO and EV410006RT).

Subsequently, the owner filed their first rent restoration application assigned Docket No. EU410072OR on September 21, 2016. On January 27, 2017, the Rent Administrator denied the application finding the owner had not restored the janitorial services as the Agency inspection revealed there was a large black bag blocking the entrance to the handicapped ramp and that the basement floor was stained and unclean with excessive dirt/dust. (Docket No. EU410072OR was affirmed on appeal on November 22, 2017 under Docket No. FO410001RO).

The owner's second rent restoration application was filed on April 30, 2018 assigned Docket No. GP410088OR. On April 2, 2019, the Rent Administrator denied the owner's application finding the owner had not corrected the janitorial services, in that the basement floor was found to be dirty, dusty and unclean (there was a bag of leaves on the basement floor).

The owner's third rent restoration application filed on October 28, 2019 assigned Docket No. HV410148OR was granted on March 12, 2021 as the Rent Administrator found the owner had restored the janitorial service as the basement floor was found to have been maintained as revealed in the Agency inspection report from February 24, 2021. At the time of the Agency inspection on February 24, 2021, the basement floor had no evidence of water stains and excessive dust. However, thereafter, the tenant appealed the Rent Administrator's order and on August 5, 2021, the Commissioner granted the tenant's PAR assigned Docket No. JO410036RT finding that, as the handicapped ramp in front of the building was part of the underlying rent reduction order, the owner failed to correct all the conditions underlying the original order,

specifying that the handicapped ramp in front of the building was found to have been blocked with garbage and recyclables at the time of the Agency inspection on February 24, 2021.

In the proceeding below, the owner filed the subject application to restore the rent on June 9, 2022, claiming the owner removed the garbage bags blocking the handicapped ramp, and that the building and property are cleaned weekly. The tenant was afforded an opportunity to respond by service of the rent restoration application on July 5, 2022.

The tenant, by counsel, responded to the owner's application asserting that the owner had not restored the janitorial services. The tenant contended, in sum, that she had submitted prior service complaints; that there were numerous HPD violations issued and a DOB violation issued pertaining for the building's boiler; and to support her assertions, the tenant submitted, *inter alia*, copies of photographs purportedly depicting the service conditions in the subject building.

Thereafter, the Rent Administrator requested an Agency inspection which was conducted on August 3, 2022. The inspector found that at the time of the inspection, there was no evidence that the handicapped ramp was being obstructed, and that the gate entry to the ramp was clear and that there were no garbage or recycling bins obstructing entry to the ramp. Based on the Agency inspection, including the time/date stamped photographs, the Rent Administrator, on December 2, 2022, granted the owner's application to restore the rent as the remaining janitorial service condition had been corrected and restored.[1]

In view of the above, the Commissioner finds that the tenant's contentions herein lack merit and do not warrant disturbing the Rent Administrator's order as the Agency inspection on August 3, 2022 revealed that there were no obstructions to the entrance to the handicapped ramp, the condition found outstanding from the prior rent restoration proceeding (under Docket No. JO410036RT), and which was the last remaining named condition pursuant to the initial rent reduction order Docket No. DW410040B. In the proceeding below, which was brought by the owner to restore the rent, the only relevant inquiry is whether the conditions which were the subject of the rent reduction order have been corrected. Here, the obstruction of the handicapped ramp with garbage and recyclables was the outstanding condition from the underlying order. It was, therefore, appropriate for the Administrator to limit the Agency inspection to this condition.

Based on the foregoing, the Commissioner finds that the tenant has not presented any allegations of errors of law or fact to warrant reversal of the Rent Administrator's order. The Rent Administrator properly granted the owner's rent restoration application based on the inspection report by the Agency's impartial inspector which indicated that the last of the outstanding conditions in the initial proceeding under Docket No. DW410040B had been restored. 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. *See* Matter of 113-117 Realty, LLC v. DHCR, 199 AD3d 506 [1st Dept. 2021] *citing*

[1] The Rent Administrator noted on page two of the order that the tenant mentioned conditions in need of repair in the proceeding, and that those conditions were not subject to the proceeding and therefore could not be entertained therein. The Administrator further noted that the tenant may file a new complaint for conditions inside the tenant's apartment using DHCR Form RA-81 and use DHCR Form RA-84 for conditions in the common areas of the building.

to Matter of Sherman v. DHCR, 210 AD2d 486 [2nd Dept. 1994].

