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.: KR210023RT |
| [redacted] | : | |
| | : | RENT ADMINISTRATOR'S DOCKET NO.: JQ210022OR |
| PETITIONER | : | |

## ORDER AND OPINION DENYING PETITION FOR ADMINISTRATIVE REVIEW

On June 30, 2022, the above-named petitioner-tenant timely re-filed a Petition for Administrative Review ("PAR") against an order the Rent Administrator issued on April 11, 2022 (the "Order"), concerning the housing accommodation known as 10 Westminster Road, [redacted] Brooklyn, NY, wherein the Rent Administrator granted the owner a rent restoration for the subject apartment.

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

In the PAR, the tenant requests that the Order be modified (changed in part), claiming that the Agency inspector on Tuesday, February 22, 2022 did not "enter the apartment due to a child returning home with indications to quarantine per order from the school on Friday, February 18, 2022" and that communicating such to the inspector was "unsuccessful". The tenant further asserts that the owner would solicit a new date for another inspection.

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. Section 2527.5(b) of the Code authorizes the Rent Administrator to request an inspection at any stage during DHCR proceedings, and Section 2523.4(d) of the Code

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 Owner's Application to Restore Rent (RTP-19) with this Agency on May 11, 2021, claiming that the medicine cabinet condition found not maintained in the initial rent reduction order, Docket No. FM210236S, was restored. The Commissioner notes that in the owner's application, page 2, Part B – Tenant's Statement of Consent, the subject tenant signed that portion of the application that states, "I have read the application and agree that the services have been restored." The tenant was served with notice of the owner's application (the "Initial Notice") on June 2, 2021. The Agency records indicate that the tenant did not respond to the Initial Notice.

Thereafter, on February 9, 2022, a Notice of Inspection was mailed to the owner and the tenant. The Notice of Inspection advised the parties that an inspection of the subject apartment would be conducted by a DHCR inspector on February 22, 2022, between 11:00 a.m. and 3:00 p.m. The Notice advised the tenant that the failure to provide access to the inspector, without rescheduling, may result in a determination against the tenant's interests. The Notice also advised the tenant that if he must reschedule, he should notify the inspector no later than two (2) business days in advance by calling the telephone number provided. The Agency records for the matter below contain no records showing that the United States Postal Service (USPS) retuned the Notice of Inspection that was sent to the tenant, therefore, under established principles of law, an article which was mailed to the proper address is presumed to have been received.

On the date of the inspection, the DHCR inspector went to the subject apartment. A review of the inspection report reveals that, upon the inspector's arrival, the tenant claimed that the family members were under quarantine. However, there was no evidence in the record showing that the tenant called the inspector prior to the inspection date/time to inform the inspector that there was a quarantine issue in the premises and that the inspector would not be able to enter the apartment to do the inspection. Furthermore, there was no correspondence received before or after the scheduled inspection from the tenant regarding their inability to keep the Agency inspection. Based on the foregoing details, the Rent Administrator issued an order on April 11, 2022, granting the owner's rent restoration application due to the fact that the tenant did not grant the DHCR inspector access to the subject apartment.

The Commissioner notes the tenant's contention herein that the inspector did not enter the apartment due to quarantine issues and that the tenant's attempts at reaching the inspector were unsuccessful. However, the record of the Rent Administrator's proceeding does not reveal that the tenant requested that the inspection be rescheduled at any time. 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 tenant's claims regarding access were not raised during the Rent Administrator's proceeding, and therefore are beyond the scope of the subject appeal.

Based on the foregoing, the Commissioner finds that the Rent Administrator, in accordance with Agency procedures and Section 2523.4 of the Code, properly granted the owner's rent restoration application after the tenant failed to reschedule or provide access to a DHCR inspector for the inspection that was scheduled for February 22, 2022. The tenant's PAR has not established any basis to modify 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: OCT 5 2022

Woody Pascal
Deputy Commissioner

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

## Right to Court Appeal

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

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

There is no other method of appeal.

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

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IN THE MATTER OF THE
ADMINISTRATIVE APPEAL OF :

ADMINISTRATIVE REVIEW
DOCKET NO.: KT210009RT

[redacted] :

RENT ADMINISTRATOR'S
: DOCKET NO.: KP210025OR
(KM210014S)

PETITIONER

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## ORDER AND OPINION DENYING PETITION FOR ADMINISTRATIVE REVIEW

On August 3, 2022, the above-named petitioner-tenant filed a Petition for Administrative Review (PAR) against an order of the Rent Administrator issued on July 21, 2022, concerning the housing accommodations located at 103 Havemeyer Street, [redacted] Brooklyn, 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 tenant requests a reversal of the Rent Administrator's order, contending that the rent reduction order in the initial proceeding was based on a collapsed ceiling in bedroom #3 and unworkmanlike cracks and stains on the hallway ceiling; that the tenant advised in the proceeding under Docket No. KQ210008RO that the unworkmanlike cracks and stains on the hallway ceiling had not been repaired; that the complaint in the rent restoration order Docket No. KP210025OR concerns a different collapsing ceiling in the subject apartment, bedroom 1, but recorded as bedroom 3 in error by the Agency; that roof leaks and damage to the subject apartment had been ongoing from 2017; and that the owner refuses to perform necessary repairs until the tenant files a complaint.

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

Pursuant to Section 2523.4 of the Rent Stabilization Code (the "Code"), the Rent Administrator is authorized by law to 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.

In the initial proceeding, under Docket No. KM210014S, the Rent Administrator, on March 11, 2022, granted the tenant a rent reduction based on a decrease for the condition of the bedroom 3 ceiling that was found not maintained pursuant to the Agency's inspection of February 2, 2022, wherein the inspector found evidence of collapsed/collapsing ceiling in bedroom 3.

On April 5, 2022, the owner commenced the rent restoration ("OR") proceeding herein below, wherein the owner indicated that the necessary repairs had been performed. The tenant was served with a copy of the owner's rent restoration application on April 15, 2022. The tenant responded to the owner's application on May 16, 2022, agreeing that all conditions in the application as listed by the owner have been restored (the ceiling in bedroom 3), and that the ceiling was "starting to collapse in another bedroom from roof leaks."

The Agency records show that during the OR proceeding, the Rent Administrator requested another Agency inspection. The inspector's notes indicate that on May 20, 2022, the Agency's inspection scheduled for May 23, 2022 was canceled by the tenant who called and informed the Agency's inspector that all the repairs had been made.

The Rent Administrator, thereafter on July 21, 2022, granted the owner a rent restoration as the tenant advised the Agency inspector that all repairs were made.

Foremost, the Commissioner is of the opinion that the tenant's allegation that the issue in the rent restoration order Docket No. KP210025OR concerned bedroom 1, a different collapsing ceiling in the subject apartment, but allegedly recorded in error as bedroom 3 by the Agency, should be given a res judicata collateral estoppel effect as the tenant was a party to the underlying rent reduction and PAR proceeding (Docket Nos. KM210014S and KQ210008RO). The Commissioner notes that the tenant took the rent reduction in the initial proceeding under Docket No. KM210014S, the basis for which was the decrease found in the ceiling service in bedroom 3, and the tenant did not file a PAR or request a reconsideration of the Rent Administrator's initial order within the required timeframe, thus the Rent Administrator's order becoming a final order (the Commissioner notes that the rent reduction granted by Docket No. KM210014S was affirmed on appeal under Docket No. KQ210008RO).

Moreover, the Commissioner notes that the tenant has not contested making the phone call to the Agency's inspector on May 20, 2022, requesting a cancelation of the inspection scheduled for May 23, 2022, informing the inspector that the item of rent reduction had been restored.

Based on the foregoing, the Commissioner finds that there is no merit to the tenant's argument in the instant PAR proceeding, which in effect was a mere collateral attack of the Rent

Administrator's initial order only after the owner's rent restoration application herein below was granted. Accordingly, the Commissioner further finds that the tenant has failed to establish any basis to disturb the Rent Administrator's rent restoration order.

With respect to the tenant's concerns regarding other item(s) which were not before the Rent Administrator in the underlying rent restoration proceeding, the Commissioner notes that those items are beyond the scope of review of this administrative appeal and may not be addressed herein as the Commissioner's scope of review is limited to a review of the facts or evidence presented to the Rent Administrator below, as raised in the petition.

The Commissioner notes that the tenant is not precluded from filing a fresh complaint regarding any item(s) of complaint that the tenant may have, 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:** OCT 6 2022

**WOODY PASCAL**
**Deputy Commissioner**

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

## Right to Court Appeal

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There is no other method of appeal.

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**JAMAICA, NEW YORK, 11433**

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| **IN THE MATTER OF THE ADMINISTRATIVE APPEAL OF:** | : | |
| [redacted] | : | **ADMINISTRATIVE REVIEW DOCKET NO.: KT210026RT** |
| (TENANT) | : | |
| | : | **RENT ADMINISTRATOR'S DOCKET NO.: KO210061OR** |
| **PETITIONER** | : | |

## ORDER AND OPINION DENYING PETITION FOR ADMINISTRATIVE REVIEW

On August 22, 2022, the above-named petitioner-tenant filed a Petition for Administrative Review ("PAR") against KO210061OR, the order the Rent Administrator issued on August 11, 2022 (the "Order"), concerning the housing accommodation known as 253 Bushwick Avenue, Apt. [redacted] Brooklyn, NY 11206, wherein the Rent Administrator issued an order denying the owner's application to restore rent for the subject apartment.

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 "The termite or flying ant infestation remains active with major outbreaks on July 21, 2022 and August 5, 2022." The tenant enclosed three black and white photographs purporting to display ants and other vermin on a wall and two different windowsills in the apartment. These photographs seem similar to the photographs that are in the Rent Administrator's case file for the matter below, also provided by the tenant.

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

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

In the proceeding below, the owner filed an application to restore rent for the subject apartment with this Agency alleging the restoration of services for vermin and floor leveling in the kitchen (such services were previously found not maintained and a rent reduction was granted on July 15, 2021 under Docket No. JO210017S). The tenant was served with notice of the owner's application (the "Initial Notice") on March 21, 2022 and the tenant responded on April 12, 2022, claiming that no work had been done to correct the sloping of the floors; that the property manager had not discussed this work with the tenant; that there was a new outbreak of the insect infestation on March 16, 2022, two days "after" the landlord says the infestation was resolved; and that the infestation was treated superficially on March 17, however there was no evidence or reason to believe that it had actually been resolved at the source.

After the foregoing, an inspection of the premises was conducted on June 6, 2022. During the inspection, the impartial DHCR inspector observed that the kitchen floor is broken/sinking/sloping throughout. The inspector noted that a trip hazard is present. The inspector also noted that there was no evidence of vermin (termites) at the time of inspection. Based on these details, the Rent Administrator issued an order denying the owner's rent restoration application on August 11, 2022, finding that the floor leveling was not restored, but that vermin services were restored.

The Commissioner notes the tenant's contention herein that the termite or flying ant infestation remains active, with major outbreaks on July 21, 2022 and August 5, 2022. However, these unsubstantiated claims by the tenant do not warrant a modification or reversal of the Rent Administrator's order. As noted, the DHCR inspector inspected the subject premises on June 6, 2022 and observed that there was no evidence of vermin (termites) in the apartment.

Based on the foregoing, the Commissioner finds that the Rent Administrator correctly denied the owner's rent restoration application, while also finding that the vermin services were restored, based on the observations of the Agency's impartial inspector. The Rent Administrator, pursuant to Policy Statement 90-2 and longstanding policy and procedure, reasonably and properly relied on the DHCR inspection report when making her determination. The Commissioner finds that this tenant's PAR has not established any basis to modify or revoke the Rent Administrator's determination that was based on the observations of the Agency's impartial Inspector.

The tenant is advised that it may file a fresh 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:

OCT 14 2022

Woody Pascal
Deputy Commissioner

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

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There is no other method of appeal.

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**JAMAICA, NEW YORK, 11433**

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| **IN THE MATTER OF THE ADMINISTRATIVE APPEAL OF:** | : | **ADMINISTRATIVE REVIEW DOCKET NO.: KR610006RO** |
| ELG 1275 LLC, | : | **RENT ADMINISTRATOR'S DOCKET NO.: JS610071OR** |
| **PETITIONER** | : | |

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

On June 10, 2022, the above-named petitioner-owner filed a Petition for Administrative Review ("PAR") against an order the Rent Administrator issued on May 6, 2022 (the "Order"), concerning the housing accommodation known as 1307 Edward L Grant Hwy, Bronx, NY, wherein the Rent Administrator granted the tenant's application for a rent reduction.

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

On December 10, 2019, various tenants filed an application for a rent reduction based upon decreased building-wide services which the Rent Administrator granted on March 1, 2021, under Docket Number HX610016B, after the record revealed: (1) inadequate janitorial services in the lobby, 1st, 3rd, 4th, 5th and 6th floor hallways, and on the stairs between the lobby and 1st floor in staircase A; (2) evidence of leaks/water damage to the roof skylight over staircase B as water was dripping on the stairs and top floor; and (3) damage to the bulkhead. All other services complained of were found maintained or addressed under Docket No. HX610017B.

On April 5, 2021, the petitioner-owner filed a PAR, which was granted in part on August 26, 2021, under Docket No. JP610005RO, with respect to the removal of an apartment from the rent reduction order based on the tenant(s) failure to sign the rent reduction application. The owner filed on application to restore the rent on July 26, 2021, which was denied on May 6, 2022, under Docket No. JS610071OR, following an Agency inspection conducted on December 1, 2021, which revealed that janitorial services with respect to the lobby and stairs were restored; however, janitorial services on the 3rd, 4th and 6th floors was inadequate as there was furniture/garbage and/or construction debris present and the bulkhead in staircases A&B had

peeling paint and/or water damage. However, there were no active leaks to the roof skylight or dripping water on the stairs and top floor.

In the PAR, the petitioner-owner seeks a reversal of the Rent Administrator's order asserting that the conditions found on the 3rd, 4th and 6th floors were indicative of items discarded by tenants and work that was going on in the building at the time of the inspection. The owner further asserted that the conditions regarding the bulkhead in staircases A & B and peeling paint in staircase B are outside the ambit of the original complaint as the original condition under Docket No. HX610016B only cited evidence of leaks and/or water damage to the roof skylight over staircase B.

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

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

Here, the record supports, and the owner does not deny, that furniture/garbage and/or construction debris was present on the 3rd, 4th and 6th floors. It is irrelevant whether the items were placed there by tenants or as a result of construction as the presence of same warrants a reduction in janitorial services.

