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

IN THE MATTER OF THE ADMINISTRATIVE APPEAL OF:	:	**ADMINISTRATIVE REVIEW DOCKET NO.: KQ110022RT**
[redacted]	:	**RENT ADMINISTRATOR'S DOCKET NO.: JS110076OR**
PETITIONER	:	

ORDER AND OPINION DENYING PETITION FOR ADMINISTRATIVE REVIEW

On May 19, 2022, the above-named petitioner-tenant filed a Petition for Administrative Review ("PAR") challenging JS110076OR, an order the Rent Administrator issued on April 15, 2022 (the "Order"), concerning the housing accommodation known as 22-11 Brookhaven Avenue, [redacted] Far Rockaway, NY 11691, wherein the Rent Administrator issued an order granting the owner's application to restore rent for the subject premises.

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 tenant claims that she has never failed to provide access to her apartment for a physical inspection by this Agency. The tenant maintains that she never received a phone call, letter or a text notifying her that an inspection of her apartment will be conducted on November 17, 2021. The tenant also maintains that the vermin control issues are not restored.

In response to the tenant's PAR, the owners confirmed their receipt of the tenant's PAR and request that the tenant's PAR be dismissed as the tenant has not submitted any error in law and/or fact.

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

Pursuant to Section 2523.4 of 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. Rent Stabilization Code Section 2523.4 and DHCR Policy Statement 90-2 also provide that an objection to an owner's rent restoration application by a tenant who fails to provide access at the time arranged by DHCR for the inspection will be denied.

In the proceeding below, the owner filed an application to restore rent with this Agency on July 27, 2021, alleging the restoration of the vermin control service that was previously found not maintained on July 30, 2018 under Docket No. GO110203S. The tenant was served with notice of the owner's application (the "Initial Notice") on July 29, 2021 and the tenant responded on August 17, 2021 when she indicated that she did not agree that the conditions had been restored. The tenant said she was still experiencing difficulties with mice in the apartment. On November 5, 2021, the Agency sent a Notice of Inspection to the landlord and tenant advising the parties that an inspection of the subject premises was scheduled for November 17, 2021. The Notice also advised the tenant that the failure to provide access to the inspector or owner at the time of the Agency inspection, without rescheduling, may result in a determination against the tenant's interests. On the date of the inspection, the DHCR inspector noted that the tenant failed to provide access to the subject apartment for the inspection.

Based on the foregoing details, the Rent Administrator issued an order restoring the tenant's rent on April 15, 2022 under Docket No. JS110076OR.

The Commissioner notes the tenant's claim that she did not fail to provide access to the inspector as she did not receive notice of the inspection. However, a review of the record below reveals that the tenant received prior notice of the scheduled Agency inspection pursuant to the Notice of Inspection issued on November 5, 2021. The Notice of Inspection that the Agency sent to the tenant was sent to the tenant's address on record and was not returned by the United States Postal Service (USPS) as undeliverable. Under established principles of law, an article which was mailed to the proper address is presumed to have been received. Accordingly, the Commissioner rejects the tenant's contention that she was not provided with notice of the Agency inspection.

Based on the foregoing, the Commissioner finds that the Rent Administrator correctly granted the owner the requested rent restoration pursuant to Section 2523.4 of the Code and Policy Statement 90-2 as the tenant failed to provide access for the scheduled Agency inspection. 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 services complaint with this Agency, if the facts so warrant.

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

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

ISSUED: JUL 1 2022

Woody Pascal
Deputy Commissioner

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

Right to Court Appeal

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

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

There is no other method of appeal.

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JAMAICA, NEW YORK, 11433

IN THE MATTER OF THE ADMINISTRATIVE APPEAL OF:	:	
	:	**ADMINISTRATIVE REVIEW**
[redacted]	:	**DOCKET NO.: KQ430015RT**
(TENANT)	:	
	:	**RENT ADMINISTRATOR'S**
	:	**DOCKET NO.: JN430087OR**
PETITIONER	:	
	:	
	:	

ORDER AND OPINION DENYING PETITION FOR ADMINISTRATIVE REVIEW

On May 16, 2022, the above-named petitioner-tenant filed a Petition for Administrative Review ("PAR") against JN430087OR, an order the Rent Administrator issued on April 14, 2022 (the "Order"), concerning the housing accommodation known as 47 West 71st Street, Apt. [redacted] New York, NY 10023, wherein the Rent Administrator issued an order granting the owner's application to restore rent for the subject premises.

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 tenant requests that "the effective date of the Order be changed to the date of the inspection" and that the application to restore rent was filed by a prior owner, and that the current owner, Irgang Group Overhead LLC, had not yet restored services by April or May of 2021 because they had just bought the building. The tenant also claims that she received a letter from Irgang Group on April 1, 2021 informing her that they were now the new management company for the building and telling her to send her rent payments to them.

After careful consideration of the entire evidence of the 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 the restoration of rent once it is established that the required services 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 current owner of the subject premises filed an application to restore rent with this Agency on February 24, 2021, alleging the restoration of services that were previously found not maintained under Docket No. IL430067B (vestibule ceiling paint, first floor stairs, and janitorial services in the trash area, stairs, and hallway). The Agency served the tenant with notice of the owner's application (the "Initial Notice") on April 1, 2021. The tenant responded on May 24, 2021, claiming that the services were not restored; that the vestibule, lobby, stairs, and halls needed plastering and painting, janitorial services were needed, and the first-floor stairs were in need of repair. Therefore, an inspection of the subject premises was conducted on December 16, 2021. During the inspection, the DHCR inspector observed that there was adequate janitorial service throughout the stairway, in the lobby, and in all hallways in the building.

Based on the foregoing details, on April 14, 2022, the Rent Administrator issued an order granting the owner's rent restoration application, effective May 1, 2021. The Rent Administrator noted that the other conditions cited in the rent reduction order were found maintained by Docket No. JL410004OR on November 29, 1996 (for the first floor stairs and janitorial services in the trash area) and in Docket No. QK410052OR on April 3, 2003 (for the vestibule ceiling).

The Commissioner notes the tenant's contention herein that the effective date of the order be changed to the date of the inspection as the application to restore rent was filed by a prior owner. However, the Commissioner finds that the tenant's claim that the application to restore rent was filed by the prior owner is without merit. Under the rent stabilization scheme, a purchaser of a building steps into the shoes of the prior owner and assumes all of the liabilities as well as assets of their predecessors, including any pending rent reduction proceedings.

Furthermore, DHCR Policy Statement 90-2 states: "As rents are reduced when there is a failure to maintain required services, likewise, DHCR will issue orders to restore those rents after required services as specified in the rent reduction order have been restored. The rent restoration proceeding is initiated when an owner files an application affirming that the required services have been restored...If the order enumerated a number of conditions that require correction, such as faulty wiring, a leak, plaster and paint, all enumerated conditions must be corrected before the rent is restored... Where 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."

Based on the foregoing, the Commissioner finds that the Rent Administrator correctly granted the owner's rent restoration application that was based on the observations of the Agency's impartial inspector, with an effective date of May 1, 2021, which is the first of the month following the date (April 1, 2021) the Agency advised the tenant that the owner filed its application to restore rent for the subject apartment.

The tenant'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 Rent Stabilization Law and Code, it is

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

ISSUED: JUL 8 2022

Woody Pascal
Deputy Commissioner

State of New York
Division of Housing and Community Renewal
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JAMAICA, NEW YORK 11433

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IN THE MATTER OF THE ADMINISTRATIVE APPEAL OF

128 SECOND AVENUE LLC

PETITIONER

ADMINISTRATIVE REVIEW DOCKET NO.: JU420023RO

RENT ADMINISTRATOR'S DOCKET NO.: *IU420063OR* (BB420437S)

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ORDER AND OPINION DENYING PETITION FOR ADMINISTRATIVE REVIEW

On September 9, 2021, the above-named petitioner-owner filed a Petition for Administrative Review ("PAR") against an order the Rent Administrator issued on August 5, 2021 (the "order"), concerning the housing accommodation known as 128 Second Avenue Apt [redacted], New York, New York, wherein the Rent Administrator granted the owner's rent restoration application effective August 1, 2020.

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 modification of the Rent Administrator's order and asserts for the first time on appeal that the rent should have been restored not as of August 1, 2020 but as early as the date the complaining tenants in Docket No.: BB420437S ([redacted]) were restored to occupancy which was "at the very least" July 5, 1989. The owner further claims that, if not July 5, 1989, then the effective date should at least be March 15, 2013, which is when a subsequent tenant, [redacted] tenancy of the subject apartment commenced, or alternatively, January 7, 2016 based on the photographs the owner submitted during the Rent Administrator's proceeding purporting to depict proof of the 2015 "extensive renovation". The owner submits two Cititech Solutions, LLC reports, one for [redacted] (search dates October 1, 1993 to August 26, 2021, noting [redacted] is deceased), and another for [redacted] (search dates September 22, 1993 to January 2019),

and a copy of a rent overcharge application signed and dated by [redacted] on February 6. 2014, assigned Docket No.: CN410002TC, along with [redacted] one-year lease.

The owner also asserts that due to the "dissolution and turmoil" at the owner's "longtime counsel" who directed the owner to "immediately file a rent restoration application restoring the rent as of August 1, 2020, based upon the fact that the Apartment had been completely renovated in 2015, inasmuch as they had located the old 1987 Rent Reduction Order", the Agency should accept the owner's claims on appeal.

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

Pursuant to Section 2202.22 of the New York City Rent and Eviction Regulations, the Rent Administrator is authorized to order a rent reduction upon application of a tenant where such tenant was forced to vacate their apartment because it is legally uninhabitable. In such cases, 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 controlled apartments effective the first day of the month after an order restoring the rent is issued. 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. Furthermore, Policy Statement 90-2 permits the Rent Administrator to rely on an Agency inspection when making a determination.

As for the initial proceeding assigned Docket No.: BB420437S the Agency records show on July 14, 1987, the Rent Administrator, based on the owner's failure to comply with Section 2202.21, established that the maximum rent for the housing accommodation as of February 19. 1987, the date of the fire which caused the tenants to vacate involuntarily, was $1.00 per month.

The Commissioner notes that a further review of the Agency's records revealed that the tenants in Docket. No.: BB420437S, [redacted], had filed a Violation complaint against the previous owner assigned Docket No.: DI420456R. The proceeding was closed on February 23, 1990 as the Rent Administrator determined that the underlying $1.00 rent reduction order was still in effect and noted that this order would remain in effect until an order of restoration was issued.

The Commissioner notes that a review of the Agency files show, a subsequent tenant of apartment [redacted] filed an overcharge complaint on February 7, 2014, which was assigned Docket No.: CN410002TC. On November 6, 2015, the proceeding was terminated as the owner advised DHCR that the tenant had withdrew her complaint.

In the proceeding below, Docket No.: IU420063OR, the owner filed an application to restore the rent on September 11, 2020 wherein the owner requested that "the DHCR restore the rent as of August 1, 2020" because the owner "cannot speak as to if/when the tenants at that time, who are listed on the Order, [redacted], resumed occupancy after the February 19, 1987 fire" due to the lapse of time from the issuance of the underlying order and the owner's purchase of the building. The owner claimed 1) the owner purchased the subject building on or about September 12, 2013; 2) that "[a]fter reviewing historical records for the building, the Owner has just become aware" of the outstanding July 14, 1987 rent reduction order; 3) that the current tenants in occupancy, [redacted], moved into the apartment on or about August 15, 2020; and 4) that the owner believed the apartment was "extensively renovated as recently as 2015" and submitted photographs of the purported apartment asserting the photographs were taken on January 7, 2016. The owner submitted a copy of the deed for the subject property, and two affidavits from the current tenants wherein both tenants averred they were the current tenants of apartment [redacted], and that the "apartment is being maintained and overall it is in excellent condition, fit for use and occupancy."

The current tenants were afforded an opportunity to respond by service of the rent restoration application ("Initial Notice") on September 22, 2020. However, a notice was returned and marked "Refused." Subsequently, the Rent Administrator requested an inspection of the subject premises, and it was conducted on June 28, 2021. The Agency inspector was informed that the current tenants moved into the apartment in July 2020 and according to the Property Manager, [redacted], there had been a fire more than 40 years ago, in the early 1980s. The Agency inspector reported the following:

1. No defects to the apartment entry door or the apartment entry door lock;
2. No evidence of fire/water, burned marks, soot, leak stains, bubbling/peeling paint or plaster, holes, cracks, or buckling/sagging;
3. No defects to the floors, windows, or light fixtures apartment wide;
4. No defects with the kitchen or bathroom water supply and both were adequate;
5. No defects with the kitchen cabinets, kitchen sink or faucets, stove, or refrigerator; and
6. No defects with the toilet/commode, bathtub or bathtub faucets, bathroom sink (basin) or faucets.