The tenant is advised to file an "Application to Reduce Rent based on Decreased 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 denied, and the Rent Administrator's order is affirmed.

ISSUED:

MAR 3 2023

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.

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.: KX420020RT

PETITIONER

RENT ADMINISTRATOR'S DOCKET NO.: KN420010OR

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ORDER AND OPINION DENYING PETITION FOR ADMINISTRATIVE REVIEW

On December 19, 2022, the above-named Petitioner-tenant filed a Petition for Administrative Review ("PAR") against an order the Rent Administrator issued on November 16, 2022 (the "order"), concerning the housing accommodation known as 234 Mott Street, Apartment , New York, New York, wherein the Rent Administrator granted the owner's rent restoration application after a review of the records of the New York City Department of Housing Preservation and Development ("HPD") did not reveal an outstanding violation for inadequate hot water service to the subject apartment, and Hot Water Violation # 14568781 is no longer outstanding.

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 asserts that the tenant does not have any problem with the said order appealed herein, but rather has a question regarding the owner's use of their new management, NYCM, and that based on the New York State Attorney General's ("NYSAG") instruction to tenants in 2018, "NO croman people" are allowed to be affiliated with the new management of NYCM. The Petitioner also asserts that the tenant was using the fuel cost adjustment as an example to show that the new management NYCM is supposed to fix all errors created by the previous management, but instead the new management "continue[s] to play fraud" like before.

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

Pursuant to Section 2202.16 of the New York City Rent and Eviction Regulations (the "Regulations"), 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. 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.

In the proceeding below, rent was previously reduced by an order issued on November 22, 2021 under Docket No. JU420003HW based on a lack of hot water in the subject apartment, citing to outstanding HPD Violation # 14568781. On February 7, 2022, the owner applied for rent restoration based on restoration of hot water to the subject apartment, [redacted]. The owner's rent restoration application was served on the tenant on February 9, 2022. The tenant responded and acknowledged that hot water was restored to the subject apartment as of November 23, 2021. However, the tenant raised some concerns regarding rent overcharge, harassment, and other issues unrelated to inadequate hot water to the unit.

The record indicates that the Rent Administrator reviewed the HPD records for hot water violations for the subject apartment. The HPD records did not reveal current violations for hot water to the subject apartment, [redacted], and that Hot Water Violation # 14568781 was no longer outstanding. Accordingly, the Rent Administrator granted the owner's rent restoration application under Docket No. KN420010OR in accordance with the Agency's principles and procedures.

The Commissioner notes that the Petitioner-tenant has not presented any allegations of errors of fact or law on appeal that disputes the Rent Administrator's findings regarding the hot water to the subject apartment. Moreover, the tenant in their PAR states that they have "no complaint" regarding the findings of the Rent Administrator's order.

The Commissioner further notes the Petitioner-tenant's concerns regarding other issues unrelated to the subject of the Rent Administrator's order, the hot water service in the subject apartment. However, the Commissioner finds that these issues are unrelated to a lack of hot water, the subject of complaint under the rent reduction order, Docket No. JU420003HW, upon which the subject underlying rent restoration order, Docket No. KN420010OR, was based. Furthermore, the tenant acknowledged during the Rent Administrator's proceeding that the hot water condition was restored. As such, the Rent Administrator's determination is proper under the circumstances, and the Petitioner has failed to allege any errors of law or fact therein.

Based upon the Petitioner's failure to allege errors in the Administrator's decision to restore the rent issued under Docket No KN420010OR, this petition is denied.

The tenant is advised to file a fresh service application, an overcharge complaint and/or a complaint of harassment with this Agency, and/or contact the New York State Attorney General with their concerns, 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: MAR 3 2023

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

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IN THE MATTER OF THE ADMINISTRATIVE APPEAL OF

BAINBRIDGE MANAGEMENT CORP

PETITIONER

ADMINISTRATIVE REVIEW DOCKET NO.: IN210007RO

RENT ADMINISTRATOR'S DOCKET NO.: HN210022OR

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ORDER AND OPINION DENYING PETITION FOR ADMINISTRATIVE REVIEW

On February 4, 2020, the above named Petitioner-owner filed a Petition for Administrative Review ("PAR") of an order the Rent Administrator issued on January 27, 2020 (the "order"), concerning the housing accommodation known as 425 Bainbridge Street, various apartments, Brooklyn, New York, wherein the Rent Administrator denied the owner's rent restoration application after an Agency inspection of the subject premises on December 28, 2019 and January 4, 2020, revealed that conditions cited in the order reducing rent were partially restored.