With respect to the bulkhead, the conditions found not maintained under Docket No. HX610016B, included "damage to the bulkhead." The services found not restored under Docket No. JS610071OR includes damage to the bulkhead in "staircases A and B." Evidence in the record supports damage, including peeling paint, to the bulkhead in Staircase B. However, as it appears that the services not maintained under Docket No. JS610071OR was specific to the bulkhead in staircase B, the bulkhead in Staircase A should not have been included as a basis for denying the petitioner-owner's rent restoration application.

Based on the foregoing, the Commissioner finds that the petitioner's PAR is granted, in part, to the extent of removing the condition of the bulkhead in Staircase A as a basis for denying the owner's rent reduction application under Docket No. JS610071OR.

The Commissioner notes that the petitioner-owner may file an application to restore the rent, if the facts so warrant.

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

**ORDERED**, the petition is granted, in part, and the Rent Administrator's order under Docket No. JS610071OR is amended as indicated and otherwise affirmed.

ISSUED:

OCT 19 2022

Woody Pascal
Deputy Commissioner

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

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**JAMAICA, NEW YORK, 11433**

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| **IN THE MATTER OF THE ADMINISTRATIVE APPEAL OF:** | : | **ADMINISTRATIVE REVIEW** |
| 102-30 67TH AVENUE LLC | : | **DOCKET NO.: KR110008RO** |
| | : | **RENT ADMINISTRATOR'S** |
| | : | **DOCKET NO.: JU110042OR** |
| **PETITIONER** | : | |

ORDER AND OPINION DENYING PETITION FOR ADMINISTRATIVE REVIEW

On June 15, 2022, the above-named petitioner-owner filed a Petition for Administrative Review ("PAR") challenging JU110042OR, an order the Rent Administrator issued on May 12, 2022 (the "Order"), concerning the housing accommodation known as 102-30 67th Avenue, Apartment [redacted], Forest Hills, New York, wherein the Rent Administrator denied the owner's application to restore the rent based on an inspection report from the inspection conducted at the subject apartment which confirmed that the kitchen cabinet condition and the living room thermostat cited in the order reducing rent under Docket No. HQ110159S, were not completely 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 requests a reversal of the Rent Administrator's order and contends that the Rent Administrator's order contradicts the findings of a proceeding conducted by the Agency's Compliance Unit ("CU") which determined that the conditions cited in the rent reduction order were repaired and that the rent was to be restored (Docket No. JP110001NC); that the CU scheduled a "No Access" inspection which was conducted on August 30, 2021, wherein during the inspection, the owner completed repairs while the inspector was present; that it was an abuse of discretion, arbitrary, and capricious for the Rent Administrator to issue the challenged order, relying on an inspection that took place six months after the conditions were found to have been corrected during the No Access inspection; that the "new conditions discovered during the improper second inspection cannot be utilized to deny" the owner's rent restoration application; and that the owner only gained access to the apartment to make repairs after the CU scheduled the No Access inspection on August 30, 2021, and that the conditions were repaired when the DHCR's inspector was present. The owner cites to DHCR

Administrative Appeal Docket Nos. QK230036RO, CG210077RO, and UJ410021RO to support their claims. The Petitioner-owner submits along with their petition a copy of the underlying subject order, Docket No. JU110042OR, and the Notice of Compliance, Docket No. JP110001NC, dated September 24, 2021.

The tenant submitted a response to the owner's petition, objecting to the owner's claims on appeal. The tenant rebuts the owner's claim that the tenant refused to grant the owner access for repairs and avers that the complaints under Docket No HQ110159S were for kitchen cabinets and thermostat, and that after the owner filed the subject rent restoration application, inspections followed which confirmed these conditions were not maintained. The tenant annexed correspondence between the owner and the tenant purporting to show the parties' negotiation efforts to schedule and resolve access and repair issues.

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.

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 conducted by the Agency's impartial inspector who is not a party to the proceeding. Furthermore, Section 2527.5 (b) provides that the Agency may make investigations of the facts and conduct inspections at any stage of a DHCR proceeding and the New York Courts have consistently held that the Rent Administrator has broad discretion to determine if inspection is necessary and at what stage of the proceeding to request an inspection.

A review of the record shows that rent was previously reduced by order issued on February 28, 2020 under Docket No. HQ110159S based on the owner's failure to maintain the kitchen cabinets and the living room thermostat. By correspondence dated November 30, 2021, the owner, through counsel, requested that rent for the subject apartment be restored based on a "No Access" inspection scheduled by the Agency's Compliance Unit on August 30, 2021, which found the conditions cited in the rent reduction order Docket No. HQ110159S repaired and advised that an order restoring rent would be issued.

The record reveals that on August 30, 2021, the Agency conducted an inspection of the subject premises pursuant to the Compliance Unit proceeding, Docket No. JP110001NC. The Agency inspection report revealed that the time of the inspection on August 30, 2021, repairs to the cabinet doors were completed resulting in the cabinet doors being able to close, however, the cabinets had a "worn finish" and were "dirty and stained," and that it could not be determined if the thermostat was functioning as the heating system was turned off for the season. The Rent Administrator thus, during the subject rent restoration proceeding, Docket No. JU110042OR, requested an Agency inspection for the purpose of determining whether the thermostat was being

maintained as the Agency was unable to do so during the August 30, 2021 inspection. On February 11, 2022, the Agency inspection was performed, and at the time of inspection, the Agency's impartial inspector found the following: the thermostat in the living room produced the same low-level heat on high or low; possible defective knob.

Based on a complete review of the record, including the findings of the Agency inspections conducted on August 30, 2021 and February 11, 2022, the Rent Administrator, on May 12, 2022, denied the owner's application to restore the rent under Docket No. JU110042OR, finding that the kitchen cabinet condition (lower cabinet finish is worn) and the living room thermostat not repaired.

The Commissioner finds the owner's contentions do not set forth a basis to revoke the Rent Administrator's order in this case. The Rent Administrator properly relied on the independent Agency inspectors' findings that the lower kitchen cabinet finish was worn, and that the thermostat in the living room produced the same low-level heat on high or low at the time of the inspections.

The Commissioner finds that the fact that the Rent Administrator conducted a reinspection six months after the "No Access" inspection did not prejudice the owner as the owner claims. The Commissioner notes that it is not uncommon for the Rent Administrator to request another inspection, prior to issuance of an order, especially where the previous inspection found part of the items of complaint decreased during an initial inspection, primarily to ensure that items found not maintained, which may have been repaired during the passage of time, will be appropriately designated as such in the Rent Administrator's order; or in the event when an item was not inspected during the previous inspection. In the instant case, the Commissioner finds that a review of the record reveals that the owner was a party to the rent restoration proceeding, and in fact submitted a letter in support of their claim that the rent should be restored, advising the Rent Administrator of the Notice of Compliance under Docket No. JP110001NC, and therefore was not prejudiced by the subsequent inspection as the owner claims.

As noted above, the record reveals that during the initial inspection on August 30, 2021, the inspector noted that the kitchen cabinets had a worn finish, although the cabinets were repaired so that they could properly close at the time of the inspection. Secondly, the inspector on August 30, 2021 further reported that the thermostat could not be inspected because the heating system was turned off, which necessitated a reinspection during the underlying rent restoration proceeding to determine if the thermostat was defective as previously found under the rent reduction order, Docket No. HQ110159S. See Section 2527.5 (b) of the RSC which provides that the Rent Administrator may order an inspection at any stage of the DHCR proceeding and the courts have consistently upheld same.

Based on the findings of the Agency inspections conducted on August 30, 2021 and February 11, 2022, as well as a review of the same conditions found originally not maintained under the subject rent reduction order, Docket No. HQ110159S, the Commissioner finds that the Compliance Unit's proceeding, Docket No. JP110001NC, is not dispositive in this case. The

original rent reduction order, Docket No. HQ110159S, reduced the subject tenant's rent based upon the findings that there were unworkmanlike repairs to the kitchen cabinets as well as for the mismatching "finish" of the cabinets. A review of the inspection report and time-dated photographs under Docket No. HQ110159S reveals the same set of cabinets that were inspected on August 30, 2021. According to the photographs and inspection report from August 30, 2021, the finish of the bottom cabinets was not repaired, and such finish was not repaired at the time of the Agency's No Access inspection on August 30, 2021. The Commissioner notes that on August 30, 2021, during the No Access inspection, the cabinets were repaired so that they could close as indicated in the Notice of Compliance under Docket No. JP110001NC. However, as noted, the cabinet's finish was not repaired as is required under the original rent reduction order, Docket No. HQ110159S.

Furthermore, the Commissioner finds that the thermostat was found not maintained at the time of the inspection on February 11, 2022, and therefore a rent restoration was not warranted at the time of the Rent Administrator's order on May 12, 2022.

The Commissioner further finds unsubstantiated, the Petitioner-owner's claim that the February 11, 2022 inspection findings are new conditions that evolved after the initial inspection was conducted as a review of the record in totality reveals that the conditions mirror each other.

The Commissioner notes that the Matter of Fairfield Towers Condominium, Administrative Appeal Docket No. QK230036RO, Matter of Kingswood Management, Corp., Administrative Appeal Docket No. CG210077RO, and Matter of Kimberly Mortimer, Administrative Appeal Docket No. UJ410021RO, cited by the owner are not applicable herein. Firstly, the Administrative Docket No. QK230036RO is distinguishable to the extent that in QK230036RO, the Commissioner granted the owner's rent restoration application, finding that there were new conditions occurring after the items had already been found restored under a non-compliance proceeding, which is not the case herein as there are no new conditions cited in the subject case; secondly, Docket No. CG210077RO pertained to overcharges and a previously established lawful stabilized rent, and lastly, Docket No. UJ410021RO, was regarding a prior claim of high income rent deregulation and the setting of the legal rent.

Based on the foregoing, the Commissioner finds that the Rent Administrator's decision is not an abuse of discretion, arbitrary and capricious, and the owner's PAR has not established any basis to modify or revoke the Rent Administrator's determination. The Agency inspections revealed that the same conditions underlying the rent reduction order, specifically the mismatching and worn finish of the kitchen cabinets and the defective thermostat, were not repaired in order to properly grant a restoration of rent pursuant to Section 2523.4 of the Code.

The owner is advised that it may file a fresh "Owner's Application to Restore Rent," following the procedure for a No Access inspection provided for in Section 2523.4(d)(2), if the facts so warrant.

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

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

ISSUED: OCT 28 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: 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@hcr.ny.gov. Upon receipt of the complete filings, the receipt of such documents will be acknowledged by email. Only after such acknowledgement of receipt of such documents will the service by email be deemed good service on New York State Division of Housing and Community Renewal (DHCR). DHCR is not the agent for service for any other entity of the State of New York or any third party. In addition, the Attorney General must be served at 28 Liberty Street, 18th Floor, New York, NY 10005. Since Article 78 proceedings take place in the Supreme Court, it is advisable that you consult legal counsel.

There is no other method of appeal.

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

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**IN THE MATTER OF THE ADMINISTRATIVE APPEAL OF** :

**ADMINISTRATIVE REVIEW**
**DOCKET NO.: KT610028RT**

[redacted] :

**RENT ADMINISTRATOR'S**
: **DOCKET NO.: KN610094OR**
**(JU610005B)**

**PETITIONER**

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**ORDER AND OPINION DENYING PETITION FOR ADMINISTRATIVE REVIEW**

On August 29, 2022, the above-named petitioner-tenant filed a Petition for Administrative Review (PAR) against an order of the Rent Administrator issued on August 3, 2022, concerning the housing accommodations located at 1450 Taylor 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 modification of the Rent Administrator's order, arguing, essentially, that: on the owner's application to restore rent, the part B, Tenant's Statement of Consent, a portion requiring the tenant's signature was not signed by the tenant; while the Agency's inspection of May 18, 2022 indicated service restoration based on which the Administrator granted the owner a rent restoration, the Commissioner denied the owner's PAR Docket No. KN610015RO on May 19, 2022, affirming the Rent Administrator's initial order Docket No. JU610005B; janitorial service was not restored, and is still not properly provided, and; the order needs to be modified.

The tenant contends further that before the owner could be granted a rent restoration, the owner should have the property manager meet with the tenant to hear the tenant's suggestion to keep the building clean; and that the tenant would be canceling the proceeding under Docket No.

KR610032B, a complaint subsequently commenced by the tenant after the proceeding herein below was decided. The tenant submitted photographs to support the contention of inadequate janitorial services.

The owner, through counsel, opposed the tenant's petition.

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

Pursuant to Section 2523.4 of the Rent Stabilization Code (the "Code"), the Rent Administrator is authorized by law to 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.

The Commissioner notes that in the initial proceeding, pursuant to the tenant's complaint under Docket No. JU610005B, on February 1, 2022, the Rent Administrator granted the tenant a rent reduction based on inadequate building-wide janitorial services in the subject premises.

On February 28, 2022, 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 tenant was served with a copy of the owner's rent restoration application on March 7, 2022.

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.

During said rent restoration proceeding, the Rent Administrator had requested an inspection of the subject premises. The Commissioner notes that the outstanding service (janitorial service) was found maintained by the Agency's inspector on May 18, 2022.

Preliminarily, concerning the tenant's contention that the Tenant's Statement of Consent portion of the owner's rent restoration application was not signed by the tenant, the Commissioner notes that the owner's claim of service restoration was borne out by the Agency's impartial inspector who is not a party to the proceeding. Thus, the Commissioner finds that based on the totality of the record before the Agency, building-wide janitorial services, the outstanding service for which a rent reduction was granted in the initial proceeding under Docket No. JU610005B, was found maintained prior to the issuance of the Rent Administrator's rent restoration order, warranting a rent restoration.

Concerning the tenant's comment that the Commissioner denied the owner's PAR Docket No. KN610015RO on May 19, 2022 and granted a rent restoration thereafter, the Commissioner notes that said finding is not relevant to the rent restoration proceeding, as said PAR was against the initial rent reduction order, and that since a diminution in janitorial services was confirmed by the Agency in the initial rent reduction proceeding, a denial of the owner's PAR thereto was proper.

The Commissioner notes, regarding the indication of the tenant's willingness to work with the owner and/or property manager and to withdraw the service complaint which the tenant subsequently filed under Docket No. KR610032B, that the Agency favors amicable resolution of disputes between parties. However, the tenant is not precluded from filing a fresh complaint, if the facts warrant.

The Commissioner notes that the evidence (photographs) which the tenant submitted in the instant proceeding are deemed to be beyond the scope of the Commissioner review as 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 photographs cannot be addressed herein. Nevertheless, the Commissioner notes that at the time of the Agency inspection on May 18, 2022, the janitorial services were found maintained, and therefore a rent restoration was warranted in this case.

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.