Based on the Agency inspection, the Rent Administrator, on August 5, 2021, granted the owner's rent restoration application finding that the conditions or violations upon which the rent reduction order was issued have been corrected. The Administrator determined that the rent be restored to the level in effect prior to the rent reduction plus all lawful increases effective, August 1, 2020.

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. While the owner on appeal disagrees with the August 1, 2020 effective date, the Commissioner rejects the owner's claims that the effective date of the Rent Administrator's order must be modified. 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 a fire occurred on February 19, 1987 for which the rent was set at $1.00 on July 14, 1987 (effective February 19, 1987) to maintain the landlord and tenant relationship, that the owner failed to file a rent restoration application until September 11, 2020. that no information was submitted to show the date when the complaining tenants under Docket No.: BB420437S resumed occupancy, and that at the time of the Agency inspection on June 28, 2021, the inspector found the apartment habitable, which are facts that are not disputed.

The record below establishes that the Rent Administrator took into account the entire record and that after consideration, concluded that the only firm evidence of the date of the owner's restoration of the tenants' apartment was the owner's statement that the apartment was restored effective August 1, 2020 along with the current tenants' affidavits averring the apartment was habitable and that they leased the apartment since August 2020. This conclusion was proper under the circumstances. The Commissioner finds that the record supports that the effective date of the restoration of the tenants' apartment was properly set by the Rent Administrator as August 1, 2020 as the owner delayed in filing an application to restore the rent and offered no reasonable explanation on the delay in filing the rent restoration application.

Furthermore, the Commissioner notes that 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 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 purchaser and new owners of buildings upon request of the Agency. In this case, the owner failed to adhere to Agency policy and procedures and apply for the restoration of rent prior to September 11, 2020. Here, the rent was established at $1.00 under the initial services complaint, Docket No.: BB420437S on July 14, 1987, in order to maintain the landlord/tenant relationship between the parties while the apartment remained uninhabitable. Agency records reveal that the prior owner of the subject premises failed to apply for a rent restoration when the complaining tenants under Docket No.: BB420437S resumed occupancy or failed to resume occupancy, as well as the owner's failure to file for a rent restoration when any new tenant occupied the subject unit, up until September 11, 2020 under the instant case. Accordingly, the Commissioner finds that the owner's claim that the rent should be restored to an earlier date is without merit. *See* Matter of 305 Realty NY LLC v. DHCR, Supreme Court of the State of New York, County of Kings, Index No. 5044/2010.

The Commissioner notes that the owner claims the effective date of the order should be July 5, 1989, as the owner, relying on the Cititech Solutions, LLC reports, asserts was the date [redacted] occupied the apartment, or March 15, 2013, the lease commencement date of another tenant, or in the alternative, January 7, 2016 the purported date of photographs taken of the alleged subject apartment. However, these claims, along with the copy of a February 28, 2013 lease agreement and the two Cititech Solutions LLC reports were not presented below and thus are beyond the scope of review in this proceeding, which is limited to those facts and issues which were before the Rent Administrator.

Based on the above, the Commissioner finds that the Rent Administrator's order is reasonable and proper as issued, and the effective date of the restoration of the rent as determined by the Administrator is proper. The owner's PAR fails to provide any basis to modify or revoke the Rent Administrator's determination.

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

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

ISSUED: JUL 14 2022

Woody Pascal
Deputy Commissioner

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There is no other method of appeal.

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IN THE MATTER OF THE ADMINISTRATIVE APPEAL OF

ADMINISTRATIVE REVIEW DOCKET NO.: KP110008RT

MARIA HERNANDEZ

PETITIONER

RENT ADMINISTRATOR'S DOCKET NO.: JP120027OR

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ORDER AND OPINION DENYING PETITION FOR ADMINISTRATIVE REVIEW

On April 7, 2022, the above-named petitioner-tenant filed a Petition for Administrative Review ("PAR") against an order the Rent Administrator issued on March 3, 2022 (the "order"), concerning the housing accommodation known as 94-16 34th Road, Apartment [redacted], Jackson Heights, New York wherein the Rent Administrator granted in part the owner's rent restoration application finding the service conditions cited in the order reducing rent had partially been corrected as an Agency inspection revealed the owner had not restored the apartment's intercom and living room ceiling condition.

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.

In the PAR, the tenant, through counsel, seeks a modification of the Rent Administrator's order asserting the Rent Administrator's finding that the owner restored the paint/plaster apartment wide condition is contradicted by the Administrator's further finding that the living room ceiling stained with water marks was not restored. The tenant questions how the paint/plaster apartment wide can be considered restored when the DHCR inspector found the living room ceiling stained with water marks. According to the tenant, the contrary findings in the order along with the evidence she submitted to the Rent Administrator (an affidavit, photograph, and a recent New York City Department of Housing Preservation & Development

("HPD") violation report) demonstrates that the paint/plaster apartment wide condition has not been restored by the owner. Moreover, the tenant asserts that Policy Statement 90-1 "govern[s]" the rent reduction order, Docket No QS002943S, which Policy Statement 90-1 states that the owner may not collect any Maximum Base Rent ("MBR") or Major Capital Improvement ("MCI") increases granted subsequent to the original rent reduction order until DHCR issues an order finding that all of the conditions cited in that order and in any other rent reduction orders issued prior to February 8, 1990 have been corrected.

The owner did not submit a response to the tenant's petition.

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

Section 2202.16 of the New York City Rent and Eviction Regulations ("CRER" or "the Regulations") grants the Rent Administrator power to order a decrease of the maximum rent otherwise allowable for rent controlled apartments, where there has been a decrease in maintenance of essential services. Policy Statement 90-2 permits the Rent Administrator to 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.

The Agency records show that the tenant filed a service complaint assigned Docket No. QS002943S which was terminated on March 12, 1986 based on the tenant's failure to submit evidence as requested. This termination order was subsequently revoked by an order issued on March 10, 1987 under Docket No. AL110020RP, wherein the Rent Administrator granted the tenant's service application based on an Agency inspection conducted on February 19, 1987 which revealed the following defects:

1. Water stains from leakage on the bedroom and living room ceilings.
2. Peeling paint/plaster and cracks in plaster of the bedroom ceiling.
3. Apartment wide peeling paint/plaster and water stains from leakage on the ceilings.
4. Lack of mice and roach control throughout the apartment; and
5. An inoperable intercom and bell/buzzer system.

In the proceeding below, the owner commenced a rent restoration proceeding on April 7, 2021, wherein the owner claimed the owner restored all the services found not maintained in the underlying rent reduction order. On May 14, 2021, the tenant was served with the owner's application ("Initial Notice"). The tenant, by counsel, submitted answers denying the conditions were restored and claimed the owner failed to provide documentation to support the owner's restoration contention. The tenant claimed that the living room ceiling has water damage and stains, and that the ceiling leaks especially when it rains; the apartment has only been painted once in the last 40 years; there is a mice and cockroach infestation; and that the intercom remains broken.

Prompted by the aforementioned, the Rent Administrator determined that an Agency inspection was warranted, and thereafter, the Administrator requested an Agency inspection. A review of the record reveals that an inspection was conducted on September 29, 2021 by an impartial Agency inspector whereupon the inspector observed:

1. Only the ceiling in the living room was defective with water marks
2. No defects to the bedroom ceiling
3. The intercom phone in the apartment was defective/broken; intercom for the apartment is not working
4. No evidence of mice and roaches in the apartment; and
5. Paint/plaster apartment wide was not defective.

Based on the findings of the independent Agency inspector, the Rent Administrator on March 3, 2022, granted in part the owner's rent restoration application based on the finding that the owner had restored the paint/plaster apartment wide and vermin control conditions, and that the owner had not restored the living room ceiling condition (living room was stained with water marks) and the intercom service. The Rent Administrator noted that the tenant mentioned service conditions in need of repair, but that those conditions were not the basis of the underlying rent reduction order and therefore was not entertained in the proceeding. The tenant was advised to file a new complaint for those mentioned service conditions, if warranted, using DHCR form RA-84 for building wide services and RA-81 for conditions in the subject premises.

Accordingly, the Commissioner finds the tenant's PAR does not establish any basis to modify or revoke that part of the Administrator's determination relating to the finding that the owner restored the paint/plaster apartment wide and vermin control services. The Rent Administrator's determination that the paint/plaster apartment wide and vermin control service conditions were restored was neither arbitrary nor capricious and was supported by a rational basis, namely the inspector's report and time/date stamped photographs dated September 29, 2021, and in accordance with Agency policy, the Administrator correctly deemed the two services restored and granted in part the owner's application. 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. The tenant provided no evidence to rebut the clear findings of the Agency inspection.

Furthermore, the tenant's assertion that the Administrator's findings are contradictory is unavailing as there are two distinct service conditions identified, one which found the living room ceiling stained with water marks, and therefore not restored, and the other finding affecting the peeling paint/plaster of the other areas of the apartment, which were found maintained at the time of the Agency inspection. The tenant's unsubstantiated claims that the owner failed to restore all the service conditions, and that there are other service conditions unrelated to the underlying rent reduction order existing in the subject apartment and building are insufficient to disturb the Rent Administrator's determination. The tenant is advised to file a new complaint for decreased services, if the fact so warranted, using DHCR Form RA-84 for building wide services and Form RA-81 for conditions in the subject premises.

The Commissioner notes the tenant's assertion that the underlying rent reduction order is "governed by Policy Statement 90-1 because it became effective on August 1, 1985, which is prior to February 8, 1990." According to Policy Statement 90-1 (February 9, 1990), rent decrease orders for a failure to maintain services issued prior to February 9, 1990, currently in effect for rent controlled apartments, which do not distinguish between a failure to provide an essential or a non-essential service, bar the collectability of any subsequent MCR increase, until an order has been issued restoring the rent.

In this case, the underlying order which found that the subject apartment had defective conditions as listed above, was issued on March 10, 1987 and effective August 1, 1985, which was, according to Policy Statement 90-1, at a time when service reduction orders did not distinguish between a failure to provide an essential or a non-essential service (i.e., prior to the promulgation of Policy Statement 90-1 on February 8, 1990), and, as such, it appears that the directive stated in the subject Rent Administrator's order (Docket No. JP120027OR) providing that an asterisk next to a service item indicates that such service is essential, is not applicable. In light of the above, the Commissioner therefore advises the tenant, if the facts so warrant, to raise such issue in a case related to an MCR proceeding and/or any overcharge proceedings as those proceedings may be affected by Policy Statement 90-1.

Based on the totality of the record, the Commissioner finds that the tenant's petition is denied, and the Rent Administrator's order is affirmed on PAR. 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 in part the owner's rent restoration application.

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

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

ISSUED: JUL 15 2022

Woody Pascal
Deputy Commissioner

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

Right to Court Appeal

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

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

There is no other method of appeal.

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

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IN THE MATTER OF THE ADMINISTRATIVE APPEAL OF

[redacted]

PETITIONER

----------x

ADMINISTRATIVE REVIEW
DOCKET NO.: JW210052RT

RENT ADMINISTRATOR'S
DOCKET NO.: IQ210011OR

ORDER AND OPINION REMANDING PETITION FOR ADMINISTRATIVE REVIEW

On November 24, 2021, the above-named Petitioner-tenant filed a Petition for Administrative Review ("PAR") challenging IQ210011OR, an order the Rent Administrator issued on October 22, 2021 (the "order"), concerning the housing accommodation known as 201 East 18th Street, Apartment [redacted] Brooklyn, New York, wherein the Rent Administrator granted the owner's application to restore rent after the tenant failed to provide access to the apartment for the Agency inspection scheduled for June 14, 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 Petitioner-tenant's PAR, the tenant, through counsel, avers that the Rent Administrator erred in granting the owner's rent restoration application on the grounds that the Petitioner-tenant did not provide access. The tenant asserts that the tenant's refusal to grant access was due to the Agency inspector's failure to follow safety procedures, and the tenant expected the inspector to return at some point but there was no such attempt by the Agency inspector. The Petitioner-tenant also claims that hazardous violations issued by the New York City Department of Housing Preservation and Development ("HPD") for mold and mildew (related to leaks and stains), broken/defective plastered surfaces, and inconsistent paint, remain open (attached to the PAR is the Open Violations list from HPD for the subject building). Lastly, the Petitioner claims that the conditions are not restored.

By submission dated January 12, 2022, the owner's attorneys submitted a response, requesting that the tenant's PAR be terminated as the violations issued by the HPD against the subject apartment have been "completed" and that the HPD's website does not show any outstanding violations, and that the subject tenant is on a fishing expedition so that he can bolster his claims of a rent overcharge pending in the Supreme Court under Index No. 503566/2020. The owner attached the Open Violations list from HPD for the subject premises dated January 12, 2022, purporting to corroborate their averment.

