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

2730 DECATUR AVE ESTATES LLC

PETITIONER

ADMINISTRATIVE REVIEW DOCKET NO JR610033RO

RENT ADMINISTRATOR'S DOCKET NO HW610106OR

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ORDER AND OPINION DENYING PETITION FOR ADMINISTRATIVE REVIEW

On June 25, 2021, the above-named petitioner-owner filed a Petition for Administrative Review ("PAR") of an order the Rent Administrator issued on May 21, 2021 (the "order"), concerning the housing accommodation known as 2730 Decatur Avenue, Apt [redacted] Bronx, New York, wherein the Rent Administrator issued an order denying the owner's application to restore rent finding the bedroom 2 ceiling not restored

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

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

In the PAR, the petitioner-owner, through its attorney, seeks a reversal of the Rent Administrator's order claiming that sometime after June 8, 2021, upon its receipt of the April 8, 2021 Agency Inspection report, including the inspector's one "out of focus ' photograph, the owner directed the building's superintendent to inspect the tenant's apartment The building's superintendent did not find evidence of cracks in the ceiling of bedroom 2 during his inspection The owner submitted in the PAR the photographs that were claimed to have been taken during the superintendent's inspection

The tenant opposes the owner's petition asserting the owner has not restored the unmaintained bedroom 2 ceiling and raises additional apartment wide service complaints

Pursuant to Section 2523 4 of the Rent Stabilization Code ("RSC"), following a complaint by a tenant, DHCR is authorized to order a rent reduction where it is found that the owner has failed to maintain required or essential services Moreover, 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 Policy Statement 90-2 permits the Rent Administrator to rely on an Agency inspection when making a decision Section 2527 5(b) of the RSC gives the Administrator the authority to request an inspection at any stage of a DHCR proceeding and New York Courts have consistently recognized the reliability of DHCR inspections

In the initial proceeding under Docket No FM610035S, the tenant filed a complaint alleging a diminution in services to the apartment entry door, vermin control, kitchen, bathroom, bedroom 1, bedroom 2 and living room On April 27, 2017, the Rent Administrator granted the tenant a rent reduction and directed the restoration of services, as the Rent Administrator found unmaintained conditions to the apartment entry door, vermin control, kitchen, bathroom, bedroom 1, bedroom 2 and living room Subsequently, on May 23, 2017, the owner filed its first rent restoration application assigned Docket No FQ610105OR On September 15, 2017, the Rent Administrator denied the owner's application finding the owner had not restored the bedroom 2 ceiling and bathroom drain conditions

Thereafter, on January 7, 2019, the owner filed its second rent restoration application assigned Docket No HM610031OR On May 29, 2019, the Rent Administrator denied the owner's application after finding the bedroom 2 ceiling unmaintained while determining the owner had restored the bathroom drain

In the proceeding below, the owner filed its third application to restore the rent on November 25, 2019, asserting it corrected the bedroom 2 ceiling and included two photographs of the ceiling purporting to support its claim The tenant responded to the owner's complaint (the ' Initial Notice") served on January 6, 2020, denying the claim that the condition was corrected and raising additional service complaints Subsequently, the Rent Administrator requested an inspection, and it was conducted on April 8, 2021 The Agency inspector observed cracked plaster to various areas to bedroom 2 ceiling Based on the Agency inspection, on May 21, 2021, the Rent Administrator denied the owner's application to restore the rent as bedroom 2 ceiling was found unmaintained

The Commissioner finds the owner s PAR does not establish any basis to modify or revoke the Rent Administrator's determination which was based on the April 8, 2021 Agency inspection which found bedroom 2 ceiling unmaintained The Commissioner notes the owner's claim that its building's superintendent inspected the tenant's apartment after receiving a copy of the Agency's April 8, 2021 inspection report finding no cracks in the ceiling of bedroom 2 and submitted photographs to support this assertion, however this assertion post dates the Rent Administrator's order Therefore, this evidence cannot be entertained pursuant to fundamental

principles of the administrative appeal process and Section 2529 6 of the Rent Stabilization Code

The Commissioner further finds that based on the totality of the record, the Rent Administrator's order was correctly issued, and the Rent Administrator and Agency staff conducted the proceeding below in accordance with established law and practice, and principles of due process The Rent Administrator's reliance on the inspector's observations, training, and experience in the area of building inspections, as well as the inspector's impartiality in conducting the inspection was reasonable Consequently, the Commissioner finds the owner's claims on appeal are without merit, and that the owner has not presented any allegations of error of fact or law to warrant a reversal of the Rent Administrator's order

The tenant is advised she may file a new services complaint, if the facts so warrant

The owner's application to restore the rent assigned Docket No JR610067OR was granted on October 18, 2021