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 owner seeks a modification of the Rent Administrator's order and contends, in substance, that the DHCR purportedly conducted an inspection on January 9, 2020 which was not included in the order denying the owner's application to restore rent. The Petitioner claims that during the alleged inspection on January 9, 2020, the inspector assured the owner that the fire escape condition was acceptable. Notice of inspection and the photos of the subject premises are annexed to the owner's petition as proof.

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.

In the initial proceeding, the tenant filed a complaint on July 31, 2018, alleging a decrease in services. Specifically, that the owner failed to provide adequate services in the following areas: vermin control in public area, janitorial services in hallway and stairs, and rear building fire escape. The owner was served with the notice of the tenant's complaint (the "Initial Notice") on August 6, 2018. The Agency records indicate that the owner did not respond to the tenant's service complaint.

On November 9, 2018, an inspection was conducted at the subject premises by the Agency's impartial inspector. The inspection report confirmed that the conditions cited in the tenant's complaint as illustrated above were not maintained. The record shows that the Rent Administrator's order was based on the inspection report which revealed that the alleged conditions were unmaintained. Thus, the Rent Administrator granted the tenant's rent reduction application on January 7, 2019, under Docket No. GS210048B.

Thereafter, on February 6, 2019, the owner applied for rent restoration based on an alleged restoration of services. The tenant was afforded an opportunity to respond to the owner's rent restoration application on February 8, 2019. There is no evidence in the record that the tenant submitted an answer to the owner's application. On December 28, 2019, and January 4, 2020, DHCR conducted Agency inspections to ascertain if services were restored as claimed by the owner. The inspector noted that some of the conditions cited in the order reducing rent were restored except the fire escape in the rear yard reported as rusted and required proper sanding, scaping and painting. Therefore, based on the underlying inspection report which indicated that services were not completely restored, the Administrator determined that conditions were partially restored, thus warranting a denial of the owner's application on January 27, 2020, under Docket No. HN210022OR.

The Commissioner notes the owner's contention that another Agency inspection was conducted on January 9, 2020, during which the inspector purportedly assured the owner that the fire escape condition. The Commissioner finds that there is no inspection report reflecting or confirming the owner's unsubstantiated claim. Furthermore, Section 2527.5 (b) of the Rent Stabilization Code ("RSC") authorizes the Administrator to request an inspection at any stage during a DHCR proceeding and New York Courts have decided that the Agency has broad discretion to decide when an inspection is necessary.

Based on the foregoing therefore, the Commissioner finds that 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 and taking a photograph depicting the fire escape condition was reasonable and in compliance with DHCR Policy Statement 90-2. In this case, the owner claimed to have fixed the fire escape condition, thus warranting an Agency inspection to confirm. However, the Agency inspection revealed that the fire escape was not maintained at the time of the inspection, thereby warranting a denial of the owner's rent restoration application.

Accordingly, the owner's PAR has not established any basis to modify the Rent Administrator's determination.

The owner is advised to re- file an "Owner's Application to Restore Rent," if the facts so warrant or after it has completely restored services.

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: MAR 21 2023

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

[redacted]

PETITIONER

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ADMINISTRATIVE REVIEW DOCKET NO.: KX410030RT

RENT ADMINISTRATOR'S DOCKET NO.: KN410054OR

ORDER AND OPINION DENYING PETITION FOR ADMINISTRATIVE REVIEW

On December 27, 2022, the above-named petitioner-tenant filed a Petition for Administrative Review ("PAR") against KN410054OR, an order the Rent Administrator issued on November 22, 2022 (the "order"), concerning the housing accommodation known as 409 West 48th Street, Apartment [redacted], New York, New York, wherein the Rent Administrator granted the owner's rent restoration application after the tenant refused to allow the owner's repair team to make repairs during the May 3, 2022 "No Access" Agency 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 tenant, through their counsel, requests a reversal of the Rent Administrator's order averring that it was erroneous for the Administrator to enforce a policy of unconditional access against the tenant; that the Deputy Commissioner should hold that a tenant has a right to deny unreasonable access requests; that it is unreasonable for an owner and the owner's workers seeking access to perform repairs to refuse to identify themselves; that the imposition of Covid-19 protocols by the tenant as a precondition for granting access is reasonable during a pandemic; and that the conditions are still extant.