**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:** OCT 28 2022

**WOODY PASCAL**
**Deputy Commissioner**

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

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Note: 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@hcr.ny.gov. 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**
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**GERTZ PLAZA**
**92-31 UNION HALL STREET**
**JAMAICA, NEW YORK 11433**

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**IN THE MATTER OF THE ADMINISTRATIVE APPEAL OF**

[redacted]

**PETITIONER**

**ADMINISTRATIVE REVIEW DOCKET NO.:** KU420004RT

**RENT ADMINISTRATOR'S DOCKET NO.:** KR420073OR

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## ORDER AND OPINION DENYING PETITION FOR ADMINISTRATIVE REVIEW

On September 6, 2022, the above-named petitioner-tenant filed a Petition for Administrative Review ("PAR") challenging an order of the Rent Administrator (the "order"), concerning the housing accommodation known as 600 West 187th Street, [redacted] New York, New York, wherein the Rent Administrator granted the owner's rent restoration application after a review of the records of the New York City Department of Housing Preservation and Development ("HPD") did not reveal an outstanding violation for inadequate heat service to the subject apartment, [redacted]

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 requests a reversal of the Rent Administrator's order averring inter alia, that the Rent Administrator's order contains some flaws as it cannot be currently confirmed that the owner actually restored the service. The Petitioner-tenant claims that the owner has not provided heat since the end of the heat season (May 31, 2022), and that the HPD inspection that led to the dismissal of the heat violations was conducted at the end of heat season in July. The tenant avers that it is unfair that the Agency processed the owner's rent restoration application within one month of filing, but the tenant's rent reduction application was granted almost three months after the tenant filed, and the said reduction was not accorded a retroactive effect. Lastly, the Petitioner requests that the rent be restored prospectively during the 2022-2023 heating season.

On September 26, 2022, the owner objected to the tenant's PAR, claiming that the heating system is working adequately and that they have complied with HPD.

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

Pursuant to Section 2202.16 of the New York City Rent and Eviction Regulations ("RER" or the "Regulations"), DHCR is authorized to order a rent reduction, upon application by a tenant, where it is found that an owner has failed to maintain required or essential services. However, if there is a finding that services are not maintained and an order reducing rent is issued, DHCR will subsequently issue an order restoring the rent after the required services specified in the rent reduction order have been restored.

At the outset, the Commissioner notes that the challenged Rent Administrator's order was amended by a subsequent "Amended Order" dated September 9, 2022, wherein the Rent Administrator added the effective date of October 1, 2022 for the rent restoration which was omitted in the initial order; and modified the previous issue date of September 1, 2009 to September 9, 2022. However, all other parts of the said order remain unchanged. The Commissioner further notes that the Rent Administrator's "Amended Order" was served on the subject tenant on September 9, 2022.

A review of the Agency records reveals that on February 16, 2022, the tenant commenced the initial services proceeding by the filing of a complaint, alleging that the owner failed to provide adequate heat to the subject apartment. After consideration of all the evidence in the record, including a review of the HPD records, the Rent Administrator found that there were inadequate heat violations, warranting a rent reduction of the tenant's maximum legal collectible rent.

On June 27, 2022, the owner submitted an application to restore the rent and asserted that heat and hot water had been restored; and that the violations for heat and hot water had been certified and removed from the HPD. The owner submitted along with the owner's rent restoration application a copy of the HPD "Open Violations" list. The tenant was afforded an opportunity to respond to the owner's application by service of the application on the tenant on July 26, 2022. The tenant submitted an answer to the owner's rent restoration application on August 8, 2022 and opposed the restoration. The tenant claimed that because heat season already ended, there was no way to ascertain if heat had been restored, as the inspection was conducted after the heat season.

The record indicates that in accordance with the DHCR procedure for heat complaints and/or restoration applications, the Rent Administrator reviewed the HPD records for heat violations for the subject apartment. The HPD records did not reveal any outstanding violations for heat to the subject apartment, [redacted] Accordingly, the Rent Administrator granted the owner's rent restoration application under Docket No. KR420073OR in accordance with the Agency's principles and procedures.

The Commissioner notes the Petitioner's contention that the Rent Administrator's order was faulty because the HPD inspection, which was the sole reason the heat violations were removed,

was conducted in June after the heat season was over. However, the Commissioner finds that there is no basis to disturb the Rent Administrator's order as a careful review of the Division's proceeding discloses that the Rent Administrator, in accordance with Agency procedure, properly relied on the evidence in the HPD record which showed no outstanding violations for heat in the subject apartment. Furthermore, the tenant's argument regarding the timing of the HPD inspection does not refute the finding of the Rent Administrator that "[a] review of the records of the New York City Department of Housing Preservation and Development reveals no outstanding violations for inadequate [h]eat service to the subject apartment [redacted]".

Regarding the tenant's contention that the rent restoration should be postponed for the next heat season, the Commissioner finds this Petitioner's argument unpersuasive. The Commissioner notes that the processing of an administrative matter is based on facts and/or issues presented at the time the case is being processed and may not be based on a future event, that may or may not happen. Moreover, the administrative process is not open-ended, and as such, cannot be held in abeyance. It is important to note that the tenant is not precluded from initiating a fresh complaint for lack of heat with HPD and/or this Agency at that time.

Furthermore, the Commissioner notes that the Rent Administrator properly established the effective date of the rent restoration to be October 1, 2022 under the circumstances herein.

Based on the foregoing, the Commissioner finds that the Rent Administrator conducted the underlying rent restoration proceeding in accordance with established law, Agency practice and principles of due process, and that the Rent Administrator properly concluded that a rent restoration was warranted, and properly granted the owner's rent restoration application.

The Commissioner notes that the tenant may file a new rent reduction application if the facts so warrant.

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

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

ISSUED: NOV 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

## Right to Court Appeal

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There is no other method of appeal.

STATE OF NEW YORK
DIVISION OF HOUSING AND COMMUNITY RENEWAL
OFFICE OF RENT ADMINISTRATION
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JAMAICA, NEW YORK 11433

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| IN THE MATTER OF THE ADMINISTRATIVE APPEAL OF | ADMINISTRATIVE REVIEW DOCKET NO.: KQ210007RO |
| 5508-95 LINDEN BLVD LLC | |
| PETITIONER | RENT ADMINISTRATOR'S DOCKET NO.: JM210062OR |

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## ORDER AND OPINION DENYING PETITION FOR ADMINISTRATIVE REVIEW

On May 5, 2022, the above-named petitioner-owner filed a Petition for Administrative Review ("PAR") against an order the Rent Administrator issued on March 31, 2022 (the "order"), concerning the housing accommodation known as 95 Linden Blvd, Apt [redacted] Brooklyn, New York wherein the Rent Administrator denied the owner's rent restoration application finding the application was premature as the November 14, 2018 New York City Department of Housing Preservation and Development ("HPD") Vacate Order #146247 remained on the record with HPD.

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 reversal of the Rent Administrator's order contending the order is erroneous and tainted by irregularity in a vital matter. The owner claims that the subject apartment was restored to habitability in February 2020, and that the tenant resumed occupancy "several months later." The owner's counsel, in substance, asserts that their office submitted the owner's rent restoration application which had been signed by the tenant and which included proof, to wit, copies of a February 26, 2020 HPD letter and a HPD Vacant Building Survey/Habitability Report to show HPD had determined that the subject apartment was habitable. The owner's counsel denied their office received a Request for Additional Information from the Rent Administrator or that it received the tenant's response to

the Initial Notice. The owner cites to New York State caselaw[1] to support its claims that where an administrative agency fails to consider the full record or misapprehends a material fact, a reversal, remand or reconsideration is warranted.

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 New York City Rent Stabilization Code ("RSC" or "the Code"), where a hazardous condition causes a tenant to vacate their apartment, following a complaint of decreased services, the DHCR is empowered, pursuant to Section 2522.6 of the Code, to issue an order reducing a tenant's rent to a nominal amount until the landlord restores the premises to a habitable condition. When a tenant is forced to vacate an apartment because it is legally inhabitable, the 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.

On November 5, 2018, the tenant commenced the initial proceeding by the filing of a rent reduction application regarding fire damage to the subject apartment which occurred on October 31, 2018, causing the subject apartment to be uninhabitable. By order dated December 26, 2018 under Docket No. GW210110S, the Rent Administrator ordered that, effective October 31, 2018, the legal regulated rent was reduced to $1.00 per month.

Subsequently, on January 15, 2021, the owner filed the underlying rent restoration application, assigned Docket No. JM210062OR, in which the owner reported that the rent was previously reduced to $1.00 per month pursuant to Docket No. GW210110S issued on December 26, 2018 and that the tenant had been restored to occupancy as of June 27, 2020. The tenant signed the application in the space provided indicating she was the tenant and that she agreed that the services were restored. On February 5, 2021, the tenant was served with a copy of the owner's rent restoration application. On February 26, 2021, the tenant submitted a response wherein the tenant raised concerns: 1) with the service of heat in the "renovated" subject apartment; 2) rent overcharge issues concerning the rent being charged after the December 2018 order; and 3) prior mold conditions in the apartment.

According to the record, the Rent Administrator, on August 27, 2021 served the owner with a Request for Additional Information/Evidence wherein the Administrator reported that the owner had stated the subject apartment was restored for occupancy on June 27, 2020 and that a review of HPD records indicated that Vacate Order #146247, effective November 14, 2018, was still active. The Rent Administrator requested the following information: 1) documentation showing the Vacate Order was rescinded for the subject apartment; 2) when did the tenant re-occupy the apartment; and 3) if the tenant resumed paying the Legal Regulated Rent, to specify the date the tenant started paying the Legal Regulated Rent.

[1] Brower v. New York City Dept. of Educ., 38 Misc.3d 291, 293 (Sup. Ct. N.Y. Co. 2012); Tager v. Comm'snr of Dept. of Rent & Hous. Maintenance, Off. Of Rent Control, City of N.Y., 66 Misc.2d 452, 454 (Sup. Ct. N.Y. Co. 1971); & Popik v. New York State Div. of Hous. & Community Renewal, 225 A.D.2d 334 (1st Dep't 1996).

A review of the Agency record reveals that the owner did not submit a response to the Rent Administrator's August 27, 2021 Request for Additional Information/Evidence.

Based on the totality of the record, on March 31, 2022, the Rent Administrator issued an order denying the owner's application as premature as HPD records revealed that Vacate Order #146247 was still active.

Foremost, the Commissioner rejects the owner's argument that the Rent Administrator's order is erroneous and tainted by irregularity in a vital matter. The record below establishes that the Rent Administrator properly took into account the entire record which included information from HPD's database. The Commissioner finds the owner's assertion that they filed along with their rent restoration application copies of the February 26, 2020 HPD rescission letter and the corresponding HPD inspection report to be unsupported by the record and is self-serving; there is no record that the owner submitted such HPD letter or report during the Rent Administrator's proceeding, including at the time of the owner's application. Here the record revealed that Vacate Order #146247 was active and had not been rescinded by HPD at the time of the Rent Administrator's order, therefore warranting the denial of the owner's application as premature. Moreover, as for the cases cited by the owner to support the claim that where an administrative agency fails to consider the full record or misapprehends a material fact, a reversal, remand or reconsideration is warranted, the Commissioner finds this claim and the cited cases to be inapplicable in this matter as a review of the Rent Administrator's proceeding reveals that the documentation and information regarding same were fully investigated and that the Rent Administrator properly predicated her order on such documentation contained within the HPD and this Agency's records.

With regard to the contention that the owner's counsel did not receive the Rent Administrator's Request for Additional Information/Evidence or the tenant's response to the Initial Notice, this Commissioner finds this claim unavailing as the Administrator properly served the Request for Additional Information/Evidence on the owner as per the information contained in the owner's filed rent restoration application as follows: 5508-95 Linden Blvd Brooklyn LLC c/o Akelius Real Estate Mgmt LLC, [redacted] The Commissioner notes that the served Request for Additional Information/Evidence was not returned by the United States Post Office to DHCR as undeliverable. Under established principles of law, an article which was mailed to the proper address is presumed to have been received. Additionally, the Commissioner further notes that the owner's counsel in their PAR did not claim they submitted a letter of representation which would have accompanied the owner's rent restoration application to authorize their representation of the owner in the underlying proceeding, nor was such letter of representation found contained within the Agency record. Moreover, the Rent Administrator did not rely upon the tenant's submission to make her determination. Accordingly, the Commissioner finds the owner's contentions to be meritless and self-serving.

In view of the record herein, 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. The Commissioner finds there is no basis to modify or reverse the Rent Administrator's determination.

The owner is advised to file a fresh rent restoration application, if the facts so warrant.

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

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

ISSUED: NOV 10 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.

There is no other method of appeal.

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

----------X

IN THE MATTER OF THE
ADMINISTRATIVE APPEAL OF :

ADMINISTRATIVE REVIEW
DOCKET NO.: KQ430039RO

Riverside TIC, LLC :

RENT ADMINISTRATOR'S
: DOCKET NO.: JO430043OR
(GV430017B)

PETITIONER

---------- X

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

On May 31, 2022, the above-named petitioner-owner filed a Petition for Administrative Review (PAR) against an order of the Rent Administrator issued on April 27, 2022, concerning the housing accommodations located at 684 Riverside Drive, New York, NY, wherein the Administrator denied 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 owner requests that the Rent Administrator's order be modified in part, to find that the intercom service and the lighting service near the fire escapes at the back of the subject premises had been restored at the time of the Administrator's order; and that the Administrator's finding of "not restored" for the intercom service and the lighting near the back fire escapes was an error of facts and/or law.

Concerning the fire escape lighting, the owner argues that the Administrator's order lacked a rational basis as a light was installed directly next to the back fire escapes as shown on page 2 of the owner's application to restore rent; that the owner's submitted photograph[1] clearly shows the

[1] Exhibit B to the owner's rent restoration application.

presence of a light next to the back fire escapes, in place and in working order since the time it was installed, prior to the owner's filing of its rent restoration application, but that the Administrator's order indicated otherwise. The owner contends further that the description of the fire escape lighting service was different in the initial order, which stated that there was no lighting near the fire escape, based on which the owner installed lighting near the fire escape, compared to the rent restoration order which denied the owner's application, indicating that there was no lighting to the fire escape, changing the requirement from *near* to *to*; and that the Rent Administrator's order thus has no rational basis and is arbitrary and capricious.

Additionally, the owner contends that neither the Department of Buildings (DOB) nor the Fire Commissioner, who have concurrent jurisdiction and the authority to enforce the New York City Fire Code, has issued a summons or a violation regarding the fire escape lighting, and that the owner is unaware of any Section of the New York City Administrative Code that the owner is in violation of.