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 18 2021

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.whcrny.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 revie The deadline for filing this Article 78 proceeding with the courts is within 60 days of the issue 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 gi In preparing your papers please cite the Administrative Review Docket Number which appears the front page of the attached order If you file an Article 78 appeal the law requires that a full c of your appeal papers be served on each party including the Division of Housing and Communit Renewal (DHCR) With respect to DHCR your appeal must be served on DHCR Counsel's othe 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 filing 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 Numb and the documents received by the court i e Notice of Petition Petition and other filed docum to DHCRLegalMail@nyshcr org Upon receipt of the complete filings the receipt of such docum 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 Stat New York or any third party In addition the Attorney General must be served at 28 Liberty Stre 15th 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
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JAMAICA, NEW YORK 11433

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IN THE MATTER OF THE ADMINISTRATIVE APPEAL OF

ADMINISTRATIVE REVIEW DOCKET NO.: JQ610028RO

EDJ REALTY INC

PETITIONER

RENT ADMINISTRATOR'S DOCKET NO.: IM610095OR

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ORDER AND OPINION DENYING PETITION FOR ADMINISTRATIVE REVIEW

On May 21, 2021, the above-named Petitioner-owner filed a Petition for Administrative Review ("PAR") against IM610095OR, an order the Rent Administrator issued on April 22, 2021 (the "order"), concerning the housing accommodation known as 2025 Continental Avenue, Apartment [redacted] Bronx, New York, wherein the Rent Administrator granted the owner's rent restoration application based upon a finding that the owner's application for modification of services under Docket No. GX610004AD was granted which approved the removal of the access to the private patio/backyard area and a $50.00 permanent rent reduction for such removal of service.

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

In the PAR, the owner, through counsel, requests a reversal of the Rent Administrator's order and substantively contends that: (1) the order is incomplete as it only addresses the subject apartment [redacted], whereas apartment [redacted] is not considered; (2) the order is arbitrary and capricious in that the order, despite acknowledging the illegality of the patio, and notwithstanding the owner's assertion that the tenant's use of the rooftop was illegal and had caused damage to the building, the Rent Administrator proceeded to grant the tenant a rent reduction, and that nevertheless, assuming the fifty dollar rent reduction was properly awarded, the owner's rent restoration application should have been made effective to 2009 rather than March of 2020 out of equity; (3) there has been no reduction in service to justify a modification of the rent given that

the tenants have the same access to the rooftop as they did prior to the issuance of the rent reduction order, and that the owner merely removed an illegal fence which does not reduce their ability to use the rooftop; and (4) if the appeal is denied and the rent is not entirely restored, the owner requests a new order with a calculation of the lawful rent to be collected and charged from 2009 to present.

The tenant responded to the PAR, objecting to the owner's claims on appeal, disputing the owner's request to apply the rent restoration retroactively to 2009.

The owner answered the tenant's rebuttal submission, disputing the tenant's claims therein.

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

Pursuant to Section 2523.4 of the Rent Stabilization Code ("RSC" or the "Code"), DHCR is authorized to order a rent reduction, upon application by a tenant, where it is found that an owner has failed to maintain required or essential services. Likewise, an owner is entitled to the restoration of rent once it is established that the required services cited in the rent reduction order have been restored. Policy Statement 90-2 states that the Rent Administrator, upon confirmation that services have been restored, will grant the owner a rent restoration, and "[w]here DHCR issues an order restoring rent, the retroactive date will be the first of the month following the date of service on the tenant of the owner's application to restore rent."

Additionally, under Agency policy and the RSC, an owner may not unilaterally eliminate a required service without Agency permission. Section 2523.4 (d) and (e) of the RSC provides that an owner may file an application with the Agency for permission to modify or decrease required services prior to doing so, provided that doing so would not be inconsistent with the Rent Stabilization Law and Code.

In the initial proceeding, rent was reduced by an order issued by the Rent Administrator on May 3, 2012 under Docket No. ZE620005B, after finding that the owner unilaterally removed the subject tenant's rooftop patio area without a prior approval from the Agency to modify services as required under Section 2522.4 (d), (e) of the RSC.

Thereafter, on January 22, 2020, the owner applied to restore rent based on restoration of the diminished service cited in the order reducing rent. Specifically, the owner asserted that it had obtained the requisite permission from the DHCR to modify service under Docket No. GX610004OD. On February 4, 2020, the tenant was afforded an opportunity to respond to the owner's application. By correspondence dated February 10, 2020 and received by the Division on February 13, 2020, the tenant opposed the owner's rent restoration application and averred in pertinent part that the removal of their private fence had greatly impacted their enjoyment and use of their patio as their privacy has been impeded.