On February 28, 2022, the Petitioner, by submission through their counsel, disputed the owner's averments and stated that the owner intentionally omitted the violation report which contained 24 of the 39 violations, and that HPD Violation Nos. 12429099, 12429118, and 11101027 are pending for the subject apartment as of February 19, 2022. The Open Violations list from HPD dated February 19, 2022 is annexed to the Petitioner's submission. In another submission dated June 22, 2022, the Petitioner-tenant claimed again that the Agency inspection on June 14, 2021 was not conducted due to the Agency inspector's failure to follow safety procedures, that no other inspection attempts were made, and that the conditions in the subject premises have not been corrected.

After careful consideration of the entire evidence of record, the Commissioner is of the opinion that the petition should be granted, and the proceeding be remanded to the Rent Administrator for further processing and a new order be issued.

Pursuant to Section 2523.4 of the Rent Stabilization Code ("RSC" or the "Code"), DHCR is authorized to order a rent reduction, upon application by a tenant, where it is found that an owner has failed to maintain required services. 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 2527.5 (b) authorizes the Administrator to conduct an inspection at any stage of a DHCR proceeding and Courts have consistently held that the DHCR has broad discretion to decide if an inspection is necessary.

The Commissioner notes that on January 22, 2020, in the initial proceeding, Docket No. HQ210257S, the Rent Administrator granted the tenant a rent reduction based on the following conditions in the subject apartment: leaks/stains bedroom 1 and paint/plaster bedroom 1.

On May 19, 2020, the owner commenced the rent restoration proceeding herein below, wherein the owner alleged that the conditions underlying the rent reduction order, Docket No. HQ210257S, had been restored. The owner attached a copy of invoice for work from Fatlum Krasniqi purporting to show the nature and the extent of repairs that were performed.

The record shows that the tenant was served with a copy of the owner's rent restoration application on July 8, 2020; and by submission dated July 22, 2020, the tenant opposed the owner's rent restoration application, stating that the roof was still leaking, leading to a crack in the ceiling in the tenant's bedroom; and that the said ceiling was patched before, and needed to be properly fixed.

The record indicates that the Rent Administrator requested an Agency inspection to ascertain if the defective kitchen leaks/stains in bedroom 1 and the paint/plaster in bedroom 1, the service conditions based upon which rent was reduced under Docket No. HQ210257S, had been repaired as claimed by the owner.

On May 24, 2021, a Notice of Inspection ("Notice"), which scheduled an inspection for June 4. 2021, between the hours of 11:00 AM and 3:00 PM was mailed to the parties advising both parties to be present during the scheduled inspection. The Notice contained cautionary language advising the tenant that a failure to provide access, without rescheduling, may result in a determination against the tenant's interests. The Notice also advised the tenant to notify the inspector no later than two business days in advance by calling the inspector at the number provided, and that inspections may only be rescheduled for good cause.

The record shows that based on the Petitioner-tenant's request, the June 4, 2021 inspection was rescheduled for June 14, 2021. A Notice to Reschedule Inspection was mailed out to the owner and the Petitioner on June 7, 2021, which rescheduled the inspection for June 14, 2021. between the hours of 11:00 AM and 3:00 PM. The notice again cautioned the tenant that a failure to provide access may result in a determination against the tenant's interests. The record shows that the Agency inspector was unable to inspect the subject apartment on June 14, 2021 as requested by the Rent Administrator.

On October 22, 2021, the Rent Administrator granted the owner's rent restoration application under Docket No. IQ210011OR, finding that the tenant failed to provide access to the subject apartment for the June 14, 2021 Agency inspection. The Petitioner-tenant then filed the instant PAR requesting the Commissioner to review such Rent Administrator's decision.

The Commissioner having reviewed the Petitioner-tenant's appeal and any and all supporting documentation, any and all statements made by the affected parties, the underlying case file and all relevant Rent Regulatory Laws and Regulations finds that the Petitioner's appeal is granted to the extent of remanding the proceeding to the Rent Administrator for additional processing, including requesting any necessary inspections as the Agency inspector was unable to inspect the subject apartment during the below proceeding as requested by the Rent Administrator.

The Rent Administrator shall, after notifying the owner and tenant of the reopening of the proceeding and allowing all parties to comment and offer evidence, reconsider this matter, and render a determination addressing the issues raised upon remand.

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

ORDERED, that this petition is granted, and the proceeding is remanded to the Rent Administrator for further processing and reconsideration.

ISSUED: JUL 21 2022

Woody Pascal
Deputy Commissioner

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

Right to Court Appeal

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

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There is no other method of appeal.

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

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IN THE MATTER OF THE
ADMINISTRATIVE APPEAL OF :

ADMINISTRATIVE REVIEW
DOCKET NO.: KQ630030RT

[redacted] :

RENT ADMINISTRATOR'S
: DOCKET NO.: JT630054OR
(CI630041B)

PETITIONER

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ORDER AND OPINION DENYING PETITION FOR ADMINISTRATIVE REVIEW

On May 31, 2022, the above-named petitioner-tenant filed a Petition for Administrative Review (PAR) against an order of the Rent Administrator issued on March 16, 2022, concerning the housing accommodations located at 2162 Valentine Avenue, Apartment [redacted] Bronx, NY, wherein the Administrator granted the owner's application to restore rent.

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 petitioner-tenant seeks a reversal of the Rent Administrator's order and contends that janitorial service had not been restored and that there was still vermin problem, hazardous to health, in the subject premises.

The owner objected to the petitioner-tenant's PAR, claiming that DHCR inspected the building and found the janitorial services to be adequately maintained.

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 denied.

The Commissioner notes that in the initial proceeding, Docket No. **CI630041B**, on July 7, 1989, the Rent Administrator granted the tenants of the subject premises a rent reduction based on the following conditions found not maintained in the premises: inoperative lobby door lock; garbage accumulation in the backyard, roof, hallways and front of the building; roach infestation; and filthy public area floor.

Prior to the owner's filing of the rent restoration application herein below, the owner had filed three rent restoration applications: Docket No. **FJ630015OR**, wherein on May 26, 1992, the Rent Administrator found the following conditions not maintained: vermin control, evidence of garbage in the backyard and hallways of the building (janitorial services), and the public area floors; Docket No. **GO630160OR**, wherein on April 11, 2019, the Rent Administrator found vermin control and the public area floors maintained; and Docket No. **IT630083OR**, wherein on July 26, 2021, the Rent Administrator found that the backyard and grounds (janitor services) were not maintained.

On August 18, 2021, the owner commenced the rent restoration proceeding herein below, wherein the owner claimed that the outstanding condition had been restored. The Agency's record shows that the tenants were served with a copy of the owner's rent restoration application on September 16, 2021.

During said rent restoration proceeding, the Rent Administrator had requested an inspection of the subject premises. The Commissioner notes that the outstanding service found not maintained under Docket No. **CI630041B**[1] was found maintained by the Agency's inspector on December 8, 2021. The Rent Administrator, therefore, on March 16, 2022, granted the owner's rent restoration application under Docket No. **JT630054OR** as all conditions cited in the underlying rent reduction order were found restored.

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.

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, that based on the totality of the record before the Agency, all items for which a rent reduction was granted in the initial proceeding under Docket No. **CI630041B** have been restored prior to the issuance of the subject Rent Administrator's rent restoration order, Docket No. **JT630054OR**, warranting a rent restoration. The Rent Administrator properly and reasonably relied upon the Agency inspection conducted on December 8, 2021 which revealed that janitorial services were adequately maintained.

The Commissioner notes that the tenant may file a fresh complaint, if the facts warrant.

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

[1] Evidence of garbage in the backyard and hallways of the building (janitorial services).

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: JUL 22 2022

WOODY PASCAL
Deputy Commissioner

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

Right to Court Appeal

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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.: KP630003RT

[redacted] :

RENT ADMINISTRATOR'S
: **DOCKET NO.: JT630054OR**
(CI630041B)

PETITIONER

---------- X

ORDER AND OPINION DENYING PETITION FOR ADMINISTRATIVE REVIEW

On April 4, 2022, the above-named petitioner-tenant filed a Petition for Administrative Review (PAR) against an order of the Rent Administrator issued on March 16, 2022, concerning the housing accommodations located at 2162 Valentine Avenue, Apartment [redacted] Bronx, NY, wherein the Administrator granted the owner's application to restore rent.

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 petitioner-tenant seeks a reversal of the Rent Administrator's order, stating that the tenant contacted the Agency on October 1, 2021, over the phone, seeking direction on how to proceed with the case or respond; the tenant contends that on October 4, 2021, the tenant submitted a response, indicating that the owner forged the tenant's signature on the rent restoration application, that garbage was not being removed from the rooftop of the subject premises, that the building was not being exterminated and the public area floors were not being cleaned. The petitioner-tenant further claims that the janitorial services have not been restored, the rooftop has been left uncleaned, the floors, walls and staircase have been dirty, the lobby door has no glass panels for complete visibility, and the building is not exterminated.

The tenant also contends that pursuant to Sections 210.45 and 175.30 of the Penal Law of the State of New York, the rent restoration order should be reversed based on the owner's

falsification of the application to restore rent; and submitted, *inter alia*, photographs purporting to depict the rooftops 1 and 2, the building staircase, hallways 1 and 2, the building hallway wall and the lobby front door glass, in support of the tenant's contentions.

The owner opposed the petition, claiming that DHCR conducted an inspection which determined the only remaining condition had been restored, and that all services have been restored.

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 denied.

The Commissioner notes that in the initial proceeding, Docket No. **CI630041B**, on July 7, 1989, the Rent Administrator granted the tenants of the subject premises a rent reduction based on the following conditions found not maintained in the premises: inoperative lobby door lock; garbage accumulation in the backyard, roof, hallways and front of the building; roach infestation; and filthy public area floor.

Prior to the owner's filing of the rent restoration application herein below, the owner had filed three rent restoration applications: Docket No. **FJ630015OR**, wherein on May 26, 1992, the Rent Administrator found the following conditions not maintained: vermin control, evidence of garbage in the backyard and hallways of the building (janitorial services), and the public area floors; Docket No. **GO630160OR**, wherein on April 11, 2019, the Rent Administrator found vermin control and the public area floors maintained; and Docket No. **IT630083OR**, wherein on July 26, 2021, the Rent Administrator found that the backyard and grounds (janitorial services) were not maintained.

On August 18, 2021, the owner commenced the rent restoration proceeding herein below, wherein the owner claimed that the outstanding condition had been restored. The Agency's record shows that the tenants were served with a copy of the owner's rent restoration application on September 16, 2021.

During said rent restoration proceeding, the Rent Administrator had requested an inspection of the subject premises. The Commissioner notes that the outstanding service found not maintained under Docket No. **CI630041B**[1] was found maintained by the Agency's inspector on December 8, 2021. The Rent Administrator, therefore, on March 16, 2022, granted the owner's rent restoration application under Docket No. **JT630054OR** as all conditions cited in the underlying rent reduction order were found restored.

[1] Evidence of garbage in the backyard and hallways of the building (janitorial services).

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.

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, that based on the totality of the record before the Agency, all items for which a rent reduction was granted in the initial proceeding under Docket No. **CI630041B** have been restored prior to the issuance of the Rent Administrator's rent restoration order, Docket No. **JT630054OR**, warranting a rent restoration. The Rent Administrator properly and reasonably relied upon the Agency inspection conducted on December 8, 2021 which revealed that janitorial services were adequately maintained.

Concerning the tenant's allegation that the owner forged the tenant's signature on the rent restoration application, the Commissioner notes that the Agency has placed no reliance on the contended tenant's signature in arriving at the decision taken, rather, the Agency's impartial inspector verified the owner's claim of service restoration. The Commissioner further notes that the Rent Administrator took into account the tenant's response to the owner's rent restoration application received on October 6, 2021, which indicated that the tenant did not agree that all conditions were restored, prompting the Rent Administrator's request for an Agency inspection.

The Commissioner notes that the tenant has alleged service reductions with regard to other items which were not raised before the Rent Administrator during the initial rent reduction proceeding. The scope of review of an administrative appeal, pursuant to Section 2529.6 of the Rent Stabilization Code is limited to a review of the facts or evidence before the Rent Administrator. Thus, the Commissioner finds that those items cannot be addressed herein.

The Commissioner notes that the tenant may file a fresh complaint, 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: JUL 22 2022

WOODY PASCAL
Deputy Commissioner

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

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There is no other method of appeal.