Regarding the intercom system, the owner argues that while the Rent Administrator found that the intercom service was not maintained and granted a rent reduction for such service as the owner converted the previously existing intercom system to the one connected to the tenants' cell phones without permission from the Agency, the owner subsequently submitted an application for permission to change or modify said service on January 22, 2019, which was granted June 24, 2019; that the Rent Administrator then denied the owner's application for rent restoration of the intercom service and found that there are now two intercom systems in the subject premises (right side standard intercom and left side intercom that connects to personal phones), indicating in the subject order that the right side intercom did not have the pins for the 6th floor apartments and the left side intercom was "not operating properly" and "does not connect with all the apartments"; that it was the owner's intention that the tenants utilize the left side intercom system, but a number of tenants were either uncooperative or had difficulty using the system which then made the owner reinstall the standard intercom system, thereby giving the tenants a choice of which intercom system they preferred to use, as a result of which all tenants have intercom system; that the 6th floor tenants indicated that they preferred the left side intercom and did not want two intercom systems, thus they all have intercom service through the left side system; that also, there is a mistake of fact concerning the left side intercom, in that the order stated that the intercom did not connect to all apartments, which actually was because many tenants preferred the right side intercom system and did not want two intercom systems; that the left side intercom was operating properly and had good communication, and the order was incorrect in stating that it was not operating properly, and not clear whether it was deemed thus because it did not connect to all apartments or the inspection revealed issues with any individual units; and that in December of 2020, prior to the installation, the owner had sent letters (exhibit E) to the tenants asking for phone numbers (landline or cell phones) for intercom system from tenants choosing the right side intercom, and had stated that the owner would reimburse tenants for the cost of installation. The owner concluded by stating that the owner's application for rent restoration contained information regarding the two systems; and if exhibit E is considered new evidence/information, the Commissioner may remand the proceeding for a redetermination, pursuant to Section 2529.6 of the Code.

Various tenants responded individually and/or collectively, asserting that the intercom service and the lighting service near the back fire escapes were yet to be restored, posing safety issues, which may result in falling or someone hiding in the back; that for garbage disposal and laundry purposes, the fire escape is the only way for tenants to access the basement when the elevator is out of order.

The tenants listed various defects concerning the intercom service: that the left side intercom is connected to personal cell phones, not landlines, and not connected to all apartments; that the apartments listed are not in order; that the right side intercom does not connect to all apartments, only to rent regulated apartments, and some apartment pins were not visible; that navigating which intercom system services specific apartments is very confusing, and guests may not know which to use, and that neither intercom system seem to work adequately; and that management did not give each tenant the choice of which intercom system they wanted/preferred to use; that there were many problems during the year, like poor sound on both ends of the line with breaks in the line connection, days when intercom system was out for the entire building, and periods where the system would not buzz open the second inner door.

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

Pursuant to Section 2523.4 of the Rent Stabilization Code (the "Code") and Section 2202.16 of the New York City Rent and Eviction Regulations, the Rent Administrator is authorized by law to direct the restoration of services and grant a rent reduction, upon application by a tenant where it is determined that required services have not been maintained. Likewise, an owner is entitled to the restoration of rent once it is established that the required services cited in the rent reduction order have been restored.

In the initial building-wide service reduction proceeding filed on October 24, 2018, on May 10, 2019, under Docket No. GV430017B, the Rent Administrator granted the tenants a rent reduction based on a decrease in a plethora of services, including, in relevant part, no evidence of lighting provided near the back fire escapes and a change in the intercom system without the Agency's approval.

On March 11, 2021, the owner commenced the rent restoration ("OR") proceeding herein below, wherein the owner indicated that the necessary repairs had been performed. The tenants were served with a copy of the owner's rent restoration application on March 15, 2021. Various tenants responded, opposing the owner's rent restoration application. The Commissioner notes that tenants' response(s) concerning the fire escape lighting and the intercom services in the proceeding below mirrors the tenants' response to the owner's PAR as stated above, as well as claims of other building-wide service related issues.

The Agency records show that the Rent Administrator requested an Agency inspection during the rent restoration proceeding, and on September 3, 2021, the Agency's inspection was conducted. The inspection report indicates that there was no lighting provided to the back fire

escape at the time of inspection; and that there were two intercom systems[2] in the building at the time of inspection, with one intercom panel located on right side of the building main entry door and the second intercom panel located on the left side of the building main entry door.

On April 27, 2022, the Rent Administrator under Docket No. JO430043OR denied the owner's rent restoration application, finding, in pertinent part, that lighting was not provided to the back fire escape, and that the intercom was not operating properly on the left side.

Concerning the intercom service, the Commissioner notes that the service was found not maintained in the initial proceeding, Docket No. GV430017B, because the tenants complained that there was a change in the intercom system without the DHCR's prior approval. Agency records, as noted in the Rent Administrator's order, indicates that the tenants stated in their complaint that the original intercom was converted to a phone system and connected to the tenants' cell phones without an application to the Agency for permission to change services, and the allegation was not refuted by the owner. Based thereon, the Rent Administrator, on May 10, 2019, granted a rent reduction to the tenants for the owner's change in intercom service without the Agency's permission.

The Agency's records indicate that the owner filed an application for permission to modify or change services before the Agency, under Docket No. HM430016OD, which was granted by the Rent Administrator on June 24, 2019.[3] The Commissioner notes that the Rent Administrator granted the owner's application to modify intercom services (approving the replacement of the traditional intercom system with a telephone entry intercom system), with attendant conditions based on changing technology which requires certain conditions to be observed to ensure that there is intercom service provided physically in the apartment(s) and that the resulting change in service does not actually decrease services to the tenants.

The Commissioner notes that since the condition upon which the tenants were granted a rent reduction, the owner's failure to obtain Agency permission to change the intercom system from a standard system to one that uses a phone system, had been satisfied pursuant to the modification order under Docket No. HM430016OD, the owner's rent restoration for the subject item, intercom system, should have been granted. Accordingly, the Commissioner finds that the portion of the Rent Administrator's order finding that intercom service was not maintained is herein reversed.

The Commissioner notes the submissions of tenants who have concerns regarding the intercom system or indicated that the intercom system was not operating properly in their apartments, and further notes that such tenants are not precluded from filing fresh service complaints before the Agency concerning the intercom service.

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[2] The inspector noted that the right side intercom is a standard intercom system from the exterior panel to interior panels for each apartment, and was properly operable at the time of the inspection, with adequate communication throughout it and buzzing of the door. However, the inspector noted that this (right side) intercom panel did not have pins for the 6th floor apartments. Concerning the left side intercom system, the inspector noted same as not operating properly at the time of the inspection, with poor communication; that the system did not connect with all apartments; and that same was an external panel connecting to personal phones of tenants.

[3] The Commissioner notes that Docket No. HM430016OD was not appealed and is therefore considered final and binding upon the parties.

With respect to the lighting for the back fire escape area, the Commissioner notes that at the time of the Agency's inspection on September 3, 2021, the Agency's inspector observed that there was no lighting to the back fire escape in the subject building. Thus, the owner's contention regarding language and change of requirement from "near" the fire escape or "to" the fire escape is irrelevant to the outcome of the instant proceeding and is merely self-serving. The Commissioner further notes that the photograph submitted by the owner purporting to show the light that the owner claimed to have installed in the back fire escape area does not correlate with the photograph of the back area of the instant building in the Agency's record under Docket No. GV430017B. Accordingly, the Commissioner finds that the Rent Administrator reasonably and properly relied upon the Agency inspection when making her determination regarding the lighting for the back fire escape.

The Commissioner also finds that the owner is precluded from raising issues with the initial service reduction order, Docket No. GV430017B. The owner's failure to appeal those services (specifically in this case the back fire escape lighting) found not maintained in Docket No. GV430017B in a timely manner rendered final and binding its determination on the merits, and therefore cannot be subject to collateral attack in this proceeding.

Based on the foregoing, the Commissioner finds that the Rent Administrator's rent restoration order should be modified to expunge intercom service from the list of items found not restored.

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

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

**ORDERED**, that this petition be, and the same hereby is, granted, in part, and that the Rent Administrator's order be, and the same hereby is, modified as indicated above.

**ISSUED:** NOV 10 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.

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] (TENANT) | : | **ADMINISTRATIVE REVIEW DOCKET NO.: KU610003RT** |
| | : | **RENT ADMINISTRATOR'S DOCKET NO.: JS610081OR** |
| **PETITIONER** | : | |

## ORDER AND OPINION DENYING PETITION FOR ADMINISTRATIVE REVIEW

On September 2, 2022, the above-named petitioner-tenant filed a Petition for Administrative Review ("PAR") challenging Docket No. JS610081OR, an order the DHCR Rent Administrator issued on August 12, 2022 (the "Order"), concerning the housing accommodation known as 2860 Decatur Avenue, Apt. [redacted] Bronx, NY, wherein the Rent Administrator granted the owner's rent restoration request.

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

In the PAR, the tenant requests that the Order be modified (changed in part) because the toilet has not been fixed. The tenant claims the flushometer is defective; it does not fully dispose of waste.

The owner's attorney responded to the tenant's PAR on October 17, 2022 by letter dated October 4, 2022, which asserted that the landlord has advised that the toilet is in proper working order; there is no basis in which to modify the Order as the inspection found the flushometer also to be in proper working order based on the 8/12/22 inspection prior to the challenged Order being issued; and that based on the foregoing, the instant PAR must be denied.

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. Section 2527.5(b) of the RSC authorizes the Rent Administrator to request an inspection at any stage during a DHCR proceeding and New York courts have held that this Agency has broad discretion to decide when an inspection is necessary.

In the proceeding below, the owner filed an application to restore the rent for the subject apartment on July 26, 2021, alleging the restoration of services that were previously found not maintained under Docket No. FV610339S and in the subsequent rent restoration proceeding, Docket No. HW610104OR (windows, mildew, toilet flushometer, and living room light switch). The tenant was served with notice of the owner's application (the "Initial Notice") on August 4, 2021. The Agency records indicate that the tenant responded on August 19, 2021, claiming that the toilet continued to refresh without being flushed, and that the attempted repair was unsuccessful. Hence, an inspection of the subject apartment was conducted on December 8, 2021 when an impartial DHCR inspector visited the tenant's apartment and made the following observations: (a) There is no evidence of the apartment windows having broken balances, broken glass, gaps, or condensation defects; (b) All apartment windows open/close/lock properly. All apartment windows have been replaced with new windows; (c) There is no evidence of mold behind the toilet or at the base of the cabinet around the sink; (d) Toilet condition: The toilet's flush-o-meter doesn't have any defects. The flushometer has been replaced; (e) The living room light switch doesn't have any defects; and (f) The electric switch on the living room wall operates the light fixture/outlets properly.

Based on the foregoing details, the Rent Administrator issued an order granting the owner's rent restoration application and directing that the rent is restored to the level in effect prior to the rent reduction order, plus all lawful increases which are collectible from September 1, 2021, the effective date of the order.

The Commissioner notes the tenant's contention herein that the toilet has not been fixed, and he requests that the order be amended to reflect that the flushometer does not fully dispose of the waste in the toilet. However, this unsubstantiated claim by the tenant directly contradicts the DHCR rent inspector's finding on December 8, 2021, that the flushometer had been replaced and was working properly at the time of the inspection. The Commissioner finds that the tenant's claim does not warrant a modification or reversal of the Rent Administrator's order which was correctly based on the observations of a neutral DHCR inspector.

Based on the foregoing, the Commissioner finds that the Rent Administrator correctly granted the owner a rent restoration, and the tenant's PAR has not established a basis to modify or revoke the Rent Administrator's determination. The tenant is advised to file a new service complaint with this Agency, should 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: NOV 10 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 |
| [redacted] | : | DOCKET NO.: KQ410031RT |
| (TENANT) | : | |
| | : | RENT ADMINISTRATOR'S |
| | : | DOCKET NO.: JV410034OR |
| PETITIONER | : | |

## ORDER AND OPINION DENYING PETITION FOR ADMINISTRATIVE REVIEW

On May 25, 2022, the above-named petitioner-tenant filed a Petition for Administrative Review ("PAR") challenging JV410034OR, an order the Rent Administrator issued on April 11, 2022 (the "Order"), concerning the housing accommodation known as 123 Wadsworth Ave., Apt. [redacted], New York, NY 10033, wherein the Rent Administrator granted the owner a rent restoration and directed that the rent is restored to the level in effect prior to the rent reduction order, plus all lawful increases which are collectible from December 1, 2021, the effective date of the order.

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

In the PAR, the tenant requests that a new inspection be done because vermin control has not been restored in the apartment.

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

Pursuant to Section 2523.4 of the Rent Stabilization Code (the "Code"), the Rent Administrator is authorized 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 for the subject apartment on October 12, 2021, alleging the restoration of services that were found not maintained under Docket No. EG510146S, and that were not restored subsequent thereto (specifically the vermin control services). The tenant was served with notice of the owner's application (the "Initial Notice") on November 1, 2021. The Agency's records indicate that the tenant responded to the Initial Notice on November 16, 2021 with the claim that there are still roaches and mice in the apartment. The Agency mailed a Notice of Inspection to the tenant on January 18, 2022, advising the tenant of an upcoming scheduled inspection on January 27, 2022 between 9:00 AM and 12:00 PM. The Notice of Inspection advised the tenant that the failure to provide access to the inspector, without rescheduling, may result in a determination against the tenant's interests. A DHCR inspector went to the tenant's apartment on January 27, 2022, as scheduled. The inspector noted that the tenant failed to provide access to the subject apartment for the scheduled Agency inspection. Based on the foregoing details, the Rent Administrator issued an order granting the owner's rent restoration request effective December 1, 2021.

The Commissioner notes the tenant's contention that there are still mice and roaches in the apartment. However, this claim by the tenant does not warrant a modification or reversal of the Rent Administrator's order. DHCR Policy Statement 90-2 holds as follows:

> 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 tenant confirms the owner's statement, then the rent is restored. Otherwise, an inspection is made to determine if the required services have been restored. If the tenant denies access for the DHCR inspection, then the rent will be restored.

Based on the foregoing, the Commissioner finds that the Rent Administrator acted in accordance with Policy Statement 90-2 and correctly granted the owner a rent restoration in the matter below after the tenant failed to provide access to an Agency inspector for a scheduled Agency inspection, and the tenant's PAR has not established any basis to modify or revoke the Rent Administrator's determination in Docket No. JV410034OR.

The tenant is advised that she may file a new service complaint with this Agency if the facts so warrant.