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 rent reduction, upon application by a tenant, where it is found that an owner has failed to maintain required 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. Section 2523.4(d)(2) states that the objection to a rent restoration application by a tenant who refused access for repairs at the time arranged by the DHCR for the inspection will be denied. Additionally, Policy Statement 90-2 provides that "[i]f the tenant denies access for the DHCR inspection, then the rent will be restored." Policy Statement 90-2 allows the Rent Administrator to rely on an Agency's inspection report in determining if services at issue have been restored.

A review of the record indicates that rent was previously reduced on February 26, 2021 under Docket No. HT410263S for the owner's failure to maintain the stove/oven door, the plumbing of the kitchen sink and the kitchen sink cabinet, the bathroom main water valve, the bathroom door frame alignment, and the door frame alignment bedroom 1.

Subsequently, on February 17, 2022, the owner filed the underlying rent restoration application herein, Docket No. KN410054OR and indicated that the owner had attempted to perform the necessary repairs and the tenant thwarted the said efforts by failing to provide access as requested by the owner in their request for access letters. The owner submitted along with their rent restoration application, copies of letters addressed to the subject tenant, requesting access to perform repairs.[1] The tenant was afforded an opportunity to respond by service of the owner's application on the tenant on February 23, 2022. The tenant submitted an answer to the owner's rent restoration application on March 23, 2022, claiming (1) that the tenant is not obligated to grant the owner unconditional access for repairs where the owner fails to be specific; and (2) that the tenant is entitled to know the identity and vaccination status of all persons to be allowed into the tenant's apartment, as well as impose identification, vaccination and mask mandates as a pre-condition for access into the tenant's unit.

The Rent Administrator, in accordance with the DHCR procedure, requested a "No Access" Agency inspection of the subject apartment to facilitate the resolution of the complaint and to ascertain the condition of the service issues the tenant complained about. Notice of Inspection – For Access was provided to the tenant on April 19, 2022, wherein the tenant was advised that an inspection was scheduled with the Agency inspector and the owner and/or the owner's repair person(s) so as to provide access to the owner for the purposes of attending to repairs and/or the restoration of services. The Notice also advised the tenant that the failure of the tenant to keep the appointment would result in a determination against the tenant's interests.

Thereafter an Agency "No Access" inspection was conducted at the subject premises on May 3, 2022. The record indicates that the parties were present at the time of inspection, including the owner's repair team with materials and ready to make repairs. The record shows that the tenant, as acknowledged, failed to provide access for the repair person to correct the conditions during the Agency inspection on May 3, 2022, as scheduled.

[1] A letter dated January 13, 2022 requesting access on January 21, 2022; a letter dated February 2, 2022 requesting access on February 10, 2022; and United States Postal Service certified mail receipts for each letter.

As the tenant failed to grant the owner's repair team access to repair and/or restore services at the time of the "No Access" inspection, the Rent Administrator, in accordance with RSC Section 2523.4 and DHCR Policy Statement 90-2, granted the owner's rent restoration application on November 22, 2022.

The Commissioner notes, as indicated above, where a No-Access inspection is truncated by the tenant's refusal, the Rent Administrator may properly find services restored. The Commissioner finds that the Rent Administrator conducted the underlying proceeding in accordance with established law, Agency practice and principles of due process, and that the Rent Administrator properly granted the owner's rent restoration application in this case.

The Commissioner finds the Petitioner's argument pertaining to the Covid-19 vaccination mandates and request for contractor identification is merely self-serving and unpersuasive herein.

Based on the foregoing, the Commissioner having reviewed the Petitioner's appeal, the entire proceeding, including all the supporting documentation, finds that the Rent Administrator, pursuant to Section 2523.4 of the RSC and DHCR Policy Statement 90-2, properly granted the owner's rent restoration application as the Petitioner-tenant refused to allow the owner's contractors access at the time of the Agency's scheduled "No Access" inspection. Accordingly, the tenant's PAR has not established any errors of law or fact with the Rent Administrator's decision.

The Commissioner therefore finds that the tenant's PAR is denied, and the Rent Administrator's order is affirmed.