On April 22, 2021, based upon a complete review of the record and all the supporting submissions including the evidentiary proof that the Agency had granted the owner's application to remove access to the private patio/backyard under Docket No. GX610004OD, the Rent

Administrator granted the owner's application to restore rent under Docket Number IM610095OR, and directed that the rent for the subject premises be restored to the level in effect prior to the subject rent reduction order, Docket No. ZE620005B, plus all lawful increases which are collectible from the effective date of the rent restoration order, March 1, 2020.

At the outset, the Commissioner finds that the owner's argument that the Rent Administrator's order is incomplete as the said order only addresses the subject apartment [redacted] while disregarding apartment [redacted] is without merit. The Commissioner notes that the underlying rent reduction order, Docket No. ZE620005B, only applied to apartment [redacted], and therefore apartment [redacted] is not a party to the underlying proceedings.[1]

The Commissioner notes the owner's contention that the Rent Administrator's order is arbitrary and capricious in determining the effective date of restoration as March 1, 2020 as opposed to a date in 2009. However, the Commissioner finds that the Rent Administrator's order is in accordance with the Agency's Policy Statement 90-2 that states that the Rent Administrator, upon confirmation that services have been restored, will grant the owner a rent restoration and that the effective date will be the first of the month following the date of service on the tenant of the owner's application to restore rent. Here, the record shows that the owner applied for a rent restoration on January 22, 2020. The owner's rent restoration application was served on the tenant on February 4, 2020. Therefore, the Commissioner finds that the effective date of the restoration order is correct as the effective date of March 1, 2020 is the first of the month following the date of service on the tenant of the owner's application to restore rent.

In regard to the owner's contentions with the $50.00 permanent rent reduction, the Commissioner finds such claims without merit and are beyond the scope of this appeal. The record reflects that the owner submitted an application to modify services on December 12, 2018 which was granted on October 1, 2019 under Docket No. GX610004OD. Specifically, the Rent Administrator under Docket No. GX610004OD determined that the owner's application to modify the tenant's service, the fenced-in private patio located on the roof of the garage, was granted and provided that the tenant's rent be permanently reduced by $50.00 each month for the loss of service that was enjoyed by the tenant for many years. The Rent Administrator's determination was affirmed on appeal under Docket No. HW610001RO on April 16, 2021. Accordingly, the Commissioner finds that the owner's claims regarding the $50.00 permanent rent reduction are beyond the scope of the subject appeal and that the Rent Administrator under the subject order, Docket No. IM610095OR was proper in accordance with the Agency's records and policies. The owner may not raise issue with the permanent rent reduction found in the Rent Administrator's decision under Docket No. GX610004OD by way of a collateral attack in the instant appeal against the Rent Administrator's decision under Docket No. IM610095OR that related to the granting of the owner's rent restoration application and not on the owner's modification of services application that determined the permanent rent reduction. See RSC Section 2529.6 Scope of Review.

[1] The Commissioner notes that the owner in their appeal state that apartment 2E was granted a rent reduction under Docket No. AR610273S. A review of the Agency records reveals that the Rent Administrator's order under Docket No. AR610273S is in regard to apartment 2E, and therefore, apartment 2E is separate from the subject underlying proceeding, Docket No. IM610095OR and the initial rent reduction order, Docket. No. ZE620005B.

Based on the foregoing, the Commissioner finds that the Rent Administrator's decision under the subject rent restoration application, Docket No. IM610095OR was proper and in accordance with the RSC and Agency policies. The Rent Administrator's order is neither arbitrary nor capricious and the owner's PAR has not established any basis to modify or revoke the Rent Administrator's decision.

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

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

ISSUED:

NOV 24 2021

Woody Pascal
Deputy Commissioner

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

Right to Court Appeal

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

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There is no other method of appeal.

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

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IN THE MATTER OF THE ADMINISTRATIVE APPEAL OF

ADMINISTRATIVE REVIEW DOCKET NO GP910081RT

[redacted] & [redacted]
Tenants' Representatives

RENT ADMINISTRATOR'S DOCKET NO GN910010OR (FP910019B)

PETITIONERS

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ORDER AND OPINION DENYING PETITION FOR ADMINISTRATIVE REVIEW

On April 27, 2018, the above named petitioner-tenants' representatives filed a petition for administrative review (PAR) against an order issued on March 22, 2018, by the Rent Administrator concerning the housing accommodations known as 30 Park Avenue, Various Apartments, Mount Vernon, NY, wherein the Administrator denied[1] the owner's rent restoration application

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

In the PAR, various tenants, through the tenants' representatives, request a modification of the Administrator's order and contend, in substance, that the portion of the Rent Administrator's order finding the parking garage as a restored service, despite ongoing work to repair the leaking roof and outstanding hazardous condition code violations issued by Mount Vernon Department of Buildings (DOB) indicating "defective, deplorable, unsafe and dangerous" condition(s), was premature, and that the parking garage should thus be included in services found not restored until such time as the garage repairs have been completed