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

IN THE MATTER OF THE ADMINISTRATIVE APPEAL OF:	:	ADMINISTRATIVE REVIEW DOCKET NO.: KR210007RT
[redacted]	:	RENT ADMINISTRATOR'S DOCKET NO.: JR210053OR
PETITIONER	:	

ORDER AND OPINION DENYING PETITION FOR ADMINISTRATIVE REVIEW

On June 9, 2022, the above-named petitioner-tenant timely refiled a Petition for Administrative Review ("PAR") of an order the Rent Administrator issued on April 11, 2022 (the "Order"), concerning the housing accommodation known as 2212 Ditmas Avenue, Apt. [redacted] Brooklyn, NY 11226, wherein the Rent Administrator granted the owner a rent restoration after an Agency inspector confirmed that gas service was being provided at the subject premises.

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 claims the landlord must finish repair work before the rent can be restored specifying that a cabinet was removed to install a new gas pipe, leaving big holes in the wall, causing mice and roaches to come into his apartment. The tenant avers that the work was completed on May 4, 2022 and attached photographs to the PAR purporting to show the incomplete work.

On July 11, 2022, the owner responded to the tenant's PAR, claiming that the tenant's PAR should be denied because the items the tenant complained of were not the subject of the order reducing the tenant's rent, and that the same items were corrected.

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. Likewise, the Rent Administrator may grant a restoration of rent where it is determined 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 June 22, 2021 alleging the restoration of the cooking gas service in the premises that was originally found not maintained under Docket No. IM210184S on June 4, 2021. The tenant was served with the notice of the owner's application to restore rent (the "Initial Notice") on June 24, 2021. The Agency records indicate that the tenant did not respond to the Initial Notice. Hence, on February 16, 2022 an inspection of the subject premises was conducted by a DHCR inspector. During the inspection, the DHCR inspector observed that cooking gas was being provided to the building/apartments at the time of the inspection. Based on the foregoing details, on April 11, 2022, the Rent Administrator issued an order granting the owner's rent restoration request and determining that rent was restored to the level in effect prior to the rent reduction order, Docket No. IM210184S, plus all lawful increases which were collectible from July 01, 2021, the effective date of the subject Order Restoring Rent, Docket No. JR210053OR.

Based on the foregoing, the Commissioner finds that the Rent Administrator correctly granted the owner a rent restoration after a DHCR inspector visited the subject premises and confirmed that cooking gas service was being provided in the subject premises at the time of the inspection. The Commissioner notes that the DHCR inspector did not identify any issues with the cooking gas service in the subject premises. The tenant's PAR has not established any basis to modify or revoke the Rent Administrator's determination.

The tenant is advised that he may file a new service complaint with this Agency to address any services that are not being maintained in the subject premises.

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

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

ISSUED: JUL 22 2022

Woody Pascal
Deputy Commissioner

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

Right to Court Appeal

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

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

There is no other method of appeal.

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

IN THE MATTER OF THE ADMINISTRATIVE APPEAL OF:	:	
	:	**ADMINISTRATIVE REVIEW**
[redacted]	:	**DOCKET NO.: KR410004RT**
(TENANT)	:	
	:	**RENT ADMINISTRATOR'S**
	:	**DOCKET NO.: JR410020OR**
PETITIONER	:	

ORDER AND OPINION DENYING PETITION FOR ADMINISTRATIVE REVIEW

On June 8, 2022, the above-named petitioner-tenant timely refiled a Petition for Administrative Review ("PAR") challenging JR410020OR, an order the Rent Administrator issued on April 15, 2022 (the "Order"), concerning the housing accommodation known as 217 Haven Avenue, Apt. [redacted] New York, NY 10033, wherein the Rent Administrator issued an order granting the owner's application to restore rent for the subject premises after the tenant failed to provide access to a DHCR inspector for a scheduled inspection of the subject apartment on February 2, 2022.

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 tenant requests that the Order be reversed and claims that she did not fail to provide access for the purpose of a physical inspection on February 2, 2022. The tenant asserts that the date had been rescheduled to February17, 2022 after she called the Agency inspector and explained to him that she was unable to make the inspection scheduled for February 2, 2022. The tenant claims that the inspector did not show up on February 17, 2022. The tenant further claims that the owner attempted to repair the ceiling issues, however, the conditions are not fixed.

On July 7, 2022, the owner's management agent submitted a response to the tenant's PAR claiming that the conditions in the tenant's apartment have been corrected.

After 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 the restoration of rent when this Agency has established that the required services that were cited in the underlying rent reduction order have been restored. Section 2523.4 of the Code and Policy Statement 90-2 also provides that an objection to a rent restoration application by a tenant who fails to provide access at the time arranged by the DHCR for the inspection will be denied.

In the proceeding below, the owner filed an application to restore rent with this Agency claiming the restoration of services found not maintained under Docket No. HV410193S on August 26, 2020 (mold/mildew in the bathroom and bathroom wall defects). The tenant was served with notice of the owner's application (the "Initial Notice") on June 16, 2021. The tenant responded on June 24, 2021 and asserted that she did not agree that the conditions were restored. and claimed other service issues not related to the services that were subject of the rent restoration application.

Thereafter, on January 20, 2022, the Agency sent a Notice of Inspection to the owner and tenant, advising the parties that the subject apartment would be inspected on February 2, 2022 between 9:00 a.m. and 12:00 p.m., and that the failure to provide access to the inspector, without rescheduling, may result in a determination against the tenant's interests. On the date of the scheduled inspection, February 2, 2022, the DHCR inspector noted that the tenant did not grant access to the subject apartment for the Agency inspection. Based on the foregoing details. the Rent Administrator issued an order restoring the rent for the subject apartment effective July 1. 2021.

The Commissioner notes the tenant's contention that "[she] did not fail to provide access for the purposes of physical inspection on 2/2/2022. The date had been rescheduled to 2/17/2022. The inspector did not show up. The conditions are not fixed." However, the Commissioner's consideration in this matter is set by Rent Stabilization Code Section 2523.4 and Policy Statement 90-2 which provides that the objection to a rent restoration application by a tenant who fails to provide access at the time of the Agency inspection will be denied. In this case, the Commissioner notes that the record does not reveal that the tenant requested that the inspection be rescheduled, or that the inspection was rescheduled for February 17, 2022 as claimed by the tenant for the first time on appeal. Pursuant to Section 2529.6 of the Code. a petition for administrative review is limited to the facts and/or evidence before the Rent Administrator, as raised in the petition. The details that the tenant claims in the PAR currently under review were not raised when the rent restoration application was pending before the Rent Administrator.

Based on the foregoing, the Commissioner finds that the Rent Administrator correctly granted the owner's rent restoration application after the tenant failed to provide access to a DHCR inspector for the inspection that was properly scheduled on February 2, 2022 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 services complaint, if the facts so warrant.

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

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

ISSUED: JUL 26 2022

Woody Pascal
Deputy Commissioner

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

Right to Court Appeal

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There is no other method of appeal.

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

IN THE MATTER OF THE ADMINISTRATIVE APPEAL OF:	:	**ADMINISTRATIVE REVIEW**
THE MARINA 30 LLC (OWNER)	:	**DOCKET NO.: JX110011RO**
	:	**RENT ADMINISTRATOR'S DOCKET NO.: JM110014OR**
PETITIONER	:	

ORDER AND OPINION DENYING PETITION FOR ADMINISTRATIVE REVIEW

On December 3, 2021, the above-named petitioner-owner filed a Petition for Administrative Review ("PAR") of an order the Rent Administrator issued on October 29. 2021 (the "Order"), concerning the housing accommodation known as 22-30 Mott Avenue. Far Rockaway, New York, wherein the Rent Administrator denied the owner's application to restore rent based upon an Agency inspection conducted on June 28, 2021 which revealed the Section "A" Public Doors not restored

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 that the Rent Administrator's order be reversed because the underground parking garage was not the subject of the underlying order reducing the tenants' rent. The owner further claims that access to the underground garage is limited only to the tenants who have parking agreements with the owners, and that since the complaining tenants do not have parking space agreements for the parking garage, which is not accessible to the subject tenants, the conditions in the garage would not be the subject of the application and that same was not the subject of the rent reduction order, and that the underground parking garage issue is being raised for the first time herein as it was not alleged by the tenants in the complaint and not included in the initial order. The Petitioner-owner also claims that they did not receive the notice of inspection, which they claim to be prejudicial to the owner as neither the owner nor the agent was present for the inspection. Lastly, the owner claims that the Rent Administrator's order should be modified and reversed because the complaining tenants do not have access to the garage and therefore are not affected by the doors in the underground garage.

The tenants of apartments [redacted] through their representative, oppose the owner's petition, requesting that the Rent Administrator's decision be affirmed as same was based on an inspection by the Division's impartial inspector. The tenants also rebut the owner's claim that Section "A" Public Doors in the garage were not alleged in the tenants' complaint and the claim that the tenants are not affected by the Section "A" Doors, specifying that the tenants' original complaint about the building-wide safety concerns included the doors in the premises, and that the failure to maintain the subject doors is a safety and fire hazard concern affecting all tenants.

In response, the Petitioner asserts that the failure of the tenants to be more specific about the doors in the underground garage deprived the owner of the specificity required to give the Petitioner-owner proper notice of the alleged condition, and that the owner corrected all conditions except the ones relating to the underground parking garage as evidenced by the underlying order.

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. 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. 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 of the subject premises filed an application to restore rent with this Agency on January 4, 2021, alleging the restoration of the Section "A" Public Doors that were previously found not maintained under Docket No. HS110014B. The Division served the tenants with notice of the owner's application on January 12, 2021. The tenants of apartments [redacted] responded to the notice and agreed that services were restored. Thereafter, an inspection of the premises was conducted on June 28, 2021. During the inspection, the DHCR inspector observed that the Section "A" Public Fire Doors in the underground parking garage were defective as follows:

1. The South side stairwell A and B fire doors did not close and were tied open with wires.
2. The North side rear exterior yard door beside parking space #15 was mis-aligned and did not close.
3. The East side end rear exterior yard door did not self-close and was held open with a piece of concrete.

Based on the findings of the independent Agency inspector, on October 29, 2021, the Rent Administrator issued an order denying the owner's rent restoration application. The Rent Administrator noted that the inspector reported that 2nd, 3rd, and 4th floor Section "A" Public Doors self-close without defect.

At the outset, the Commissioner notes that the owner cannot collaterally attack the findings under the rent reduction order, Docket No. HS110014B by way of this appeal against

the rent restoration order. Docket No. JM110014OR. Agency records reveal that the owner failed to file an appeal against Docket No. HS110014B, and therefore such Rent Administrator's determination regarding the owner's failure to maintain the Section "A" Public Doors is finding and binding upon the parties. Thus, the Petitioner-owner's claims in this appeal regarding the underground parking garage doors and the tenants' use of such doors will not be considered as they are barred by the principles of res judicata and collateral estoppel.

The Commissioner further notes that the DHCR is not required to notify the parties of a building-wide inspection unless it concerns a non-public or secluded area of the building that is not accessible to an inspector or pertains to a "no access inspection", which are not the facts herein. Accordingly, the owner's claim that they were not notified of the inspection of the Section "A" Public Doors is without merit and is not a basis to reverse the Rent Administrator's order in this case as such notice was not required.

The Commissioner notes the owner's contention herein that the underground parking garage was not the subject of the order reducing rent. However, the Commissioner rejects this argument as a diligent review of the rent reduction order, Docket No. HS110014B reveals that, at the time of the Agency inspection on March 5, 2020, the Superintendent refused to provide access to the "basement" to inspect the fire doors underneath the subject premises, and that upon re-inspection of the same area under the subject case, Docket No. JM110014OR, the Section "A" Public Doors (fire doors) referenced in Docket No. HS110014B were in fact the doors that are located in the underground parking garage that the inspector now had access to.

The Commissioner further finds that the Rent Administrator properly predicated their decision on the inspector's report in accordance with DHCR established principles and procedures, and that such reliance on the inspector's training is reasonable as same was supported by date-stamped photographs depicting the issues with the fire doors located underneath the subject premises in the underground parking garage.

Based on the foregoing, the Commissioner finds that the Rent Administrator correctly denied the owner's rent restoration application that was based on the observations of the Agency's impartial inspector, and the owner's PAR has not established any basis to modify or revoke the Rent Administrator's determination.

The Commissioner notes that the owner has filed a new "Owner's Application to Restore Rent," currently pending under Docket No. KS110013OR.

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

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

ISSUED:

JUL 29 2022

Woody Pascal
Deputy Commissioner

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

Right to Court Appeal

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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

[redacted]

PETITIONER

ADMINISTRATIVE REVIEW DOCKET NO.: KN410001RT

RENT ADMINISTRATOR'S DOCKET NO.: IM410076OR

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ORDER AND OPINION DENYING PETITION FOR ADMINISTRATIVE REVIEW

On February 1, 2022, the above-named petitioner-tenant re-filed a timely Petition for Administrative Review ("PAR") against an order the Rent Administrator issued on November 12, 2021 (the "order"), concerning the housing accommodation known as 385 Fort Washington Avenue, Apt [redacted] New York, New York wherein the Rent Administrator granted the owner's rent restoration application and restored the legal regulated rent, effective September 9, 2019.