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: MAR 24 2023

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
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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.: LM210017RT

[redacted]

PETITIONER

RENT ADMINISTRATOR'S DOCKET NO.: KS210119OR

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ORDER AND OPINION DENYING PETITION FOR ADMINISTRATIVE REVIEW

On January 17, 2023, the above-named petitioner-tenant filed a Petition for Administrative Review ("PAR") against an order the Rent Administrator issued on January 5, 2023 (the "order"), concerning the housing accommodation known as 904 Winthrop Street, Apt [redacted] Brooklyn, New York, wherein the Rent Administrator determined that based on the findings of an Agency inspection, the owner had restored the services cited in the underlying rent reduction order and ordered the restoration of the rent.

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 tenant seeks a reversal of the order. The tenant disputes the findings of the Agency inspection claiming the Agency inspection was not done correctly. The tenant asserts that: the hallway walls were not plastered and painted properly; the chain guard was replaced but it is defective and was not properly installed; the walls and ceiling in the kitchen were not plastered and painted, and there are water stains on the ceiling and water marks on the walls; that the tile walls in the bathroom are cracked, not repaired properly and that the wall tiles are of different sizes and shapes; that the bathroom riser pipe has a hole on the top and is missing the escutcheon plate; and that one of the riser pipes were not repaired properly in that there is a screw sticking out of the escutcheon plate. The tenant submits undated photographs of the purported conditions in his apartment to support his claims.

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 ("RSC" or "the Code") Section 2523.4, the Rent Administrator is authorized 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. 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. Policy Statement 90-2 permits the Rent Administrator to rely on an Agency inspection when making a determination and New York Courts have consistently upheld the reliability of Agency inspections.

In the initial proceeding, the rent was reduced by an order issued on May 16, 2022, under Docket No. JW210095S, upon the finding that the following services were unmaintained: the paint/plaster in the hallway and the kitchen, the entrance door-chain guard, the top of the riser pipe in the kitchen, the floor/covering in the kitchen, the bathroom walls and riser pipe, and the enamel bathtub. The owner commenced the rent restoration proceeding below on July 29, 2022, asserting they had corrected the services and submitted a work order to support their claim. On August 9, 2022, the tenant was served with the owner's application. The tenant responded and claimed the owner had not corrected the services. The tenant also asserted there were additional defective conditions in his apartment.

According to the Agency record, upon notice to both parties, an inspection was conducted at the subject premises on September 19, 2022, whereupon the inspector reported that at the time of inspection the conditions found in the underlying rent order had been restored as no defects were found to the hallway walls, ceiling and floor; the escutcheon plates on the kitchen and bathroom riser pipes; the kitchen floor, walls and ceiling; the bathroom walls and enamel bathtub; and the entrance door chain guard.

Based on the Agency inspection, including the time/date stamped photographs, the Rent Administrator, on January 5, 2023, granted the owner's application to restore the rent as the outstanding apartment-wide service conditions were found to have been corrected and restored. The Administrator noted on page two of the order that the new service conditions raised by the tenant in the proceeding could not be entertained in the matter, and that the tenant may file a new complaint, if warranted, using DHCR form RA-81 for conditions inside his apartment, or DHCR form RA-84 for conditions in the common areas of the building.

After a review of the underlying proceeding, the Commissioner finds that on appeal, the tenant has not presented any allegations of errors of fact or law against the Rent Administrator's determination to warrant the modification or reversal of the Rent Administrator's order, which was based on the Agency inspection conducted on September 19, 2022. The Administrator and Agency staff conducted the proceeding below in accordance with established law, Agency practice, and principles of due process. The Administrator properly concluded that the DHCR inspector, as a disinterested party, accurately reported the conditions in the tenant's apartment

and that the Rent Administrator properly concluded that the owner restored the outstanding service conditions and ordered the restoration of the rent. *See* Matter of 113-117 Realty, LLC v. DHCR, 199 AD3d 506 [1st Dept. 2021] *citing to* Matter of Sherman v. DHCR, 210 AD2d 486 [2nd Dept. 1994].

The tenant is advised to file a fresh services 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: MAR 24 2023

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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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**
50-56 MANHATTAN AVENUE, LLC (OWNER)	:	**DOCKET NO.: KX420014RO**
	:	**RENT ADMINISTRATOR'S**
	:	**DOCKET NO.: KT420072OR**
PETITIONER	:	

ORDER AND OPINION DENYING PETITION FOR ADMINISTRATIVE REVIEW

On December 13, 2022, the Managing Agent (hereinafter "MA") for the above-named petitioner-owner filed a Petition for Administrative Review ("PAR") challenging KT420072OR, the order the Rent Administrator ("RA") issued on November 16, 2022 (the "Order"), concerning the housing accommodation known as 50 Manhattan Avenue, Apt. [redacted] New York, NY 10025, wherein the RA issued an order denying the Owner's application to restore rent for the subject apartment after a DHCR inspector visited the building on October 13, 2022 and noted that there was a foul odor in the garbage disposal room in the basement at the time of inspection.