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

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

ISSUED:

NOV 18 2022

Woody Pascal
Deputy Commissioner

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

## Right to Court Appeal

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

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| **IN THE MATTER OF THE ADMINISTRATIVE APPEAL OF:** | : | **ADMINISTRATIVE REVIEW DOCKET NO.: KV410005RO** |
| ACQUISITION AMERICA VI LLC, | : | **RENT ADMINISTRATOR'S DOCKET NO.: KR410024OR** |
| **PETITIONER** | : | **TENANT(S):** [redacted] |

ORDER AND OPINION DENYING PETITION FOR ADMINISTRATIVE REVIEW

On October 6, 2022, the above-named petitioner-owner filed a Petition for Administrative Review ("PAR") against an order the Rent Administrator issued on September 1, 2022(the "Order"), concerning the housing accommodation known as 509 Cathedral Pkwy, New York, NY, wherein the Rent Administrator denied the owner's application to restore the rent.

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

On November 4, 2019, the tenant filed an application for a rent reduction based on various decreased services, which the Rent Administrator granted on May 28, 2020, under Docket Number HW410003B, after an Agency inspection conducted on February 26, 2020, revealed that the four (4) washing machines and five (5) dryers in the laundry room were not operational.

On June 15, 2022, the petitioner-owner filed an application to restore the rent alleging that the laundry room gas was turned off on or about November 1, 2018, in order to effectuate repairs to the plumbing, and further that the gas service was restored on May 31, 2020. An Agency inspection conducted on August 16, 2022, revealed that while the washing machines were operational, dryer #3 in the laundry room was not working at the time of inspection. Based on the evidence contained in the record, the Rent Administrator issued an order on September 1, 2022, under Docket No. KR410024OR, denying the owner's application to restore the rent. The owner then filed the instant PAR.

In the PAR, the petitioner seeks a reversal of the Rent Administrator's order, alleging that the service complained of concerned no gas to the laundry room and as gas was restored, the order should be reversed.

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

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

Here, the record supports that no washers or dryers were functioning at the time of inspection on February 26, 2020. The record further supports, and the petitioner-owner does not refute, that although gas was restored to the laundry room, one dryer was not operational at the time of inspection on August 16, 2022. It is irrelevant that the washers and dryers were initially not functioning due to no gas service. A lack of gas to the laundry room results in inoperable washers and dryers. It is not the lack of gas to the laundry room that is at issue but rather the inability to use the washers and dryers. As such, the petitioner-owner's argument that the underlying complaint was based on no gas service to the laundry room has no merit.

In sum, the Commissioner finds that the Rent Administrator appropriately relied on the record and the petitioner-owner has not set forth any basis to modify the Rent Administrator's order.

The Commissioner notes that the petitioner-owner may file an order to restore the rent if the facts so warrant.

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

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

ISSUED: NOV 18 2022

Woody Pascal
Deputy Commissioner

State of New York
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Web Site: www.hcr.ny.gov

## Right to Court Appeal

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

There is no other method of appeal.

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

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| **IN THE MATTER OF THE ADMINISTRATIVE APPEAL OF:** | : | |
| | : | **ADMINISTRATIVE REVIEW** |
| ESCO ASSOCIATES LLC | : | **DOCKET NO.: KM110032RO** |
| | : | |
| | : | **RENT ADMINISTRATOR'S** |
| **PETITIONER** | : | **DOCKET NO.: JN110083OR** |

ORDER AND OPINION DENYING PETITION FOR ADMINISTRATIVE REVIEW

On January 26, 2022, the above-named petitioner-owner filed a Petition for Administrative Review ("PAR") challenging JN110083OR, an order the Rent Administrator issued on December 22, 2021 (the "order"), concerning the housing accommodation known as 94-26 34th Road, [redacted] Jackson Heights, New York, wherein the Rent Administrator granted the owner's rent restoration application effective August 31, 2021.

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

In the PAR, the owner, through counsel, requests a modification of the Rent Administrator's order averring that the order is contrary to law by deviating from the DHCR precedent, policy, and procedure and establishing the effective date of restoration as August 31, 2021, (the day prior to the date the current tenant took occupancy), claiming that the rent should have been restored as of the date the complaining tenant surrendered the apartment and a new tenant reoccupied the apartment, or at the latest, June 14, 2006, the date that New York City Department of Housing Preservation and Development "HPD" lifted the Vacate Order after HPD inspected the apartment on May 5, 2005; that the facts are supported by the DHCR Registration Rent Roll, including the owner's rent ledgers which are annexed to the petition; that per the Matter of Haidt, Docket No. HD410378RT; Matter of Franklin, Docket No. XH410005RT; and Matter of Goos, Docket No. VA410061RT, the Agency set the effective date of the rent restoration as of the date the tenant resumed occupancy, or the date the apartment was restored to

habitability; that the rent reduction order is devoid of any instruction to the owner concerning the time-frame within which to file their rent restoration application; that establishing the rent at $1.00 is not meant to be punitive but rather to maintain the landlord/tenant relationship until the tenant is restored to occupancy; that the owner made necessary repairs to return the apartment to habitability by May 5, 2005, and that the August 31, 2021 effective date unfairly creates rent overcharge exposure due to a decrease in services which was corrected sixteen years earlier; and that at no time did the Administrator request any information concerning the occupancy of the apartment except for information of the current tenant who commenced occupancy sixteen years after the apartment was restored to habitability. The owner attached a letter from HPD dated June 14, 2006 stating that Vacate Order #23827 was rescinded, and a purported affidavit of Talin Eshagoff dated September 30, 2021 wherein the affiant claims to be the managing member of the owner, ESCO Associates LLC, as well as the previous (now deceased) owner's son, claiming that he had no prior involvement with the management of the building, and that he does not know why his father did not file the rent restoration applications after the apartments were restored to habitability, and that after Talin Eshaghoff learned of the requirement to file the rent restoration applications, such applications were filed with assistance of counsel.

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

Pursuant to Section 2522.6 of the 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.

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

According to the Agency's records, pursuant to Section 2522.6 of the RSC, the rent for the subject apartment was determined to be $1.00 per month as of March 20, 2005, the date of the fire that caused the tenant to vacate the subject premises involuntarily (see Docket No. TC110152S issued on April 7, 2005).

In the proceeding below, Docket No. JN110083OR, the owner filed an application to restore the rent on February 26, 2021, wherein the owner asserted that the apartment was restored for occupancy on October 1, 2005; and that the tenant listed on the rent reduction order

resumed occupancy in October of 2005 and vacated the said apartment in February of 2006 and requested that the owner's rent restoration application be granted restoring the rent as of October 2005. The owner's application was subsequently supplemented by a letter from HPD dated June 14, 2006 rescinding Vacate Order #23827, which was issued on April 7, 2005 for the subject premises, based on an inspection conducted on May 5, 2005.

The owner's rent restoration application was served on the tenant on March 1, 2021.

The record shows that on September 2, 2021, the Administrator requested from the owner the reason for the delay in filing their application, if there was a current tenant and if so, to provide a copy of the tenant's initial lease. The owner, through counsel, responded by correspondence dated October 12, 2021 and claimed that the petitioner-owner was not aware the rent reduction order was in effect until recently, and that the said rent reduction order did not contain any language instructing the owner to file a rent restoration application; that the former owner was not aware that he needed to file for rent restoration as he believed that the requirements were met when the apartment was restored to habitability and HPD rescinded the Vacate Order in June of 2006; and that the current occupant, [redacted] commenced occupancy of the apartment pursuant to a lease dated September 1, 2021. The owner provided the Agency with the lease as requested.

Based on the totality of the evidence, including the owner's submissions, the Rent Administrator, on December 22, 2021 granted the owner's rent restoration application finding that the restoration of rent was warranted, and that the services were restored. The Administrator determined that the rent be restored to the level in effect prior to the rent reduction plus all lawful increases, effective August 31, 2021, the day prior to the current tenant taking occupancy.

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

Here, the Commissioner notes that it is undisputed that on April 7, 2005, Vacate Order #23827 for the subject premises was issued by HPD, that under Docket No. TC110152S, issued on April 7, 2005, the rent was set at $1.00 per month as of March 20, 2005, the date of the fire which caused the tenant to vacate the premises involuntarily, that on June 14, 2006, HPD rescinded Vacate Order #23827 based on an HPD vacant building survey inspection conducted on May 5, 2005, and that the owner failed to file a rent restoration application until more than fifteen (15) years later, on February 26, 2021.

The record below establishes that the Rent Administrator took into account the entire record and that after consideration, concluded that it would be inequitable to restore the rent back to June 2006 as the owner requested, considering that the owner failed to submit a rent

restoration until February 2021, fifteen (15) years after the owner claims the complaining tenant was restored to occupancy in October of 2005. Under the circumstances in this case, the Commissioner finds that the Rent Administrator properly determined that the effective date be August 31, 2021, the day prior to the date the current tenant took occupancy.

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

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

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

[1] See Docket Nos. CQ410024RO and XH410001RP.

Based on the foregoing, the Commissioner finds that the Rent Administrator's order is correct as issued, and the effective date of August 31, 2021, the day prior to the current tenancy, is proper under the circumstances herein, and the owner's PAR has not established any basis to modify or revoke the Rent Administrator's determination.

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

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

ISSUED:

NOV 23 2022

Woody Pascal
Deputy Commissioner

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

## Right to Court Appeal

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

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| **IN THE MATTER OF THE ADMINISTRATIVE APPEAL OF:** | : | |
| | : | **ADMINISTRATIVE REVIEW** |
| ESCO ASSOCIATES LLC | : | **DOCKET NO.: KM110033RO** |
| | : | |
| | : | **RENT ADMINISTRATOR'S** |
| **PETITIONER** | : | **DOCKET NO.: JN110081OR** |

ORDER AND OPINION DENYING PETITION FOR ADMINISTRATIVE REVIEW

On January 26, 2022, the above-named petitioner-owner filed a Petition for Administrative Review ("PAR") against JN110081OR, an order the Rent Administrator issued on December 23, 2021 (the "order"), concerning the housing accommodation known as 94-26 34th Road, Apartment [redacted], Jackson Heights, New York, wherein the Rent Administrator granted the owner's rent restoration application effective August 31, 2021.

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

In the PAR, the owner, through counsel, requests a modification of the Rent Administrator's order claiming that the order is contrary to law and the DHCR precedent, policy, and procedure because the order established the effective date of restoration as August 31, 2021 (the day prior to the date the current tenant took occupancy), and further claims that the rent should have been restored as of the date the apartment was restored to habitability or the date the tenant signed the agreement (December 2005) surrendering the apartment, or at the very latest June 14, 2006, (the date that New York City Housing Preservation and Development "HPD" lifted the Vacate Order). The owner asserts that in December of 2005, after the complaining tenant was notified that the apartment had been restored to a habitable condition pursuant to the HPD inspection, the tenant opted to surrender the said apartment and thereafter, a new tenant commenced occupancy on January 1, 2006, evidence that the apartment was restored to habitability. Moreover, that on June 14, 2006, the HPD issued a letter rescinding the Vacate

Order based upon an inspection conducted in May of 2005. The petitioner-owner also contends that, per the Matter of Haidt, Docket No. HD410378RT; Matter of Franklin, Docket No. XH410005RT; and Matter of Goos, Docket No. VA410061RT, the Agency set the effective date of the rent restoration as of the date the tenant resumed occupancy, or the date the apartment was restored to habitability. The owner further asserts that the rent reduction order is devoid of any instruction to the owner concerning the time-frame within which to file their rent restoration application, and that establishing the rent at $1.00 is not meant to be punitive but rather to maintain the landlord/tenant relationship until the tenant is restored to occupancy. Lastly, the owner claims that the August 31, 2021 effective date unfairly creates rent overcharge exposure due to a decrease in services which was corrected sixteen years earlier, and the reason the owner did not file was because the owner at the time was not aware that an application was required to restore the rent. The owner attached a letter from HPD dated June 14, 2006 stating that Vacate Order #23827 was rescinded, and a purported affidavit of Talin Eshagoff dated September 30, 2021 wherein the affiant claims to be the managing member of the owner, ESCO Associates LLC, as well as the previous (now deceased) owner's son, claiming that he had no prior involvement with the management of the building, and that he does not know why his father did not file the rent restoration applications after the apartments were restored to habitability, and that after Talin Eshaghoff learned of the requirement to file the rent restoration applications, such applications were filed with assistance of counsel.

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

Pursuant to Section 2522.6 of the 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.

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

According to the Agency's records, pursuant to Section 2522.6 of the RSC, the rent for the subject apartment was determined to be $1.00 per month as of March 20, 2005, the date of the fire that caused the tenant to vacate the subject premises involuntarily (see Docket No. TD110064S issued on May 4, 2005).

In the proceeding below, Docket No. JN110081OR, the owner filed an application to restore the rent on February 25, 2021, wherein the owner asserted that the apartment was restored for occupancy on December 1, 2005, and that the tenant subsequently surrendered the apartment to the owner. During the pending proceeding, the owner also claimed that HPD lifted the Vacate Order #23827 on June 14, 2006 based upon an inspection conducted on May 5, 2005. The owner submitted along with their application, a lease surrender and release agreement signed by the tenant dated December 16, 2005, a letter dated June 14, 2006 from HPD rescinding Vacate Order #23827 (which was issued on April 7, 2005 for the subject premises) based on an inspection conducted on May 5, 2005.

The record shows that on September 2, 2021, the Administrator requested from the owner the reason for the delay in filing their application, if there was a current tenant and if so, to provide a copy of the tenant's initial lease. The owner, through counsel, responded by correspondence dated October 12, 2021 and claimed that the Petitioner was not aware that a rent reduction order was in effect until recently, and that the rent reduction order issued in 2005 did not contain any language instructing the owner to file a rent restoration application; that the prior management believed that all requirements had been complied with once the apartment was restored to habitability and HPD lifted the Vacate Order; and that the current occupants, [redacted] and [redacted], commenced occupancy of the apartment pursuant to a lease dated September 1, 2021. The owner provided the Agency with the lease as requested.

Based on the totality of the evidence, including the owner's submissions, the Rent Administrator, on December 23, 2021, granted the owner's rent restoration application finding that the restoration of rent was warranted, and that the services were restored. The Administrator determined that the rent be restored to the level in effect prior to the rent reduction plus all lawful increases, effective August 31, 2021, the day prior to the current tenant taking occupancy.

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

Here, the Commissioner notes that it is undisputed that on April 7, 2005, Vacate Order #23827 for the subject premises was issued by HPD, that under Docket No. TD110064S, issued on May 4, 2005, the rent was set at $1.00 per month as of March 20, 2005, the date of the fire which caused the tenant to vacate the premises involuntarily, that on June 14, 2006, HPD rescinded Vacate Order #23827 based on an HPD vacant building survey inspection conducted on May 5, 2005, and that the owner failed to file a rent restoration application until more than fifteen (15) years later, on February 25, 2021.