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

In the PAR, the tenant seeks a reversal of the Rent Administrator's order claiming: 1) the apartment is "not fully inhabitable" since many of the conditions she complained about in her application remain unresolved such as "mold and pests"; 2) the owner disregards requests to repair and even prevents repairs from occurring citing to a New York City Department of Housing Preservation & Development ("HPD") work order and references photographs purportedly depicting the inside of the subject apartment on December 23, 2021 and January 28, 2022; 3) the owner's statement that the owner restored the services is incorrect, referencing HPD violations and inspections; 4) the tenant cannot resume occupancy of the bedroom; and 5) that the eastern wall in the living room is stained, there is a water leak in the kitchen, and there is

mold near the ceiling which was confirmed by a mold assessment report which was provided to the owner during a housing court proceeding (Index No.: HP 6239/18).

The owner, by counsel, opposes the tenant's petition and claims the apartment is habitable and that the tenant resumed occupancy. The owner also asserts the PAR is meritless as the vacate order was rescinded on October 2, 2019.

In response to the owner's objections, the tenant reiterates her claims on appeal, asserting that the owner failed to mention that the original issues have not been resolved, and that the tenant's occupancy is "a fraction of the apartment" as the bedroom is uninhabitable.

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

At the outset, the Commissioner notes that a review of the Rent Administrator's proceeding reveals that the documentation and information submitted by the owner and the tenant regarding same, were fully investigated and that the Rent Administrator properly predicated the decision on such documentation and the Agency's records.

Pursuant to Section 2522.6 of the New York City Rent Stabilization Code ("RSC" or "the Code"), where a tenant is forced to vacate an apartment because it is legally uninhabitable, rent is established at $1.00 per month to maintain the landlord/tenant relationship between the parties until the apartment is restored to habitability and the subject tenant has resumed possession of the apartment or refused an offer to reoccupy the subject apartment. When an owner applies to restore the rent, DHCR policy and practice 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.

A review of the record reveals that the tenant's legal regulated rent was established as $1.00 per month, effective September 9, 2018 under Docket No. GU410047S, upon the Rent Administrator's finding that a fire occurred on September 9, 2018 which caused the tenant to vacate the apartment involuntarily.

In the proceeding below, Docket No IM410076OR, the owner by application on January 22, 2020, sought to restore the rent based on the owner's assertions that the apartment and services were restored for occupancy and the tenant was restored to occupancy on November 20, 2018. The owner included with their application an email purporting to be sent to the tenant dated November 21, 2018 from [redacted], stating that "all work was completed to restore your apartment to a habitable condition" and that the tenant "may occupy it as of today."

The tenant was served with notice of the application ("Initial Notice") on January 24, 2020. The tenant responded to the Initial Notice and disputed the date she re-occupied the apartment. The tenant submitted an email dated March 21, 2019 from [redacted] informing her that her apartment was "not yet habitable" and that the tenant would be "notified

in accordance with DHCR requirements when gas has been restored." The tenant also asserted, *inter alia*, that there were conditions in the apartment that needed repair, including water leaks, mold, defective plaster, closet doors in the bathroom and foyer, and that the walls near the entry to the apartment lacked paint after the fire.

Subsequently, the Rent Administrator requested an Agency inspection be conducted. On June 9, 2021, the Agency inspector observed and found the following:

1. No fire damage (smoke) in the hallway of this apartment or fire/water damage in the apartment related to a fire on September 9, 2018.
2. The apartment was habitable with the Agency inspector noting that bedroom 1 walls and ceiling were stained, moist, and wet with blisters and a strong dampness smell. The tenant stated that she does not use or occupy this room due to the heavy dampness smell and that the walls and ceiling damage are from the outside brick. The inspector noted that this damage is not related to the fire.
3. Gaps in the sides of the hallway fire door and cracks in the living room wall.
4. The tenant stated to the inspector that she returned to the apartment one year later.

The Rent Administrator mailed to the owner a Request For Additional Information on September 30, 2021 wherein the Administrator provided the owner with the opportunity to respond to the tenant's claims and advised the owner that the tenant submitted an email dated March 21, 2019 which stated the apartment was not habitable and that the tenant informed the DHCR inspector on June 9, 2021, that she resumed occupancy a year after the fire occurred. The Administrator requested that the owner advise and verify: the date the apartment was restored to habitability; the date when the tenant resumed occupancy; and whether or not the tenant had resumed paying the full rent and if so, specify the date the tenant started paying the full rent.

On October 12, 2021, the owner's response was received by the Agency wherein the owner did not dispute the tenant's date of occupancy to be one year after the date of the fire which occurred on September 9, 2018, stating that "based on the tenant's own admission, the tenant resumed occupancy on September 9, 2019."

Based on the record including the Agency inspection and the evidence presented, on November 12, 2021, the Rent Administrator granted the owner's rent restoration application having found the rent to be restored effective September 9, 2019, the date the tenant and owner stated the tenant resumed occupancy. The Rent Administrator also noted that although the original complaint listed individual issues in need of repair in the apartment, they were not investigated at the time because the apartment was vacated due to a fire. Moreover, the Administrator also advised the tenant that the noted conditions did not render the apartment uninhabitable and therefore a continued rent reduction to $1.00 per month was not warranted. The tenant was advised that the tenant may file a new service complaint to address the conditions in need of repair. The Administrator further directed the owner to correct the bedroom 1 walls and ceiling conditions found during the inspection within thirty (30) days of the issuance of the order, and if the owner fails to make the repairs, the tenant may file a new complaint.

In light of the foregoing, the Commissioner finds that the Rent Administrator correctly granted the owner's rent restoration application. The evidence of record established that the

tenant involuntarily vacated the subject apartment due to a fire that occurred on September 9, 2018, and therefore the legal regulated rent was established at $1.00 per month to maintain the tenant/landlord relationship while the subject apartment was uninhabitable, effective September 9, 2018 (Docket No. GU410047S). During the pending rent restoration proceeding, the tenant stated that the tenant resumed occupancy of the subject apartment one year after the fire, and moreover, the Agency inspector found the apartment habitable at the time of the inspection. Accordingly, the Commissioner finds that the Rent Administrator properly determined that the subject tenant resumed occupancy of the subject apartment as of September 9, 2019, and properly set an effective date for the rent restoration as of September 9, 2019, the date that the tenant stated that she resumed occupancy. The tenant's claims in this case fail to establish a basis to disturb the Rent Administrator's order.

The Commissioner notes the tenant's claim that additional service conditions exist in the apartment. However, the record reveals that the apartment was found habitable at the time of the Agency inspection, and the tenant stated that the tenant resumed occupancy of the subject premises one year after the fire that caused the tenant to vacate involuntarily. As noted above, the $1.00 order is issued to maintain the landlord/tenant relationship until the apartment is restored to habitability and the subject tenant has resumed possession of the apartment.

The Commissioner also notes that the order, Docket No. GU410047S which established the tenant's rent at $1.00 due to the tenant's involuntarily vacating the subject premises, was not appealed and is therefore final and binding on all parties. Accordingly, the tenant may not now raise issues with Docket No. GU410047S which are extraneous to the underlying rent restoration proceeding, Docket No. IM410076OR by way of a collateral attack. The Commissioner advises the tenant to file a decrease in services application regarding those service conditions as advised by the Administrator, and to submit any evidence regarding the tenant's claims with their application.

Based on the foregoing, the Commissioner finds that the Rent Administrator correctly granted the owner's rent restoration application, and that the tenant'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 Rent Stabilization Law and Code, it is

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

ISSUED: AUG 4 2022

Woody Pascal
Deputy Commissioner

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

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There is no other method of appeal.

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

IN THE MATTER OF THE ADMINISTRATIVE APPEAL OF:	:	ADMINISTRATIVE REVIEW
1210 CROES, LLC (OWNER)	:	DOCKET NO.: KR630014RO
	:	RENT ADMINISTRATOR'S
	:	DOCKET NO.: JX630031OR
PETITIONER	:	

ORDER AND OPINION DENYING PETITION FOR ADMINISTRATIVE REVIEW

On June 23, 2022, the above-named petitioner-owner filed a Petition for Administrative Review ("PAR") challenging Docket No. JX630031RO, an order the Rent Administrator issued on May 23, 2022 (the "Order"), concerning the housing accommodation known as 1210 Croes Avenue, Bronx, NY 10472, wherein the Rent Administrator denied the owner's application to restore rent after an inspection of the subject building revealed that the hallway vents on the 19th, 20th and 21st floors have accumulations of dust.

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's counsel requests that the Order issued under Docket No. JX630031OR on May 23, 2022 be reversed because the finding that three public area hallway vents on the 19th, 20th and 21st floors have "some accumulation of dust" is de minimis.

Two tenants filed an answer to the owner's PAR, claiming that all services were not repaired, with one tenant listing the specific services that need to be addressed on fourth through twentieth floors in the building. Two tenants submitted an answer, agreeing with the owner's PAR.

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. DHCR Policy Statement 90-2 states that the Rent Administrator may rely on an Agency inspection when making the determination in a matter. An owner is entitled to the restoration of rent when this Agency has 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 to restore rent with this Agency on December 9, 2021, alleging the restoration of services found not maintained on September 13, 2021 under Docket Number HP630034B (building entrance door pane, hallway vents, hallway floors/walls, directional apartment letters, and parking lot maintenance). The tenants were served with notice of the owner's application (the "Initial Notice") on December 22, 2021 and some tenants responded to the Initial Notice acknowledging that the services were restored, while another tenant objected to the owner's claim of restoration of services.

During the processing of Docket Number JX630031OR, a DHCR inspector visited the subject premises on April 1, 2022, and observed that the following service was not restored:

1) Public areas hallway vents on the 19th, 20th and 21st floors have accumulation of dust. There was minor dust on vents on remaining floors.

The inspector found the following services restored:

1) The building entrance door glass is not cracked/defective.
2) The hallway floor tiles in front of the 17th floor elevator are not cracked.
3) The 6th and 18th floors directional letters are not missing.
4) The parking lot space numbers are repainted.

Based on the foregoing details, the Rent Administrator issued an order denying the owner's rent restoration request, finding that the hallway vents were not restored.

The Commissioner notes the attorney's contention herein that the denial of the rent restoration was arbitrary and capricious as this condition is di minimis. However, this unsubstantiated claim by the attorney does not warrant a modification or reversal of the Rent Administrator's order.

The Commissioner notes that the fact that there continues to be dust build up on the hallway vents on the 19th, 20th and 21st floors of the building after the Rent Administrator issued the Order Reducing Rent for Rent Stabilized Tenant(s) on September 13, 2021, is a clear indication that all hallway vents are not "cleaned and maintained" as was stated in the owner's Application to Restore Rent. Also, the Rent Stabilization Code requires that all items that were listed in the rent reduction order be corrected in order for a rent restoration order to be issued. Docket Number HP630034B specified that, among other things, the hallway vents in the building were not maintained as the vents needed to be cleaned, and the underlying rent reduction order was not challenged in a timely manner with a claim that this portion of the order was di minimis. The Commissioner therefore finds that the owner may not now claim issue with the hallway vent service found not maintained under Docket Number HP630034B by way of a collateral attack in this appeal.

Based on the foregoing, the Commissioner finds that the Rent Administrator correctly denied the owner's application to restore rent because all of the conditions that were cited in the Order Reducing Rent were not restored at the time the order was issued. The owner's PAR has not established any basis to modify or revoke the Rent Administrator's determination in the matter below.

The Commissioner notes that the owner filed a new "Owner's Application to Restore Rent" with this Agency, which is currently pending under Docket Number KS630118OR.

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

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

ISSUED: AUG 8 2022

Woody Pascal
Deputy Commissioner

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

Right to Court Appeal

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

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There is no other method of appeal.

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

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IN THE MATTER OF THE
ADMINISTRATIVE APPEAL OF :

ADMINISTRATIVE REVIEW
DOCKET NO.: KN420003RO

DS 138 Ludlow, LLC :

RENT ADMINISTRATOR'S
: DOCKET NO.: JN420102OR
(OA420084S)

PETITIONER

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ORDER AND OPINION DENYING PETITION FOR ADMINISTRATIVE REVIEW

On February 3, 2022, the above-named petitioner-owner filed a petition for administrative review (PAR) against an order issued on January 13, 2022, by the Rent Administrator concerning the housing accommodations known as 138 Ludlow Street, Apartment [redacted] 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 the portion of the record relevant to the issues raised by the petition.