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 MA claims that a "foul odor" does not mean that there is a lack of janitorial services, nor a "reduction" in a required service; that the RA's order is insufficiently clear and does not provide management with "adequate guidance" on what needs to be done to address the condition; that a "foul odor" in the garbage disposal room is *de minimis*, not warranting a rent reduction; and that management has purchased two additional garbage storage units to minimize odor and placed odor eliminators in the garbage room and are washing the garbage area and bins one to two times per week.

The Tenant objected to the Owner's PAR, claiming that the Owner has "not complied" with the order reducing rent when the Owner applied for the rent restoration below.

In response to the Tenant's objections, the MA responded on February 9, 2023, asserting that the NYC Department of Health & Mental Hygiene inspected the premises on December 2, 2022 and no major issues were found, and that the issues have been addressed and welcomes any agency to inspect the subject premises.

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

Pursuant to Section 2202.16 of the New York City Rent and Eviction Regulations ("RER" or "the Regulations"), the RA 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. 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. Additionally, DHCR Policy Statement 90-2 states that the RA may rely on an Agency inspection when making the determination in a matter.

A review of the record reveals that the Tenant filed a building-wide rent reduction application on October 1, 2021, claiming, in pertinent part, that there were odors and unclean conditions in the garbage disposal room. Thereafter on July 1, 2022, the Deputy Commissioner in DHCR Admin. Review Docket No. KP420023RT, granted the Tenant a rent reduction for the foul odor and overflow of garbage in the garbage disposal room found during the Agency inspection on January 27, 2022. The Commissioner notes that Commissioner's order, Docket No. KP420023RT has not been appealed.

Thereafter, on August 16, 2022, the Owner filed an application to restore the rent, claiming that the garbage room has been cleared of loose trash, is sanitized, and cleaned to remove any odors, that the garbage continues to be removed on a daily basis, and the area receives monthly extermination services. Notice to the Tenant of the Owner's rent restoration application was provided on August 25, 2022 and the Tenant objected to the Owner's application on September 9, 2022.

The Rent Administrator requested an Agency inspection of the janitorial services in the garbage disposal room and such Agency inspection was conducted on October 13, 2022. The Agency inspector noted that at the time of the inspection, there was a foul odor/smell at the garbage disposal room in the basement. Based on the Agency inspection, the Rent Administrator denied the Owner's rent restoration application, finding that the garbage disposal room services were not restored due to the foul odor.

The Commissioner notes the MA's claims in this appeal, however, finds them to be without merit in this case. In regard to the MA's claim that the garbage disposal room issue is *de minimis*, the Commissioner notes that the MA may not collaterally attack the rent reduction ordered under Docket No. KP420023RT by way of this appeal proceeding as the Commissioner's order under Docket No. KP420023RT has not been appealed and is therefore final and binding on all parties. Furthermore, the Commissioner notes that, as provided for under Section 2202.16 of the RER, the RA may find that the failure to clean or dust in *discrete areas* when there is evidence that janitorial services are being regularly provided is *de minimis*.

However, as noted by the October 13, 2022 inspection report, the inspector found that there is a "foul odor" at the garbage disposal room, which is not a discrete area, and is the same service issue found not maintained in the underlying rent reduction order. Accordingly, a rent restoration was therefore not warranted for the garbage disposal room in this case.

The Commissioner finds that, in light of the above, the Rent Administrator properly denied the Owner's rent restoration request. Pursuant to DHCR 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. *See* Matter of 113-117 Realty, LLC v. DHCR, 199 AD3d 506 [1st Dept. 2021] *citing to* Matter of Sherman v. DHCR, 210 AD2d 486 [2nd Dept. 1994]. The Commissioner therefore finds that the RA, in accordance with Section 2202.16 of the RER and DHCR Policy Statement 90-2, properly and reasonably relied on the evidence contained in the record, namely the Agency inspection conducted on October 13, 2022 that revealed that there was a foul odor at the garbage disposal room.

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

THEREFORE, in accordance with the applicable provisions of the Rent Regulatory Laws and Regulations, it is

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

ISSUED:

MAR 31 2023

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.

There is no other method of appeal.