The record below establishes that the Rent Administrator took into account the entire record and that after consideration, concluded that it would be inequitable to restore the rent back to June 2006 as the owner requested, considering that the owner failed to submit a rent restoration until February 25, 2021, fifteen (15) years after the owner claims the apartment was restored to occupancy. Under the circumstances in this case, the Commissioner finds that the Rent Administrator properly determined that the effective date be August 31, 2021, the day prior to the date the current tenant took occupancy.

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

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

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

[1]See Docket Nos. CQ410024RO and XH410001RP.

No. XH410001RP, the Commissioner granted the tenant's appeal on remand, modifying the effective date due to the owner's delay in filing their rent restoration application.

Based on the foregoing, the Commissioner finds that the Rent Administrator's order is correct as issued, and the effective date of August 31, 2021, the day prior to the date the current tenant took occupancy of the subject apartment, is proper under the circumstances herein, and the owner's PAR has not established any basis to modify or revoke the Rent Administrator's determination.

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

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

ISSUED: NOV 23 2022

Woody Pascal
Deputy Commissioner

State of New York
**Division of Housing and Community Renewal**
Office of Rent Administration
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Jamaica, NY 11433
Web Site: www.hcr.ny.gov

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| **IN THE MATTER OF THE ADMINISTRATIVE APPEAL OF:** | : | |
| | : | **ADMINISTRATIVE REVIEW** |
| ESCO ASSOCIATES LLC | : | **DOCKET NO.: KM110034RO** |
| | : | **RENT ADMINISTRATOR'S** |
| **PETITIONER** | : | **DOCKET NO.: JR110061OR** |

ORDER AND OPINION DENYING PETITION FOR ADMINISTRATIVE REVIEW

On January 26, 2022, the above-named petitioner-owner filed a Petition for Administrative Review ("PAR") challenging JR110061OR, an order the Rent Administrator issued on December 22, 2021 (the "order"), concerning the housing accommodation known as 94-26 34th Road, [redacted] Jackson Heights, New York, wherein the Rent Administrator granted the owner's rent restoration application effective June 30, 2017.

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

In the PAR, the owner, through counsel, requests a modification of the Rent Administrator's order averring that the order is arbitrary and capricious, contrary to law and deviates from the DHCR precedent, policy, and procedure because the order sets the effective date to June 30, 2017, instead of May 1, 2006, (the date the complaining tenant, [redacted] resumed occupancy), or at the latest, June 14, 2006, (the date HPD lifted the Vacate Order); that the subject unit was restored as of May 5, 2005, the date the New York City Housing Preservation and Development ("HPD") inspected the apartment, proven by a letter issued on June 14, 2006 by HPD rescinding the Vacate Order; that upon restoring the subject apartment to habitability, the complaining tenant resumed occupancy and commenced paying rent; that the complaining tenant, [redacted] lived in the subject apartment for eleven (11) years before vacating the unit, and thereafter, the current tenant, [redacted] took occupancy; that the facts are not disputed and are supported by the DHCR rent roll, including the July lease for the current

tenant, [redacted] which was provided before the Rent Administrator; that per the Matter of Haidt, Docket No. HD410378RT; Matter of Franklin, Docket No. XH410005RT; and Matter of Goos, Docket No. VA410061RT, the Agency set the effective date of the rent restoration as of the date the tenant resumed occupancy; that the rent reduction order is devoid of any instruction to the owner concerning the time-frame within which to file their rent restoration application; that establishing the rent at $1.00 is not meant to be punitive but rather to maintain the landlord/tenant relationship until the tenant is restored to occupancy; and that the June 30, 2017 "erroneous" effective date unfairly creates rent overcharge exposure. The owner submits along with their petition, the letter from HPD dated June 14, 2006 lifting the Vacate Order #23827 issued for the subject premises on April 7, 2005, the owner's rent roll for April 2005, May 2005, and January 2006, and a purported affidavit of Talin Eshaghoff dated September 30, 2021, wherein the affiant claims to be the managing member of the owner, ESCO Associates LLC, as well as the previous (now deceased) owner's son, claiming that he had no prior involvement with the management of the building, and that he does not know why his father did not file the rent restoration applications after the apartments were restored to habitability, and that after Talin Eshaghoff learned of the requirement to file the rent restoration applications, such applications were filed with assistance of counsel.

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

Pursuant to Section 2522.6 of the 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.

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

According to the Agency's records, pursuant to Section 2522.6 of the RSC, the rent for the subject apartment was determined to be $1.00 per month as of March 20, 2005, the date of the fire that caused the tenant to vacate the subject premises involuntarily (see Docket No. TE110010S issued on May 26, 2005).

In the proceeding below, Docket No. JR110061OR, the owner filed an application to restore the rent on June 29, 2021 wherein the owner asserted that the apartment had been restored

for occupancy and included a signed Tenant's Statement of Consent dated May 1, 2021. The owner's application with the signed Tenant's Statement of Consent (Part B) was served on the tenant on July 1, 2021.

The record shows that on September 16, 2021, the Administrator requested from the owner the initial lease of the current tenant, the reason it took so long to file for rent restoration, and when the tenant started paying the full rent.

On October 12, 2021, the owner, through counsel, responded and claimed that the owner was unaware that the rent reduction was in effect until recently; that the said order did not contain any language instructing the owner to file a rent restoration application; that the prior owner believed all requirements had been complied with once the apartment was restored to habitability and HPD lifted the Vacate Order; and that a new tenant is currently occupying the subject apartment. The owner included a lease commencing on July 1, 2017.

Based on the totality of the evidence, including the evidence that the current tenant began their tenancy on July 1, 2017, the Rent Administrator, on December 22, 2021, granted the owner's rent restoration application finding that the restoration of rent was warranted, and that the services were restored. The Administrator determined that the rent be restored to the level in effect prior to the rent reduction plus all lawful increases effective June 30, 2017, which was the day prior to the date the current tenant took occupancy.

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

Here, the Commissioner notes that it is undisputed that on April 7, 2005, Vacate Order #23827 for the subject premises was issued by HPD, that under Docket No. TE110010S, issued on May 26, 2005, the rent was set at $1.00 per month as of March 20, 2005, the date of the fire which caused the tenant to vacate the premises involuntarily, that on June 14, 2006, HPD rescinded Vacate Order #23827 based on an HPD vacant building survey inspection conducted on May 5, 2005, and that the owner failed to file a rent restoration application until more than fifteen (15) years later, on June 29, 2021.

The record below establishes that the Rent Administrator took into account the entire record and that after consideration, concluded that it would be inequitable to restore the rent back to June 2006 as the owner requested, considering that the owner failed to submit a rent restoration until June 29, 2021, fifteen (15) years after the owner claims the tenant was restored to occupancy. Under the circumstances in this case, the Commissioner finds that the Rent Administrator properly determined that the effective date be June 30, 2017, the day prior to the date the current tenant took occupancy of the subject apartment.

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

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

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

Based on the foregoing, the Commissioner finds that the Rent Administrator's order is correct as issued, and the effective date of June 30, 2017, the day prior to the date the current tenant took occupancy of the subject apartment, is proper under the circumstances herein, and the

[1] See Docket Nos. CQ410024RO and XH410001RP.

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

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

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

ISSUED: NOV 23 2022

Woody Pascal
Deputy Commissioner

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

## Right to Court Appeal

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

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** |
| ESCO ASSOCIATES LLC | : | **DOCKET NO.: KO110005RO** |
| | : | |
| | : | **RENT ADMINISTRATOR'S** |
| **PETITIONER** | : | **DOCKET NO.: JW110001RK** |

ORDER AND OPINION DENYING PETITION FOR ADMINISTRATIVE REVIEW

On March 1, 2022, the above-named petitioner-owner filed a Petition for Administrative Review ("PAR") against JW110001RK, an order the Rent Administrator issued on February 2, 2022 (the "order"), concerning the housing accommodation known as 94-26 34th Road, Apartment [redacted], Jackson Heights, New York, wherein the Rent Administrator granted the owner's rent restoration application effective August 14, 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 requests a modification of the Rent Administrator's order, contending that the order pursuant to reconsideration is based on an error of law and/or fact inasmuch as it established an erroneous effective date for restoration of the rent; that the building was returned to habitability a few months after the fire, confirmed by an inspection conducted by the New York City Housing Preservation and Development ("HPD"); that HPD issued a letter lifting the Vacate Order on June 14, 2006, which confirmed that the subject apartment was habitable as of May 5, 2005; that in the owner's response to information requested by the DHCR, the owner explained that the order reducing rent to $1.00 did not contain any direction to file a restoration order, and it was for this reason combined with other factors that the prior (deceased) owner believed that all conditions were satisfied once HPD had determined the apartment safe and habitable; that the owner and the tenant provided information and evidence that the subject tenant resumed occupancy in 2005 and there were no rent arrears; that the Rent Administrator

ignored the evidence supplied and failed to restore the rent based on the date the Vacate Order was rescinded and/or the tenant resumed occupancy, citing to Matter of Franklin, Docket No. XH410005RT, Matter of Haidt, Docket No. HD410378RT, and the Matter of Goos, Docket No. VA410061RT; that the essence of fixing a $1.00 monthly rent is not punitive as the instant order conveys, but rather it is to maintain the landlord/tenant relationship until the tenant is restored to occupancy; that the August 14, 2020 effective date unfairly creates rent overcharge exposure due to a decrease in service which was corrected sixteen (16) years earlier; and that the rent should be restored as of the date the apartment was restored to habitability. The Petitioner annexed to their PAR the June 14, 2006 HPD letter rescinding Vacate Order # 23827 that was issued on April 7, 2005, and a purported affidavit of Talin Eshaghoff dated September 30, 2021 wherein the affiant claims to be the managing member of the owner, ESCO Associates LLC, as well as the previous (now deceased) owner's son, claiming that he had no prior involvement with the management of the building, and that he does not know why his father did not file the rent restoration applications after the apartments were restored to habitability, and that after Talin Eshaghoff learned of the requirement to file the rent restoration applications, such applications were filed with assistance of counsel.

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

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

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

In the initial Rent Administrator's order determining the Legal Regulated Rent (Fire Damage), Docket No.: TD110074S, on May 26, 2005, the Rent Administrator determined that the subject tenant's rent was established at $1.00 per month as of March 20, 2005, the date of a fire that caused the tenant to vacate the subject premises involuntarily.

On August 25, 2020, the owner filed an application for rent restoration based on restoration of services. The tenant was served with the owner's application on August 27, 2020. The owner submitted along with their application, a completed and signed portion of the

Tenant's Statement of Consent dated August 14, 2020. The tenant's correspondence received by the Agency, dated September 1, 2020, confirmed that the owner had restored services.

On August 19, 2021, the Rent Administrator granted the owner's rent restoration request, restoring the rent effective August 14, 2020, the date the tenant signed the Tenant's Statement of Consent portion of the owner's rent restoration application.

Thereafter, the Rent Administrator, after a request was made by the owner's representative, reopened the rent restoration proceeding under Docket No. JW110001RK based upon fraud, illegality, or irregularity in a vital matter and proposed to affirm, modify or revoke the order issued on August 19, 2021 under Docket No. IT110098OR.

On November 26, 2021, the parties were notified of the commencement of the subject reconsideration proceeding, Docket No. JW110001RK. The parties were requested to advise the Agency on (1) when the tenant resumed occupancy after the fire, (2) when the tenant commenced paying the full rent, and (3) whether the tenant was current in their rental payments. The record indicates that the tenant responded on December 6, 2021 and stated that he resumed occupancy the day the fire occurred, and always paid rent on time and does not owe any arrears. The record also shows that the owner, through their representative, responded on December 13, 2021 and advised that the subject building is owned and managed by ESCO Associates LLC, that the tenant resumed occupancy on or about January 20, 2006; when the tenant resumed paying full rent is moot, however, the tenant resumed paying full rent about the time he resumed occupancy after HPD determined the hazardous conditions were cured, and that the tenant is not in arrears in their payments. The owner claimed further that the owner did not file for rent restoration when the tenant resumed occupancy after the fire in 2005 because the current owner was not aware of the rent reduction order until recently and that the rent reduction order did not specify that the owner had to file for rent restoration when the apartment was made habitable, and that the prior owner believed that all requirements had been satisfied once the apartment was restored and HPD lifted the Vacate Order in May 2005.

The Rent Administrator having reviewed the record and any and all supporting documentation, including any and all statements made by the affected parties, and all relevant Rent Regulatory Laws and Regulations determined that the owner's application for rent restoration was warranted. However, the Rent Administrator found that it was is inequitable to restore the rent retroactively to January 2006 as the owner failed to file a timely rent restoration application, and therefore, as a result, the Rent Administrator found that the rent was restored effective August 14, 2020, the date the tenant signed the Statement of Consent on the owner's rent restoration application.

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

upon restoration of the apartment to a habitable condition and that a timely filing is essential for the tenant's rent to be restored as of the date of re-occupancy.

Here, the Commissioner notes that it is undisputed that on April 7, 2005, Vacate Order #23827 for the subject premises was issued by HPD, that under Docket No. TD110074S, issued on May 26, 2005, the rent was set at $1.00 per month as of March 20, 2005, the date of the fire which caused the tenant to vacate the premises involuntarily, that on June 14, 2006, HPD rescinded Vacate Order #23827 based on an HPD vacant building survey inspection conducted on May 5, 2005, and that the owner failed to file a rent restoration application until more than fifteen (15) years later, on August 25, 2020.

The record below establishes that the Rent Administrator took into account the entire record and that after consideration, concluded that it would be inequitable to restore the rent back to June 2006 as the owner requested, considering that the owner failed to submit a rent restoration until August 25, 2020, fifteen (15) years after the owner claims the tenant was restored to occupancy. Under the circumstances in this case, the Commissioner finds that the Rent Administrator properly determined that the effective date be August 14, 2020, the date the tenant signed the Statement of Consent on the owner's rent restoration application.

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

The Commissioner finds that the tenant should not be made to bear the brunt of the owner's choice to not file a rent restoration application for fifteen (15) years from the time that the owner claims the effective date should be.[1] This Agency has a duty to ensure that its decisions are not inconsistent with the spirit and intent of the rent laws. See Matter of 305 Realty NY LLC v. DHCR, Supreme Court of the State of New York, County of Kings, Index No. 5044/2010, wherein the Court found that although it may seem unfair to the owner that the tenant was able to occupy the apartment and continue to pay the reduced rent of $1.00, "it would be just as unfair to raise the tenant's rent retroactively" because of the owner's failure to timely file the application for rent restoration. The Court also found that, "here, equity does not weigh in petitioner[-owner]'s favor in that petitioner is requesting that the court remedy petitioner's error, not [the Agency's] mistake. Accordingly, the Commissioner finds that the owner's claim that the

[1] See Docket Nos. CQ410024RO and XH410001RP.

rent should be restored to June 14, 2006, fifteen (15) years prior to the filing of the rent restoration application is without merit and is merely self-serving.