The owner, in the PAR, requests a modification of the Rent Administrator's order, contending that inasmuch as the order properly granted the owner a rent restoration, the effective date of June 11, 2019, the day before the current tenant's lease commenced, was in error; that the owner submitted documentation in the underlying rent restoration proceeding to show that the subject apartment was restored to habitability not later than August 1, 2003 and occupied in 2003[1]; that the tenant who resided in the subject apartment prior to the fire did not return to occupancy of the apartment; that the subject apartment had been restored to habitability and been occupied for more than 18 years continuously by different tenants since 2003.

[1] The owner claims that the owner's application established that new tenants (Lake Serrins & Julia/Jon Miller) commenced occupancy on August 1, 2003 pursuant to a one-year vacancy lease at a rent of $1,950.00 per month (a copy of the lease is attached).

The owner contends that per the Matter of Haidt[2], "[a]gency policy and procedure dictate that if a fire damaged apartment has been restored to habitability by the owner, and the tenant advises that occupancy has resumed, the Rent Administrator will grant an owner's application to restore rent previously reduced to $1.00 due to the fire damage, and the rent will be restored to the level in effect prior to the date of the fire, effective the date tenant is restored to occupancy." Also, the owner referenced the Matter of 5K Enterprises, a case wherein the Commissioner modified the Rent Administrator's order to grant the owner's rent restoration application to be effective the month the tenant resumed occupancy, March 1, 1998.[3] The owner concluded that the challenged order should thus have granted the rent restoration effective August 1, 2003 when the evidence established that new tenants occupied the subject apartment as there is no doubt that the apartment was fully habitable, and that all services affected by the fire had been restored at the time; and that the challenged order be modified, and a new order be issued granting the owner's application and modifying the effective date of the rent restoration.

Pursuant to Section 2202.22 of the New York City Rent and Eviction 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.

In the initial proceeding, on June 15, 2000, under Docket No.: **OA420084S**, the Administrator established the rent for the subject apartment at $1.00 per month, effective January 18, 2000, due to the fire incident which occurred at the subject apartment on January 18, 2000, causing the tenant to vacate involuntarily.

The Agency's records indicate that on February 25, 2021, the owner commenced the rent restoration proceeding below, under Docket No. **JN420102OR**, which was served on the tenant on April 1, 2021. The owner's rent restoration application was granted on January 13, 2022, restoring the rent effective June 11, 2019, the day before the current tenant's lease commenced.

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. While the owner on appeal disagrees with the June 11, 2019 effective date, the Commissioner rejects the owner's claims that the effective date of the Rent Administrator's order must be modified. 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.

The Commissioner notes that to support its contention that the retroactive date for the rent restoration order where rent is reduced to $1.00 should be August of 2003 in this case, the owner cited the above-stated cases: the Matter of Haidt and the Matter of 5K Enterprises. However, the Commissioner notes that owner's reliance on these cases is misplaced. Firstly, the Commissioner notes that in general, rents may be restored as of the date the apartment was

[2] Administrative Review Docket No. HD410378RT (4/27/95).

[3] Administrative Review Docket No. ML710031RO (9/8/01).

restored to habitability and the tenant resumed occupancy of the apartment or the tenant declined to resume occupancy. However, failure to file a timely Rent Restoration Application may affect the effective date of the rent restoration. Thus, the position stated in the Matter of Haidt is the general practice. Additionally, in the Matter of 5K Enterprises, the Commissioner notes that there was no inordinate delay in the owner's filing of its rent restoration application unlike in the present case wherein the order establishing the rent at $1.00 was issued on June 15, 2000 (Docket No.: **OA420084S**), and the owner inexcusably waited for eighteen (18) years from when the owner claims the apartment was restored to habitability in August of 2003, until February 25, 2021, to file the subject rent restoration application. Thus, the cited cases are not applicable to the situation herein.

The Commissioner notes that there are various instances where the Agency grants a later effective date than the date of re-occupancy[4], due to owner's inordinate delay in filing the rent restoration application.

In the Matter of 305 Realty NY LLC v. DHCR[5], the Commissioner notes that the Court found the DHCR's setting of a prospective effective date for rent restoration to be rational as it was the owner who delayed the filing of its rent restoration application and that it would be "unfair" to the tenant to retroactively raise the rent. In the instant case, where the owner's contention is that the apartment had been restored to habitability and continuously occupied by different tenants since 2003, the Commissioner finds that there is no basis to disturb the Rent Administrator's order as the owner filed its rent restoration application after over eighteen (18) years. As the Court in Matter of 305 Realty NY LLC found, "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".

Based on the foregoing, the Commissioner finds that the Rent Administrator's order is correct as issued, and the effective date of June 11, 2019 is proper under the circumstances herein.

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

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

ISSUED: AUG 10 2022

WOODY PASCAL
Deputy Commissioner

[4] See the Matter of 109 Realty, LLC, Administrative Review, Docket No. **CQ410024RO** wherein the Commissioner found that the tenant should not be made to bear the "brunt" of the owner's choice to not file a rent restoration for over three (3) years from the time that the tenant re-occupied the apartment; the Matter of Highpoint Associates V, LLC, Administrative Review, Docket No. **XH410001RP**; and the Matter of 305 Realty NY LLC v. DHCR, Supreme Court of the State of New York, County of Kings, Index No. 5044/2010.

[5] Supreme Court of the State of New York, County of Kings, Index No. 5044/2010.

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IN THE MATTER OF THE ADMINISTRATIVE APPEAL OF	ADMINISTRATIVE REVIEW DOCKET NO.: JX610034RO
45 HC LLC	
PETITIONER	RENT ADMINISTRATOR'S DOCKET NO.: IP610009OR (BR610138S)

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ORDER AND OPINION DENYING PETITION FOR ADMINISTRATIVE REVIEW

On December 31, 2021, the above-named petitioner-owner filed a Petition for Administrative Review ("PAR") against an order the Rent Administrator issued on December 1, 2021 (the "order"), concerning the housing accommodation known as 387 East Mosholu Parkway N, Apt [redacted] Bronx, New York, wherein the Rent Administrator granted the owner's rent restoration application effective April 23, 2020.

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 its counsel, seeks a modification of the Rent Administrator's order claiming the order is arbitrary and capricious, and that the Administrator made an error in fact and law. The owner contests the effective date of the order, claiming the services and the tenant were restored to the apartment as of May 2014 as evidenced by an affidavit dated May 2014 and the tenant's response dated May 8, 2020. The owner alleges that the owner, on April 29, 2014 in a letter to the Agency, requested the restoration of the rent after the $1.00 order was issued, and that the Agency, in response to the owner's letter, advised the owner to file the rent restoration request on the proper form, and that on May 26, 2014, the owner provided the restoration request on the form as required along with the tenant's acknowledgement that she was restored to possession, however, the owner, after not receiving any determination on the May 2014 application (or to their August 11, 2014 follow up letter). filed the subject rent restoration application per DHCR's directions. The owner further claims that the required services were provided since April 2014, and that the Vacate Order issued by the New York City Department of Housing Preservation and Development ("HPD") was rescinded after HPD inspected the apartment finding it "habitable and in good condition as of March 19, 2014", and that the subject tenant acknowledged on May 22, 2014 that the premises was "in good condition" and that she was "residing in the unit." The owner resubmits the documents they submitted in the proceeding below.

The tenant did not submit a response to the owner's PAR.

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

Pursuant to Sections 2522.6 and 2522.7 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.

It is the Agency's policy that to re-establish the rent in effect prior to the date of a rent reduction order, the owner is required to obtain this Agency's approval by filing an Owner's Application for Rent Restoration (RTP-19). *See also* DHCR Policy Statement 90-2 which states that pursuant to Sections 2523.3 and 2523.4 of the Code, an owner shall not be entitled to a rent restoration until the owner has made an application and DHCR issues an order restoring the rent. Said application in a $1.00 order case may be filed upon restoration of the apartment to a habitable condition and notification to the tenant that they may resume occupancy of the subject apartment. Alternatively, when applicable, an owner may also file an application with evidence that a tenant(s) surrendered their rights to the apartment.

In general, when an owner applies to restore the rent after a $1.00 order has been issued. DHCR policy and practice 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, effective the date the tenant is restored to occupancy. However, DHCR's policy also provides that the failure of an owner to file a timely rent restoration application may affect the effective date of the rent restoration.

In this case, as for the initial proceeding assigned Docket No. BR610138S, the Agency records show the tenant filed a complaint alleging a decrease in service, in that the tenant had been displaced from the subject apartment due to a fire incident that occurred on June 23, 2013. On July 18, 2013, the Rent Administrator established that the rent was $1.00 per month effective June 23, 2013, the date of the fire which caused the tenant to vacate involuntarily. The Rent Administrator advised the parties that in general, rents may be restored as of the date the apartment was restored to habitability and the tenant resumed occupancy of the apartment or declined to resume occupancy, however, the failure to file a timely rent restoration application may affect the effective date of the rent restoration.

In the proceeding below, Docket No. IP610009OR, the owner filed an application seeking to restore the rent on April 15, 2020, wherein the owner claimed that the fire damage, electrical, plumbing and gas services had been restored on March 11, 2014. In addition, the owner claimed that the apartment was restored to occupancy as of March 19, 2014, the same day the vacate order was rescinded. The owner supplemented the application with the following documents: correspondence from HPD addressed to the subject tenant at 1841 University

Avenue, Apt. 5B, Bronx, NY dated March 19, 2014 which reported that HPD had inspected the subject apartment finding it to be habitable and that HPD has taken the necessary steps to rescind the issued Vacate Order; correspondence from HPD addressed to the owner dated April 8, 2014 which informed the owner that Vacate Order No. 110288 issued on July 17, 2013 for 385 East Mosholu Parkway North, Bronx, New York had been rescinded as a result of an inspection conducted on March 11, 2014; and various NYC Department of Building records for Work Permit Data Job #220334724 and "LAA Application Details" for LAA # 240040335.

The tenant was afforded an opportunity to respond by service of the rent restoration application ("Initial Notice") on April 23, 2020. On May 14, 2020, the tenant responded and agreed that the conditions were restored and that she was seeking a new lease from the owner and to be transferred to a two-bedroom unit once the rent was restored.

According to the record, on August 16, 2021, the Rent Administrator served a Request for Additional Information/Evidence ("RFAI") on the owner which sought the following:

1. Why did it take so long to file for rent restoration?
2. Who is the current tenant? Provide the initial lease for the current tenant.
3. Is the tenant current in their rental account?

The owner filed a response dated August 27, 2021, prepared by its attorney, wherein the owner claimed with respect to the Rent Administrator's first inquiry, that the owner had filed a rent restoration application on May 26, 2014, and that when the owner did not receive a determination from DHCR, they hired an attorney to investigate the delay. The owner's counsel claimed that they had corresponded with DHCR in order to determine the status of the restoration requests and were directed to "again file a new request for restoration." The owner supplemented the response by resubmitting the documents the owner had submitted with the rent restoration application along with the following: a copy of the owner's restoration affirmation dated April 15, 2020, the owner's April 29, 2014 letter address to DHCR requesting that the legal regulated rent be restored as of March 19, 2014 (which was stamped received by the Agency on May 7, 2014); the owner's correspondence dated May 26, 20014[sic] addressed to DHCR wherein the owner asserted that on May 7, 2014, DHCR "accepted the Owner's Application" with the owner acknowledging that DHCR requested the "completion of Form RTP 19"; the owner's August 11, 2014 letter addressed to DHCR stating, *inter alia*, that it was "inconceivable" that the rent had not been restored and that the owner sought immediate restoration of the rent asserting that the tenant was in possession of the apartment on May 22, 2014; DHCR Notice of Disposition of Application for Rent Restoration dated May 9, 2014 regarding BR610138S which informed the owner that their rent restoration request was "not filed on the proper form" and that the proper forms were enclosed (RTP-19); and the Owner's Application to Restore Rent, signed by the subject tenant on May 22, 2014, and also signed by the owner, however, the date of the owner's signature was left blank (the Commissioner notes that the rent restoration application is not stamped "Received" by the Agency and there is no indication that the Agency received such rent restoration application on Form RTP-19).

With regard to the Administrator's second and third inquiries, the owner asserted that the subject tenant was the tenant of record both before and after the fire incident; and that the tenant had not paid any rent since the premises were restored and occupancy was resumed "in 2014".

The owner submitted a copy of the tenant's 2013-2014 lease. The owner further asserted that as of March 19, 2014, the premises were fully repaired; the vacate order rescinded after HPD inspected the apartment and found it habitable and in good condition; and that the tenant acknowledged on May 22, 2014 "that the premises were in good condition and that she is residing in the unit." The Commissioner notes that the owner's documentation does not include the subject tenant's acknowledgement that the tenant resumed residing in the subject apartment on May 22, 2014.

According to the record, the Administrator mailed a copy of the owner's August 27, 2021 response to the tenant along with a RFAI wherein the Administrator sought the following: the date the tenant resumed occupancy to the apartment, if the tenant had resumed paying the full rent, and if so, the date the tenant started paying the full rent. In response to the RFAI, the tenant filed her September 28, 2021 answer in which the tenant stated she did not return to the subject apartment until May of 2015, that she stopped receiving monthly charges as of June 2013, and that she requested a lease in 2017 but did not receive a response from the owner. The tenant submitted, *inter alia*, a copy of the June 23, 2013 fire incident report and a 2014 Renewal lease.

Based on the evidence in the record, the Rent Administrator, on December 1, 2021 granted the owner's rent restoration application finding that the conditions or violations upon which the rent reduction order was issued had been corrected. The Administrator found that as there were no other rent restoration applications on record associated with the underlying rent reduction order, and that it would be inequitable to charge the tenant rental arrears back to April 2014 as the owner did not inquire or submit a new application until April of 2020, determined that the legal rent be restored to the level in effect prior to the rent reduction plus all lawful increases effective April 23, 2020.

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. While the owner on appeal disagrees with the April 23, 2020 effective date, the Commissioner rejects the owner's claims that the effective date of the Rent Administrator's order must be modified. 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.

The Commissioner notes that the longstanding policy of DHCR is that an owner is responsible for knowing whether or not there are outstanding rent reduction orders in effect. In the instant matter, the record reveals that the owner was advised of the requirement to file a rent restoration application utilizing DHCR Form RTP-19 on two separate occasions, the first time being in the order establishing the rent, Docket No. BR610138S, and again in the Notice of Disposition of Application for Rent Restoration dated May 9, 2014. The record does not support the owner's claim that a rent restoration application was filed properly prior to April 15, 2020.

Furthermore, the record below establishes that the Rent Administrator took into account the entire record, and that after considering the equities in this matter, concluded that the date the rent was to be restored was April 23, 2020. Here, the Agency records show that in an order issued on July 18, 2013 under Docket No. BR610138S, the Rent Administrator established the

rent at $1.00 per month, effective June 23, 2013, the date of the fire which caused the tenant to vacate involuntarily. The Agency records also show that the owner did not file a rent restoration application by using DHCR Form RTP-19 until April 15, 2020, notwithstanding the clear language of the Rent Administrator's advisement in the initial rent reduction (Docket No. BR610138S) on page two which advised the owner that in order to re-establish the Legal Regulated Rent in effect prior to the effective date of this order, the owner must obtain this Agency's approval by filing an Owner's Application for Rent Restoration (RTP-19) and that failure to file a timely Rent Restoration Application may affect the effective date of the rent restoration.

Upon considering the entire record and the factors bearing on the equities involved herein, 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 on the proper form for almost six years from the time that the owner claimed the tenant had re-occupied the subject apartment in 2014. The Commissioner notes that the DHCR has a duty to ensure that its decisions are not inconsistent with the spirit and intent of the rent laws. Thus, the Administrator's determination was proper under the circumstances and the effective date was properly set by the Rent Administrator as the owner delayed in filing their application to restore the rent and offered no meritorious and reasonable explanation for their delay in filing the application.

Accordingly, the Commissioner finds that the owner's claim that the rent should be restored to an earlier date is without merit. *See*[1] 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.

Based on the above, the Commissioner finds that the Rent Administrator's order is reasonable and appropriate as issued, and the effective date of the restoration of the legal regulated rent as determined by the Administrator is proper. The owner's PAR fails to provide any basis to modify or revoke the Rent Administrator's determination.

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: AUG 10 2022

Woody Pascal
Deputy Commissioner

[1] See also Administrative Review Docket Nos. CQ410024RO and XH410001RP.

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IN THE MATTER OF THE ADMINISTRATIVE APPEAL OF:	:	
[redacted]	:	**ADMINISTRATIVE REVIEW DOCKET NO.: JU210047RT**
PETITIONER	:	**RENT ADMINISTRATOR'S DOCKET NO.: IN210036OR**

ORDER AND OPINION GRANTING PETITION FOR ADMINISTRATIVE REVIEW

On September 24, 2021, the above-named petitioner-tenant filed a Petition for Administrative Review ("PAR") against IN210036OR, an order the Rent Administrator issued on August 20, 2021 (the "order"), concerning the housing accommodation known as 230 Schenectady Avenue, Apartment [redacted], Brooklyn, New York, wherein the Rent Administrator granted the owner's rent restoration application effective April 1, 2012.

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, through counsel, seeks a modification of the Rent Administrator's order and asserts that the rent should have been restored not as of April 1, 2012, but prospectively as of September 1, 2021, or in the alternative, at most, the first of the month after the owner applied for restoration, March 1, 2020. The Petitioner avers that the Rent Administrator erred in granting a retroactive date which is nearly a decade ago as it is improper and prejudicial to the Petitioner-tenant, and that the DHCR should not reward an owner for their delay in filing the restoration application given that the owner has been in ownership of the subject property since 2015, and has been on notice of the underlying rent reduction order since that time, but failed to file the rent restoration application and provide the tenant with a rent stabilization lease. The Petitioner-tenant further claims that the said effective date is prejudicial and problematic as the owner has served the Petitioner with a 14-day notice seeking nearly $90,000 in arrears based on the order directing that the arrears be paid in 224 equal monthly

installments, and that this causes the Petitioner anxiety and fear of losing their apartment as the monthly installment demanded by the owner is $370.13 in addition to the Petitioner's rent of $740.25.

The owner in response to the tenant's petition, objects to the tenant's appeal and requests that the Rent Administrator's order be affirmed as the tenant had the opportunity to present their facts when the owner's application was served on the Petitioner-tenant, instead, the tenant's counsel asked for an extension of time to respond but failed to do so. Furthermore, the owner claims that the report of the inspection confirmed that the apartment was restored to habitability, and that this finding was acknowledged by the tenant who informed the inspector at the time of inspection that they returned to occupancy on January 2, 2012.

The tenant's counsel on November 15, 2021 was provided with an opportunity to respond to the owner's objections on appeal, however, no such response was received by the tenant's counsel.

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

Pursuant to Sections 2522.6 and 2522.7 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.

In the subject underlying Order Determining Legal Regulated Rent (Fire Damage), Docket No.: ZF210025S, on July 5, 2011, the Rent Administrator determined that the subject tenant's rent was established at $1.00 per month as of May 30, 2011, the date of a fire that caused the tenant to vacate the subject premises involuntarily. The Rent Administrator noted that in general, rents may be restored as of the date the apartment was restored to habitability and the tenant resumed occupancy of the apartment. The Rent Administrator also advised that the failure to file a timely Rent Restoration Application may affect the effective date of the rent restoration, and that in order for the owner to re-establish the Legal Regulated Rent in effect prior to the effective date of the order, the owner must obtain the Agency's approval by filing an Owner's Application for Rent Restoration (RTP-19).

In the proceeding below, Docket No.: IN210036OR, the owner filed an application to restore rent on February 11, 2020 wherein the owner stated that the apartment was restored to habitability as of April 1, 2012. The subject tenant was afforded an opportunity to respond by service of the rent restoration application ("Initial Notice") on February 21, 2020. However, on March 17, 2020, the tenant's counsel by correspondence dated March 12, 2020, requested an extension of time to submit an answer possibly until June 11, 2020, but no further responses were received.

Subsequently, the Rent Administrator requested an inspection of the subject premises, which was conducted on April 13, 2021 and the impartial inspector found the apartment restored to habitability. The record reveals that during the said inspection, the tenant informed the DHCR inspector that they returned to the apartment on January 2, 2012.

Thereafter, to clarify the date the tenant moved back in after the fire, the Rent Administrator requested additional information from both parties, however, the tenant did not respond to such request.

On July 26, 2021, the owner responded to the Rent Administrator's request to confirm the date that the tenant moved into the apartment. The owner claimed that when they purchased the building in 2015, the subject apartment had already been restored by the previous owner in 2012 and the previous owner would have the records of the restoration that was completed in 2012. The owner further asserted that the tenant had been living in the subject apartment for about ten (10) years.

Based on the Agency inspection as well as the tenant's statement made during said inspection, that the tenant returned to the apartment in 2012, the Rent Administrator, on August 20, 2021, granted the owner's rent restoration application, finding that the apartment was restored to habitability and that the tenant has resumed occupancy of the subject apartment. The Rent Administrator determined that the rent be restored to the level in effect prior to the rent reduction plus all lawful increases effective April 1, 2012.

The Commissioner, having reviewed the record herein, finds that the tenant's PAR has merit, warranting a modification of the Rent Administrator's order.

The Commissioner notes that the longstanding policy of DHCR is that an owner is responsible for knowing whether or not there are outstanding rent reduction orders in effect. In this case, the owner's claim that when they purchased the building in 2015, the subject apartment had already been restored by the previous owner in 2012, and that the previous owner would have the records of the restoration that was completed in 2012 is without merit. Under the rent stabilization scheme, a purchaser of a building steps into the shoes of its predecessor in interest and assumes all of the liabilities as well as assets of their predecessors, including any pending rent reduction proceedings. The existence of all DHCR orders and proceedings is available to a purchaser and new owners of buildings upon request of the Agency. Furthermore, the Commissioner notes that it is irrelevant that the current owner purchased the subject premises in 2015, as the owner did not file a rent restoration proceeding in this case until five (5) years later in 2020, and more so, the rent restoration application was filed approximately eight years from the time that the owner alleges the tenant resumed occupancy of the subject apartment.

In general, when an owner applies to restore the rent after a $1.00 order has been issued, DHCR policy and practice 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 or the tenant declined to resume occupancy, the Rent Administrator may grant the owner's rent restoration application, effective the date the tenant is restored to occupancy.

However, DHCR's policy also provides that the failure of the owner to file a timely rent restoration application may affect the effective date of the rent restoration.

The Commissioner notes that to support a contention that the effective date for a rent restoration order where rent was reduced to $1.00 should be the date the tenant re-established occupancy, the owner must file a timely rent restoration application., However, in the absence of a timely filed rent restoration application, the rent may be restored effective the first of the month after the owner's application to restore rent was submitted and served on the tenant. See Matter of 305 Realty NY LLC v. DHCR, Supreme Court of the State of New York, County of Kings, Index No. 5044/2010, Matter of Highpoint Associates V. LLP, Administrative Review Docket No. XH410001RP, and Matter of 109 Realty, LLC, Administrative Review Docket No. CQ410024RO.

A diligent review of the entire record of proceeding in the instant case does not reveal that the owner provided a reason substantiating the owner's filing the application to restore rent over eight years after the tenant had allegedly resumed occupancy in 2012. Furthermore, the owner was unable to substantiate an actual date the tenant purportedly moved in in 2012 and instead relied on his claim that the prior owner would have the documentation.

The Commissioner, in considering the factors bearing on the equities involved herein, notes that the tenant should not be made to bear the brunt of the owner's choice to not file a rent restoration for over eight years from the time that the owner claimed the tenant had reoccupied the subject apartment.

DHCR has a duty to ensure that its decisions are not inconsistent with the spirit and intent of the rent laws. As the Court in Matter of 305 Realty NY LLC found, it would be "unfair to raise the tenant's rent retroactively" because of the owner's failure to timely file the application for rent restoration. Accordingly, the Commissioner finds that the restoration of rent effective April 1, 2012 is not equitable and proper under the circumstances herein.

Based on the foregoing, the Commissioner finds that the tenant's PAR is granted, thereby modifying the Rent Administrator's order under Docket No. IN210036OR to reflect an effective date of March 1, 2020, the first of the month after the owner applied for the rent restoration and the tenant was served with the owner's rent restoration application.

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

ORDERED, that this petition is granted, and that the Rent Administrator's order, Docket Number IN210036OR, is hereby modified to reflect an effective date of March 1, 2020 in accordance with this Order and Opinion.

ISSUED: AUG 11 2022

Woody Pascal
Deputy Commissioner

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

Right to Court Appeal

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

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There is no other method of appeal.

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

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IN THE MATTER OF THE
ADMINISTRATIVE APPEAL OF :

ADMINISTRATIVE REVIEW
DOCKET NO.: JW410028RO

129 WEST 122, LLC :

RENT ADMINISTRATOR'S
: DOCKET NO.: HN410054OR
(ZE410108S)

PETITIONER

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ORDER AND OPINION DENYING PETITION FOR ADMINISTRATIVE REVIEW

On November 18, 2021, the above-named petitioner-owner filed a petition for administrative review (PAR) against an order issued on November 2, 2021, by the Rent Administrator concerning the housing accommodations known as 129 West 122nd Street, Apartment [redacted], New York, New York, wherein the Administrator denied the owner's rent restoration application as not all the items found not maintained in the initial proceeding had been completely restored during the rent restoration proceeding.