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

Based on the foregoing, the Commissioner finds that the Rent Administrator's order is correct as issued, and the effective date of August 14, 2020, the date the tenant signed the Statement of Consent on the owner's rent restoration application, is proper under the circumstances herein, and the owner's PAR has not established any basis to modify or revoke the Rent Administrator's determination.

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

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

ISSUED: NOV 23 2022

Woody Pascal
Deputy Commissioner

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

## Right to Court Appeal

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

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** |
| ESCO ASSOCIATES LLC | : | **DOCKET NO.: KQ110011RO** |
| | : | |
| | : | **RENT ADMINISTRATOR'S** |
| **PETITIONER** | : | **DOCKET NO.: JR110014OR** |
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ORDER AND OPINION DENYING PETITION FOR ADMINISTRATIVE REVIEW

On May 10, 2022, the above-named petitioner-owner filed a Petition for Administrative Review ("PAR") challenging JR110014OR, an order the Rent Administrator issued on April 6, 2022 (the "Order"), concerning the housing accommodation known as 94-26 34th Road, Apartment [redacted] Jackson Heights, New York, wherein the Rent Administrator granted the owner's rent restoration application effective June 5, 2021.

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

In the PAR, the owner, through counsel, seeks a modification of the Rent Administrator's order and asserts that the Rent Administrator erred in establishing the effective date of restoration as June 5, 2021 (the date the restoration application was filed), claiming that the rent should have been restored as early as June 14, 2006, the date the apartment was reoccupied and the Vacate Order lifted; that the owner is prejudiced by the effective date error as same causes undue hardship upon the Petitioner-owner and exposes the owner to unwarranted liability; that the Rent Administrator's inquiry into the payment history as it pertains to when the tenant started paying rent or whether there were rent arears is arbitrary and capricious, as well as the finding that the owner was late in filing the rent restoration application; that the rent reduction order is devoid of any instruction to the owner concerning the time-frame within which to file their rent restoration application; that the former (deceased) owner did not file a rent restoration application because the former owner believed that all conditions were satisfied for restoration of

the rent once the New York City Housing Preservation and Development ("HPD") determined the apartment safe and habitable; that establishing the rent at $1.00 is not meant to be punitive but rather to maintain the landlord/tenant relationship until the tenant is restored to occupancy; that Section 2522.7 of the Rent Stabilization Code ("RSC" or "the Code") permits DHCR to consider all factors bearing on the equities involved in adjusting a legal regulated rent, and that in this case, the "equities dictate that the effective date of the rent restoration be based upon the date of re-occupancy of the apartment by the tenant after the vacate order was lifted." The Petitioner cites to the Division's orders, Docket Nos. XH410005RT, VA410061RT, HD410378RT, BK410289RO, AS610002RO, and ET420024RO, and submits along with their PAR, the underlying order Docket No. JR110014OR, rent reduction order Docket No. TE110011S, a letter from HPD dated June 14, 2006, rescinding Vacate Order #23827, and a purported affidavit of Talin Eshagoff dated September 30, 2021, wherein the affiant claims to be the managing member of the owner, ESCO Associates LLC, as well as the previous (now deceased) owner's son, claiming that he had no prior involvement with the management of the building, and that he does not know why his father did not file the rent restoration applications after the apartments were restored to habitability, and that after Talin Eshaghoff learned of the requirement to file the rent restoration applications, such applications were filed with assistance of counsel.

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

Pursuant to Section 2522.6 of the RSC, 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 stabilized apartments effective the first day of the month following the date the tenant was served with the rent restoration application. However, DHCR's policy and practice further dictates that if an owner restores a fire-related damaged apartment to habitability after a $1.00 order has been issued and the tenant advises that occupancy has resumed, the Rent Administrator may grant the owner's rent restoration application to the level in effect prior to the date of the fire, effective the date the tenant is restored to occupancy. On the contrary, the failure to file a timely rent restoration application may affect the effective date of the rent restoration.

According to the Agency's records, pursuant to Section 2522.6 of the RSC, the rent for the subject apartment was determined to be $1.00 per month as of March 20, 2005, the date of the fire that caused the tenant to vacate the subject premises involuntarily (see Docket No. TE110011S issued on May 26, 2005).

In the proceeding below, Docket No. JR110014OR, the owner filed an application to restore the rent on June 5, 2021 wherein the owner asserted that the apartment was restored for

occupancy on May 26, 2005, and that based upon HPD lifting the vacate order, it was requested that the owner's rent restoration application be granted as of May 5, 2005 or the date the tenant resumed occupancy. The owner's application was accompanied by a letter dated June 14, 2006 from HPD rescinding Vacate Order #23827, based on a "vacant building survey inspection" conducted on May 5, 2005 (the HPD letter noted that Vacate Order #23827 was previously issued for the subject premises on April 7, 2005).

The owner's rent restoration application was served on the tenant on June 7, 2021.

The record shows that on September 2, 2021, the DHCR sent a Request for Additional Information/Evidence to the owner and the owner's counsel and requested that the owner provide proof of when the tenant started paying a full rent, and reasons for the owner's delay in filing the application. On November 1, 2021, the owner, through counsel, responded, claiming that the former owner was not aware that he needed to file for rent restoration as he believed that requirements were met when the apartment was restored to habitability and HPD rescinded the Vacate Order, and that the request as to when the tenant commenced paying rent "is not germane to the rent restoration proceeding," however, the owner asserted that the tenant resumed paying full rent "at or about the time the vacate order was lifted." The owner's response was sent to the tenant on December 22, 2021.

Based on the totality of the evidence, including the owner's submissions, the Rent Administrator, on April 6, 2022, granted the owner's rent restoration application finding that the restoration of rent was warranted, and that the services were restored. The Administrator determined that the rent be restored to the level in effect prior to the rent reduction plus all lawful increases, effective June 5, 2021, the date the subject rent restoration application was filed. The Rent Administrator determined that it would be inequitable to restore the rent retroactively to June 2006 given that the owner failed to file a timely rent restoration application.[1]

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

Here, the Commissioner notes that it is undisputed that on April 7, 2005, Vacate Order #23827 for the subject premises was issued by HPD, that under Docket No. TE110011S, issued on May 26, 2005, the rent was set at $1.00 per month as of March 20, 2005, the date of the fire which caused the tenant to vacate the premises involuntarily, that on June 14, 2006, HPD

[1] The Rent Administrator noted that on June 24, 2020, the tenant vacated the subject apartment as a result of another fire and a rent reduction to $1.00 per month was granted for the subject apartment under Docket No. IS110020S, issued on September 18, 2020. The rent reduction under Docket No. IS110020S was restored pursuant to an order issued on December 23, 2021, under Docket No. JR110015OR.

rescinded Vacate Order #23827 based on an inspection conducted on May 5, 2005, and that the owner failed to file a rent restoration application until more than fifteen (15) years later, on June 5, 2021.

The record below establishes that the Rent Administrator took into account the entire record and that after consideration, concluded that it would be inequitable to restore the rent back to June 2006 as the owner requested, considering that the owner failed to submit a rent restoration until June 2021, fifteen (15) years after the owner claims the tenant was restored to occupancy. Under the circumstances in this case, the Commissioner finds that the Rent Administrator properly determined that the effective date be June 5, 2021.

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

The Commissioner finds that the tenant should not be made to bear the brunt of the owner's choice to not file a rent restoration application for fifteen (15) years from the time that the owner claims the effective date should be.[2] This Agency has a duty to ensure that its decisions are not inconsistent with the spirit and intent of the rent laws. See Matter of 305 Realty NY LLC v. DHCR, Supreme Court of the State of New York, County of Kings, Index No. 5044/2010, wherein the Court found that although it may seem unfair to the owner that the tenant was able to occupy the apartment and continue to pay the reduced rent of $1.00, "it would be just as unfair to raise the tenant's rent retroactively" because of the owner's failure to timely file the application for rent restoration. The Court also found that, "here, equity does not weigh in petitioner[-owner]'s favor in that petitioner is requesting that the court remedy petitioner's error, not [the Agency's] mistake. Accordingly, the Commissioner finds that the owner's claim that the rent should be restored to June 14, 2006, fifteen (15) years prior to the filing of the rent restoration application is without merit and is merely self-serving.[3]

Regarding the cases cited by the Petitioner, the Commissioner finds the decisions in those cases are not determinative of the issues herein as the facts in those cases are distinguishable, and therefore not applicable to the instant case. For Docket Nos. AS610002RO and BK410289RO, the issues presented on appeal were in regard to the initial rent reduction order, and not a claim

[2] See Docket Nos. CQ410024RO and XH410001RP.

[3] The Commissioner notes that the owner does not provide any evidence to substantiate that the tenant resumed occupancy at the time the vacate order was rescinded.

of rent restoration and effective dates. In Docket No. ET420024RO, the issue was whether the tenant's negligence as claimed by the owner as the cause of the fire warranted a rent reduction. In Docket No. HD410378RT, the relevant facts pertained to a previously filed rent restoration application, which is not the case herein. As for the rest of the cases cited by the owner, as mentioned above, the facts are distinguishable from the facts of the subject case as the cited cases do not relate to the owner's protracted delay in filing their rent restoration application. Furthermore, Docket No. VA410061RT was remitted to DHCR, and in an order issued on February 24, 2010 under Docket No. XH410001RP, the Commissioner granted the tenant's appeal on remand, modifying the effective date due to the owner's delay in filing their rent restoration application.

Based on the 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 under the circumstances. The owner's PAR fails to provide any basis to modify the Rent Administrator's determination.

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

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

ISSUED: NOV 23 2022

Woody Pascal
Deputy Commissioner

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

## *Right to Court Appeal*

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

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**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.: KT730027RO**

**Manchester I, LLC** :

: **RENT ADMINISTRATOR'S DOCKET NO.: KR730001OR (CN730014B)**

**PETITIONER**

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

On August 30, 2022, the above-named petitioner-owner filed a petition for administrative review (PAR) against an order issued on July 27, 2022, by the Rent Administrator concerning the housing accommodations known as 150 West Columbia Street, Various Apartments, Hempstead, NY, wherein the Administrator denied the owner's application to restore rent.

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

The owner requests a reversal of the Rent Administrator's order and contends, in substance that the challenged order of July 27, 2022 which denied the owner's rent restoration application must be rescinded as to the condition of the parking lot pavement; that (1) the parking lot at issue was newly paved and painted in October of 2021, and (2) the challenged order conflicts with a prior order issued on May 6, 2022 under Docket No. JX730088OR, establishing that the parking lot pavement had been fully restored; and that the challenged order should be rescinded and revised to reflect that the parking lot pavement had been repaired.

To support the owner's contention that the parking lot pavement had been fully restored prior to the Agency's inspection of July 7, 2022 and/or the issuance of the Rent Administrator's order, the owner submitted a copy of its contract with Giannotti Construction and the plan prepared by BKH Architects ("BKH"), and photographs purporting to depict the newly paved parking lot.

The owner argues further that the challenged order deviated from DHCR policy and precedent[1]; that the Agency's order of May 6, 2022, after the Agency's inspection of March 4, 2022, indicated the parking lot pavement condition as restored; that said order was never appealed and thus became a final order that may not be collaterally attacked; that the Rent Administrator ignored said order as a precedent; and that the order of May 6, 2022 requires that the order of July 27, 2022 (based on inspection of July 11, 2022) be revoked and the parking lot pavement be removed as a condition that has not been maintained.

One tenant objected to the owner's claims on appeal that the parking lot has been restored.

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

Sections 2500.3 and 2503.4 of the Emergency Tenant Protection Regulations (TPR) provide in pertinent part that a tenant may apply to the Division of Housing and Community Renewal (DHCR) for a reduction of the legal rent to the level in effect prior to the most recent guideline adjustment and the DHCR may so reduce the rent where it is found that the owner has been found to fail to provide and maintain services.

In the initial proceeding, under Docket No. CN730014B, the tenants complained of a decrease in various services. On May 11, 2015, the Rent Administrator granted a rent reduction based on the finding of diminution in the following services: hallway ceiling, roof – water leaks, evidence of scattered parking lot pavement defects and broken walkway, and security guard services based on the Agency's inspection of November 3, 2014. Specifically, concerning the parking lot pavement, the inspector found that "There was (*sic*) evidence of scattered parking lot pavement defects and broken walkway." Agency records indicates that the owner, thereafter, filed a rent restoration application, Docket No. DT730046OR, which was denied on May 6, 2016, based on the Agency's inspection of March 16, 2016 which indicated defective surface in various areas of the parking lot pavement.

On June 6, 2022, the owner commenced the rent restoration proceeding herein below, which was served on the tenants on June 9, 2022. During the proceeding, the inspector, on July 11, 2022, found evidence of peeling paint and plaster on the bulkhead walls by the staircase close to apartment [redacted] and that there was no security provided in the building at the time of inspection. Based thereon, the Rent Administrator found that the parking lot pavement and the security guard services had not been restored.

The Commissioner notes that based on the above, a review of the entire record was performed. Firstly, the Commissioner notes that the inspection report of March 4, 2022, under

[1] The owner cited the *Matter of Fairfield Towers Condominium, Administrative Review Docket No.* QK230036RO, where a prior Agency inspection already determined the owner's compliance with a rent reduction order; the *Matter of Kingswood Management Corp., Administrative Review Docket No. CG210077RO*, wherein an earlier Rent Administrator's order was found binding where a subsequent Rent Administrator's order failed to refer to the earlier one; and the *Matter of Kimberly Mortimer Administrative Review Docket No. UJ410021RO,* where the Rent Administrator properly relied on a previous DHCR order in denying an owner's petition.

Docket No. JX730088OR, referenced herein by the owner, indicates that there was no evidence of defective parking lot pavement on Washington Street side of the parking lot of the subject premises at time of inspection. Given that a prior inspection in one of the proceedings from which the JX730088OR had emanated narrowed the parking lot pavement defect to Washington Street side, the finding of the inspector sufficed for rent restoration in that case. However, said finding cannot be relied upon herein, because the prior rent reduction and restoration proceedings, which were determined before the rent restoration order herein below, Docket Nos. CN730014B and DT730046OR, had indicated defective surface in various areas of the parking lot pavement. Thus, the Commissioner requested an inspection of the parking lot pavement in the instant proceeding.

On November 16, 2022, the Agency's inspection was performed. The inspection report indicates that the parking lot is shared between two identical buildings located at 150 West Columbia Street Hempstead, NY 11550 and [redacted] that the entire parking lot appeared to have been recently re-paved; that there were 239 numbered and striped parking spaces, each with a parking bumper; and that the parking lot was in good condition.

The inspector, however, noted that there was a sink hole in parking spot #85 which poses a trip hazard; and that there was a recently-cut trench of approximately 10 ft. wide, patched across the center of the parking lot between the two buildings, not creating any hazardous condition.

The Commissioner notes that pursuant to the Agency's inspection of November 6, 2022 has confirmed the parking lot pavement in the subject premises repaved. Further, the sink hole as found by the inspector on November 16, 2022 appears to be a new condition, not underlying the original service reduction granted under Docket No. CN730014B (the Commissioner notes that the owner should repair such defect in the subject parking lot within thirty (30) days from the date of this Commissioner's order, and that the tenants may file a fresh service complaint regarding such defect, should the facts warrant).

Based on the foregoing, the Commissioner finds that the portion of the Rent Administrator's order finding the parking lot pavement not restored be expunged from the list of items found not restored in the Rent Administrator's order, Docket No. KR730001OR, and that the Rent Administrator's order be accordingly modified. The Commissioner notes that the rest of the Rent Administrator's order remains unchanged.

The Commissioner notes that the owner may file a fresh rent restoration for the remaining service found not restored, if the facts warrant. The Commissioner also notes that the tenants are not precluded from filing a fresh complaint, should the facts warrant.

**THEREFORE**, in accordance with the applicable sections of the Emergency Tenant Protection Act and the Tenant Protection Regulations, it is

**ORDERED**, that this petition be, and the same hereby is, granted, in part, and that the Rent Administrator's order be, and the same hereby is, modified to include the parking lot pavement in the list of items found maintained based on the set of facts explicated above; and it is further

**ORDERED,** that the Rent Administrator's order pursuant to Docket No. **KR730001OR** is so otherwise, as modified herein, affirmed.

**ISSUED:** NOV 28 2022

**WOODY PASCAL**
**Deputy Commissioner**

State of New York
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**IN THE MATTER OF THE ADMINISTRATIVE APPEAL OF**

**ADMINISTRATIVE REVIEW DOCKET NO.:** KO910012RO

WESTCHESTER PLAZA OWNER, LLC

**PETITIONER**

**RENT ADMINISTRATOR'S DOCKET NO.:** JR910063OR

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## ORDER AND OPINION DENYING PETITION FOR ADMINISTRATIVE REVIEW

On March 10, 2022, the above-named Petitioner-owner filed a Petition for Administrative Review ("PAR") against JR910063OR, an order the Rent Administrator issued on February 3, 2022 (the "order"), concerning the housing accommodations known as 40 East Sidney Avenue, Various Apartments, Mount Vernon, New York, wherein the Rent Administrator issued an order denying the owner's application to restore rent, finding that the D line ventilation system issue and lack of access to the laundry room bathroom cited in the order reducing rent under Docket No. GT910025B were not restored at the time of Agency inspection on October 4, 2021.

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

In the PAR, the Petitioner-owner, through counsel, asserts that the Rent Administrator's order appealed herein should be revoked because (1) the order contains errors of fact and law, and is arbitrary and capricious and without rational basis; (2) the Rent Administrator erred in finding that the D line ventilation system "is not operational" as the same D line ventilation fan was found "not on" in the rent reduction order, and that the D line fan only services the interior of the apartments and not the hallway and the lobby, and as a result, the Rent Administrator's order being challenged should have been granted as there is no indication that the inspector found the ventilation system not working in the hallways and the lobby area, and that the service was ventilation in the hallways and the lobby, not whether a particular fan in any given apartment interior was working; (3) the order erred in finding that the laundry bathroom is an essential

service and that an alleged removal of access thereto constitutes a reduction in service, and to the owner's knowledge, there has never been a bathroom in the laundry room, and there is no evidence in the record establishing the existence of a bathroom in the laundry room at any time, therefore, the said laundry bathroom does not constitute an essential service and as a result, does not warrant a rent reduction; and (4) even assuming, arguendo, that there was previously a bathroom in the laundry room, the condition is de minimis and does not warrant a rent reduction, citing Emergency Tenant Protection Regulations ("TPR") Section 2503.4(d), DHCR Fact Sheet #37 item No.24, and Docket No. RE110116RT.

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

Section 2503.4 of the TPR provides in pertinent part that a tenant may apply to the Division of Housing and Community Renewal ("DHCR") for a reduction of the legal rent to the level in effect prior to the most recent guideline adjustment and the DHCR may so reduce the rent where it is found that the owner has failed to provide and maintain services. Likewise, an owner is entitled to a rent restoration where it is established that the services based upon which rent was previously reduced have been restored. Additionally, Policy Statement 90-2 states that the Rent Administrator may rely on an Agency inspection when making a determination and the New York Courts have consistently upheld the reliability of the DHCR inspections.

A review of the Agency's record reveals that the tenants filed a complaint alleging issues with the intercom buzzer, garage wall/ceiling/floor, terrace/spalling cement, window(s) other-garage, access/pool, sauna, tennis c, ventilation, laundry room washers, access-laundry bathroom, access-backyard /playground, building entrance walkway, elevator condition, elevator fan, walls/exterior walls, garage/doors and access, janitorial services, master tv antenna, and vermin control, under Docket No. GT910025B. The tenants' application was granted by the Rent Administrator on April 16, 2019 based on an Agency inspection which revealed decreased services with respect to the intercom/buzzer, garage wall/ceiling/floor, terrace/spalling cement, window(s) other-garage, access/pool, sauna, tennis c, ventilation, laundry room washers, access-laundry bathroom, and access-backyard /playground. The owner filed a PAR against the Rent Administrator's order, Docket No. HQ910018RO, which was denied on July 9, 2020, wherein the Commissioner affirmed the Rent Administrator's findings.

In the proceeding below, the owner filed its application to restore the rent on June 24, 2021 and claimed they had made all necessary repairs. The Petitioner-owner specifically asserted, in relevant part, that the D line vent fan was on a timer and regularly serviced, and that it might be in a scheduled "off" mode when the investigator arrived at the subject building; and that to the owner's knowledge, there was never a bathroom in the laundry room, but even if a bathroom was previously provided, same was a *de minimis* condition which the removal of such bathroom would not warrant a rent reduction.

The tenants were afforded an opportunity to respond by service of the rent restoration application on July 12, 2021. On September 14, 2021, the "Westchester Plaza Tenants' Coalition" responded, asserting they disagreed with the owner's application and in substance, alleged that all of the services identified in the rent reduction order had not been restored. The tenants further

stated that a decision on the owner's rent restoration application would be premature as the tenants had filed an Article 78 proceeding currently pending in the New York State Supreme Court (Index #58538/2021), wherein, the tenants challenged the Division's decision which granted the owner's application for substitution of certain recreational facilities namely, the pools/sauna and showers. The tenants also refuted the owner's assertion that the laundry room never had bathrooms and asserted that the said bathroom was available on the base date but had been permanently locked by the owner. The Commissioner notes that the tenant of apartment [redacted] submitted a response stating they agreed that the owner had fully restored all services.

Subsequently, the Rent Administrator requested an Agency inspection, and it was conducted on October 4, 2021. The inspector observed at the time of inspection that the D line ventilation system was not operational and that the mechanical ventilation system located on the roof was not on at the time of the inspection, and that there was no bathroom in the basement laundry room, however, there were two doors screwed shut that were blocked by washers.

Based on the Agency inspection, on February 3, 2022, the Rent Administrator denied the owner's rent restoration application, finding the owner had not fully restored all the items cited in the order reducing rent under Docket No. GT910025B, notably, the D line ventilation system and the laundry room bathroom. The Rent Administrator deemed the pool/sauna/tennis court services restored because the owner's modification of services application under GP910007OD was granted and affirmed under Docket No. IM910008RT. Further, the Rent Administrator found the intercom/buzzer, terraces, garage window, and laundry room washers restored as the tenant(s) advised by written statement received on September 14, 2021 that the services were restored.

After a review of the owner's PAR, the Commissioner finds that the owner's assertion below that all items in the tenant's' rent reduction order under Docket No. GT910025B had been repaired is without proof and proven to be without merit by the October 4, 2021 inspection which disclosed that the D line ventilation system was not operable. Here, in the rent restoration application below, the owner affirmed that they had complied with the Rent Administrator's instruction by restoring all the complained of services, including the D line ventilation system outstanding under the rent reduction order Docket No. GT910025B. However, this claim by the owner is unsubstantiated and contradicts the Agency inspection conducted thereafter on October 4, 2021. As noted above, at the time of the Agency inspection, the D line ventilation system in the hallway was not functional. The Commissioner finds that the Rent Administrator, in accordance with the TPR and Policy Statement 90-2, properly relied on the evidence contained in the record, namely the Agency inspection report from October 4, 2021. The Commissioner further finds that the Rent Administrator's reliance on the inspector's impartiality in conducting the inspections and taking the photographs was reasonable and in compliance with long standing Agency policy. Furthermore, the owner's claim that they were advised that the D line fan only services the interior of apartments and not the hallways and lobby is without merit and was not raised before the Rent Administrator. As noted above, the Agency inspection on October 4, 2021 revealed that the mechanical ventilation system was not on.

With respect to the removal of the tenants' laundry room bathroom, the Commissioner finds the owner's claim that such condition is *de minimis* is without merit. In this case, the Agency records

show that the tenants' bathroom (it is noted that nothing in the record herein shows the bathroom to be "public") was closed in the laundry room, therefore warranting a rent reduction under Docket No. GT910025B, which was affirmed on appeal under Docket No. HQ910018RO. The failure of the owner to appeal the Commissioner's order under Docket No. HQ910018RO that affirmed the original rent reduction for the tenants' bathroom rendered final and binding its determination on the merits. The Commissioner therefore finds that a collateral attack by the owner in this appeal proceeding against the original rent reduction for the removal of the tenants' bathroom cannot be entertained herein as such claims are barred by the principles of res judicata and collateral estoppel.

In light of the above, the Commissioner finds that the Rent Administrator's order is hereby affirmed, finding that the Rent Administrator's order is correct as issued for the D line ventilation system and the tenants' laundry room bathroom service.

The Commissioner notes that the owner filed a fresh rent restoration application which is currently pending under Docket No. KS910016OR.

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 on appeal.

ISSUED:

DEC 16 2022

Woody Pascal
Deputy Commissioner

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| **IN THE MATTER OF THE ADMINISTRATIVE APPEAL OF:** | : | **ADMINISTRATIVE REVIEW DOCKET NO.: KT110026RO** |
| 88-05 171 LLC, | : | **RENT ADMINISTRATOR'S DOCKET NO.: JX110099OR** |
| **PETITIONER** | : | |

ORDER AND OPINION DENYING PETITION FOR ADMINISTRATIVE REVIEW

On August 24, 2022, the above-named petitioner-owner filed a Petition for Administrative Review ("PAR") against an order the Rent Administrator issued on July 28, 2022 (the "Order"), concerning the housing accommodation known as 88-05 171st Street, Jamaica, NY, wherein the Rent Administrator denied the owner's application to restore the rent.

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

On August 13, 2018, various tenants filed an application for a rent reduction based upon decreased services. Specifically, the tenants asserted that the petitioner-owner refused to provide a sufficient number of non-duplicable keys for the building entrance door and mailbox room, and that there was a decrease in lobby space due to the owner creating an office space in the lobby. Based on evidence contained in the record, the Rent Administrator issued an order on December 4, 2019, under Docket Number GT110022B, granting the tenants' application and determining that the owner did not obtain Agency approval prior to changing from a traditional, keyed main entry door lock to a main entry that uses a non-duplicable key to enter the building. The Rent Administrator also noted that the owner did not address the issue of keys to the mailbox room. However, the Rent Administrator found that the issue of lobby space was found maintained.

On December 29, 2021, the owner filed an application to restore the rent, which was denied on July 28, 2022, under Docket No. JX110099OR, after the record revealed that the petitioner-owner failed to receive Agency approval for changing the building lock from a traditional, keyed building entry door lock to a lock requiring non-duplicable keys, and for failing to provide evidence that building entrance keys and/or mailbox keys were provided to apartments [redacted], [redacted], and [redacted].

In the PAR, the petitioner-owner seeks a reversal of the Rent Administrator's order asserting that the owner did not receive any tenant responses objecting to the owner's application

to restore the rent; that the Agency acknowledged that apartment [redacted] received a non-duplicable building entrance key under Docket No. JQ110014OR; that apartment [redacted] received an additional key with an accompanying charge; that apartment [redacted] is vacant; apartment [redacted] received a key and attested to same; and apartment [redacted] engaged in purposeful conduct with the purpose of precluding the owner from receiving a rent restoration and a Major Capital Improvement ("MCI") increase, as the tenant of record in Apt. [redacted] continues to request additional keys for her son, who lives in Apt. [redacted] and has received his own building keys.

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. In addition, Sections 2522.4(d) and (e) of the Code provides that an owner is required to file an application with this Agency for permission to modify required services prior to doing so, provided that doing so would not be inconsistent with the Rent Stabilization Law and Code.

Further, in this case, the Agency's policy provides that if an owner changes the building's entrance door lock to a system which requires non-duplicable keys, the owner is required to provide a duplicate set of keys at no cost to the tenant. Additionally, occupants of the apartment include children who are to be issued non-duplicable keys if their parent/guardian requests it. Tenants may also receive up to four (4) additional keys at no charge for employees, who may be contractors, professional care givers, and/or for guests, including family members and friends, who are expected to visit on a regular basis or visit as needed to care for a tenant or the apartment if the tenant is away.

The record supports that the owner failed to comply with Agency policy and obtain Agency approval prior to modifying the lock from a traditional metal key entry to an entry that utilizes a non-duplicable key. The owner is required to file an application to modify services and such modification of services application be approved by this Agency before an order to restore rent can be granted.

Regarding the owner's assertion that the Agency failed to send the owner tenant responses to the application, the Commissioner notes that the Agency received two responses: one from Apt. [redacted], which acknowledged receipt of an additional key with a $25.00 charge; and one from Apt. [redacted], which is requesting a key. The Agency requested additional information regarding receipt of keys for, *inter alia*, Apts. [redacted] and [redacted], to which the owner provided a response. Furthermore, the owner was provided with an opportunity to provide additional information/evidence regarding whether they provided additional keys with a copy of proof to the following tenants: [redacted], and [redacted] on February 15, 2022. Nevertheless, as the owner has failed to apply for a modification of services regarding the change to a non-duplicable key, any information provided by the owner would not warrant a reversal or modification of the Rent Administrator's order. As such, the petitioner-owner's due process rights have not been violated.

Based on the foregoing, the Commissioner finds that the Rent Administrator correctly denied the owner's application to restore the rent, and the petitioner-owner's PAR has not established any basis to modify or revoke the Rent Administrator's determination.

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

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

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

ISSUED: DEC 21 2022

Woody Pascal
Deputy Commissioner

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