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 modification of the Rent Administrator's order, and contends that the subject building is an SRO (Single Room Occupancy), Class B dwelling, and that none of the rooms or the subject apartment ever had a stove or cooking gas; that there is only one common kitchen with a stove available for use for all tenants, fully operational with gas; that a stove in the subject apartment would be a fire hazard as same would be a few feet away from the bed; that the "Building Services" indicated in the building's registration notes cooking fuel under building, not apartment, services; and that the stove/oven and cooking gas are not base date services.

The tenant responded to the owner's appeal and claimed that there was a stove and a refrigerator previously, and that the tenant had submitted photos below to substantiate the presence of the stove and refrigerator assigned to the subject apartment prior to the sale of the building to

the current owners; and that the general kitchen referenced by the owner was for the use of the tenants in the apartments without a stove and/or refrigerator.

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.

In the initial proceeding under Docket No.: **ZE410108S**, on June 15, 2011, the Rent Administrator issued a rent reduction order based on a Vacate Order issued by the New York City Department of Housing Preservation and Development (HPD), making the premises uninhabitable, reducing the rent to $1.00 per month, effective March 22, 2011.

The Agency's records indicate that on February 13, 2019, the owner commenced the rent restoration proceeding below, under Docket No. **HN410054OR**, which was served on the tenant on February 15, 2019. In response to the owner's restoration claims, in the tenant's submission dated July 16, 2021, the tenant claimed, *inter alia*, that some apartments, his inclusive, had stoves and refrigerators; that it was after the renovation that his apartment did not have a stove/gas line and refrigerator; that only apartments [redacted] and [redacted] did not have a stove/gas line and refrigerator; that the basement stove and refrigerator were restored for the basement tenants, apartments [redacted] and [redacted], and that there were other items in the building, apartment-wide and building-wide for which repairs were necessary before the owner should be granted a rent restoration. The Commissioner notes that the alleged photograph of the subject apartment submitted by the tenant during the Rent Administrator's proceeding, showing a refrigerator with a stove beside it remained unrebutted by the owner, except for the owner's bare claim that none of the rooms or the subject apartment ever had a stove or gas line in the apartment.

Thereafter, the owner's rent restoration application was denied on November 2, 2021, based on an Agency's inspection of September 24, 2020, which confirmed there were outstanding service issues, including the stove and gas issues contested by the owner herein the instant appeal. Nevertheless, the Rent Administrator found a partial restoration of rent in that the $1.00 rent reduction was replaced with a rent reduction to the level in effect prior to the most recent guidelines rent increase lease which commenced before the effective date of the subject Rent Administrator's rent restoration order as the subject apartment had become habitable, but certain services, including the alleged stove and gas line services, were found not maintained at the time of the Agency's inspection, conducted during the underlying proceeding.

After a complete review of the entire record, the Commissioner finds that the owner's petition should be denied. The Commissioner finds that the owner's assertion that "cooking fuel" is listed under "Building Services" and not under "apartment services" and therefore the stove and gas are not required services is unsubstantiated, without merit, and merely self-serving. A review of the Agency's database reveals that for the subject apartment [redacted] the "Apartment Services" for

the initial registration in 1984 includes "stove" and "gas & electric". Accordingly, "stove" and "gas & electric" are services required to be provided by the owner to the subject apartment pursuant to Sections 2520.6(r) and 2523.4 of the Code.

Furthermore, Section 2522.4(d) and (e) of the Code requires an owner to file an application for permission to modify or reduce required services prior to doing so, provided that doing so would not be inconsistent with the Rent Stabilization Law and Code. In this case, the Agency records reveal that the owner has not applied for and has not been granted an application with this Agency to modify or reduce the required stove and gas services. Therefore, a rent reduction is warranted in this case as those services were found not maintained at the time of the Agency inspection on September 24, 2020.

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

The Commissioner notes that the owner may file a fresh rent restoration application and/or an application for modification of services, if the facts warrant.

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

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

ISSUED: SEP 16 2022

WOODY PASCAL
Deputy Commissioner

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JAMAICA, NEW YORK 11433

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IN THE MATTER OF THE ADMINISTRATIVE APPEAL OF

[redacted]

PETITIONER

ADMINISTRATIVE REVIEW DOCKET NO.: KM410039RT

RENT ADMINISTRATOR'S DOCKET NO.: HX410039OR

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ORDER AND OPINION DENYING PETITION FOR ADMINISTRATIVE REVIEW

On January 28, 2022, the above-named Petitioner-tenant filed a Petition for Administrative Review ("PAR") against HX410039OR, an order the Rent Administrator issued on December 24, 2021 (the "order"), concerning the housing accommodation known as 775 Riverside Drive, Apartment [redacted], New York, New York, wherein the Rent Administrator granted the owner's rent restoration application, finding that the Vacate Order #142584 upon which an order was issued reducing rent to $1.00 per month under Docket No. GM410262S, was rescinded and the tenant resumed occupancy of the subject apartment.

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 modification of the Rent Administrator's order, requesting that the rent restoration date should not be before July 3, 2021 when the last repair was made, or alternatively, the restoring of the rent should not be granted until the dumbwaiter is properly sealed. The Petitioner claims, in substance, that as of June 20, 2019, when the owner notified the tenant that the tenant could return to their apartment because the subject apartment was ready for occupancy, various areas were unsafe and hazardous; an inspection by the tenant of the subject apartment in June of 2019 revealed the apartment was uninhabitable due to numerous defects such as a lack of cooking gas; the rescission of the Vacate Order # 142584 pertains to the hazardous condition of the roof, the foundation, the six floor apartments, the common areas, and the structural safety of the subject building, but does not include compliance issues or other violations against the building; the Petitioner disputes the authenticity of the

owner's Acknowledgement and Receipt agreement submitted with their rent restoration application because the document was "forged"; and that on November 6, 2019, the tenant signed the "Actual" Acknowledgement and Receipt, when the tenant accepted the keys to the apartment.

The tenant further claims that the tenant accepted the apartment's keys in spite of the numerous services that needed correction, and that the tenant was unable to stay in the apartment due to damage and inoperable windows. The tenant also claims that they would not want to be seen as having abandoned their apartment without accepting the keys.

The tenant also asserts that it was after an HPD inspection on March 11, 2021 that the owner arranged for the DHCR inspection that was conducted on April 15, 2021, and that at the time of the said inspection, some conditions existed, although the owner subsequently corrected some of the conditions. The tenant further claims that the current outstanding conditions in the apartment are defective floors and an unsealed dumbwaiter.

Furthermore, the Petitioner contends in substance, that the subject apartment's layout and dimensions have been changed resulting in the reduction in size of the apartment with respect to the height, length and width of the bedrooms, the living room, the foyer, and the closets, and would like the apartment restored to the pre-fire dimension and layout; that the damage sustained by the subject apartment is not substantially from the fire, but rather from a gut renovation in preparation for potential conversion of the subject building to condominium apartments; and that the Petitioner-tenant is willing to reach an amicable settlement by way of monthly rent abatement pending the correction of the defects.

The owner in their response to the tenant's appeal argues that the Petitioner raised new facts and evidence that were not part of the original proceeding; that the issues raised by the tenant pertained to various proceedings the tenant was a party to after the tenant took occupancy; that the record establishes that service was restored and all repairs were made at the time of the DHCR inspection; that the tenant's PAR should be denied, and that if the tenant believed there were other service conditions, the tenant should have filed another rent reduction claim; and that the tenant does not dispute that he moved back into the apartment.

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 pursuant to Sections 2522.6, 2522.7, and 2523.4 of the New York City Rent Stabilization Code ("RSC" or the "Code"), the Rent Administrator is authorized to order a rent reduction upon application of a tenant where such tenant was forced to vacate their apartment because it is legally uninhabitable. In such cases, 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'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 resumes occupancy,

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. Furthermore, Policy Statement 90-2 permits the Rent Administrator to rely on an Agency inspection when making a determination.

In the initial rent reduction proceeding under Docket GM410262S, on February 20, 2018, the Rent Administrator established that rent was reduced to $1.00 per month as of January 8, 2019 *based on the date of a fire which caused the tenant to vacate the subject apartment involuntarily.*

Subsequently, on December 5, 2019, the owner filed an application to restore rent based on the restoration of occupancy of the subject apartment on July 24, 2019. The owner's application was accompanied by a letter dated October 10, 2019 from the New York City Department of Housing Preservation and Development ("HPD"), wherein HPD rescinded the Vacate Order #142584 issued for the subject premises on January 26, 2018, pursuant to an inspection conducted on October 7, 2019. The owner also included a copy of an "Acknowledgement and Receipt", purporting to be signed by the tenant, wherein the tenant was provided access to the apartment and agreed to the condition of the subject apartment and received the keys on July 24, 2019.

The Agency records indicate that on December 23, 2019, the tenant was served with the owner's rent restoration application including the supporting documents. On January 13, 2020, the tenant responded to the owner's application rebutting the owner's claims that the subject apartment was restored to habitability and contended that the tenant did not accept keys to return on July 26, 2019 after the tenant walked through the apartment and found defects and conditions that needed to be addressed; that the tenant did not return to occupancy until November 7, 2019; that the tenant received the keys to the subject apartment on November 1, 2019; and the tenant cited conditions in need of repairs in the subject apartment in addition to disputing the owner's assertion that the apartment had been restored to a habitable condition.

Thereafter, in a response dated October 15, 2021, the tenant further asserted that he received keys on November 1, 2019, attaching a signed statement purporting to be between the superintendent and the tenant that is dated November 1, 2019, stating that the subject Petitioner-tenant received the keys to the apartment on November 1, 2019, as well as an "Acknowledgement and Receipt" signed by the tenant stating that the tenant acknowledged that on November 1, 2019 the tenant was provided with access and keys to the apartment, and that the tenant would move back into the apartment on November 7, 2019.

On November 12, 2021, the owner challenged the tenant's rebuttal answer to the rent restoration application and re-submitted the signed statement and "Acknowledgement and Receipt" noted above to corroborate their claim.

In an effort to resolve the dispute regarding the habitability of the subject apartment, the Rent Administrator requested an Agency inspection. A physical inspection of the subject apartment was conducted on April 15, 2021 by the Agency's impartial inspector. According to the inspection report, the tenant and property manager was present for the Agency inspection. The

inspection report reveals that at the time of the Agency inspection, the apartment was found to be in a habitable condition at the time of the inspection.

Thereafter, based on the totality of the evidence in the record, including the tenant and the owner's submissions, the inspection report from the April 15, 2021 inspection, and evidence that the Vacate Order # 142584 was rescinded, the Rent Administrator on December 24, 2021, granted the owner's rent restoration application under Docket No. HX410039OR as evidence revealed that the tenant resumed occupancy, and the subject apartment was restored to habitability.

At the outset, the Commissioner notes that a review of the Rent Administrator's proceeding reveals that the documentation and information provided by the Petitioner-tenant and the owner was properly investigated and considered by the Administrator, and that the Rent Administrator appropriately predicated their decision on such documentation and the Agency's records, including the inspection performed by the impartial inspector.

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 inspection report from April 15, 2021 which confirmed that the subject apartment had been restored to a habitable condition at the time of the Agency inspection, and the evidence that the Vacate Order #142584 pertaining to the hazardous conditions was rescinded. 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 tenant to occupancy. 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 evidence revealed that the tenant received keys to the apartment on November 1, 2019, and that the apartment was restored to a habitable condition.

Additionally, the Commissioner further finds that the service complaints raised by the Petitioner are outside of the scope of the proceedings as the initial rent reduction order under Docket No. GM410262S was establishing the rent at a $1.00 per month due to a fire which caused the tenant to vacate involuntarily. The subject rent restoration proceeding was related to such tenant involuntarily vacating the subject apartment. Furthermore, the tenant in their appeal acknowledges that substantial defects to the apartment did not result from fire damage, but rather from a gut renovation.

The Commissioner therefore notes that, pursuant to Section 2529.6 of the Code, the Commissioner's review of evidence is limited to the evidence or facts in the record below, and the Petitioner is precluded from introducing new evidence on appeal. As such, the new evidence and facts submitted by the Petitioner, including any new service conditions raised on appeal are outside of the Commissioner's scope of review, and therefore, cannot be herein entertained.

The Commissioner advises the tenant to file a fresh services complaint concerning the alleged conditions in the apartment needing repair and/or any reduction in services as these conditions are beyond the scope of the instant proceeding.

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 modification or reversal of the Rent Administrator's decision.

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: SEP 30 2022

Woody Pascal
Deputy Commissioner

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