The tenants argue further that the instant rent restoration decision is inconsistent with earlier Agency orders/findings on the same item[2], and that the Agency improperly found the garage

[1] While the Rent Administrator found the garage wall/ceiling and floor portion of the rent reduction order restored the recreational facilities portion was found not restored

[2] As for the Rent Administrator orders the tenants cite to regarding the garage the Commissioner notes that the basis for those orders were Agency inspections conducted prior to the subject inspection and are beyond the scope of the

a restored service when the garage roof and interior ceiling, although improved noticeably due to a year long repair, were still leaking especially with significant rainfall[3], which the management conceded[4]

The tenants contend that the inspection of February 28, 2018 was incomplete because it was conducted on a sunny day with no significant rainfall for three weeks prior, and no rainfall at all for almost a week, that the repair included asbestos remediation which could not be visually inspected, that the inspection did not include an exterior inspection of the roof which would have shown that there was ongoing repair work, and that given the garage's long history of leaks, the inspection should not have been conducted under stated circumstances

The tenants also contended that due consideration was not given to tenants' response of March 23, 2018, which claimed there was an outstanding DOB violation

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

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 failed to provide and maintain 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

The Commissioner notes that in the initial proceeding under Docket No **FP910019B,** a rent reduction was granted on August 28, 2017, for garage/wall/ceiling/floor and recreational facilities at the subject premises as the inspector, pursuant to the Agency's inspection, conducted at the subject premises on August 10, 2017, specifically reported the following defect(s)

(1) Leaks, damages, and falling debris from the garage ceiling in various areas
(2) No access to recreational area(s) — playground, pool, and tennis

Subsequently on February 2, 2018, the owner filed the rent restoration application herein below, wherein the owner claimed specifically regarding the garage issue, that the owner had

subject appeal The tenants also cite to the Matter of [redacted] Admin Rev Docket No CQ110031RT and the Matter of [redacted] et al, Admin Rev Docket No DM430010RT

[3] For example during the four Nor easters in March of 2018 and the April 16 2018 rainstorm

[4] That on January 25 2018 at a meeting with the management and tenants management conceded that the ceiling was still leaking but should cease when the repairs have been completed that in its MCI application before the Agency in a February 14 2018 submission the owner acknowledged that repairs to the parking garage were ongoing and the owner anticipated completion late spring/early summer and that at the City Court of the City of Mount Vernon on February 27 2018 the owner pled guilty to criminal charges based on the hazardous and defective condition of the garage

undertaken, over the past Summer and Fall, to replace the exterior garage roof and repair/upgrade[5] of the entire interior of the garage which was completed in early December 2017, that there was no interference with the use of the parking garage and any assigned space(s), and that the exterior work, which was ongoing at the time of the owner's submission, was expected to be completed by late Spring/early Summer of 2018 The owner's rent restoration application was served on the tenants on February 12, 2018

The Rent Administrator requested an Agency inspection of the conditions which the owner claimed to have restored

On February 28, 2018, an Agency inspection was completed at the subject premises The inspection report indicated that there was no evidence of defective, deplorable, unsafe and dangerous conditions to the garage at the time of the Agency's inspection

On March 22, 2018, pursuant to the DHCR inspection of February 28, 2018, the Rent Administrator denied the owner's rent restoration application based on the finding that not all the services noted in the underlying rent reduction order had been restored, to wit, that the following garage/wall/ceiling/floor were found restored, but that the recreational facilities' services were yet to be restored

The Agency record indicates that the tenants submitted a response to the Agency through the tenants representative, dated March 23, 2018, opposing the owner's rent restoration application wherein the tenants argued that until the work to repair the several hazardous conditions of the garage is completed and the DOB performs an inspection and approves the repairs, the rent reduction order(s) in connection with the garage work, *inter alia*, must remain in place The Commissioner notes that a similar submission dated March 5, 2018 was made by the tenants concerning the subject premises, *inter alia*, which had been in the records and was considered prior to the issuance of the Rent Administrator's order

Regarding the tenants' request that the Commissioner's order be based on the DOB inspection et al, the Commissioner notes that pursuant to the DHCR Policy Statement 90-2, where there is a dispute as to whether required services have been provided or are properly being maintained, the Rent Administrator may rely on the results of an Agency inspection *See* Matter of 113-117 Realty, LLC v DHCR, 2021 N Y Slip Op 06432 [1st Dept 2021] *citing to* Matter of Sherman v DHCR, 210 AD2D 486 [2nd Dept 1994] Additionally, any observable condition reported by the Agency's impartial inspector for which no alternative expertise is required could properly be relied on by the Agency In the instant case, the Commissioner notes that the tenants' service complaints below were issues discernable by visual inspection by the Agency's inspector, which the Rent Administrator relied upon in granting a rent reduction Thus, the Commissioner finds that an Agency inspection of the condition during the rent restoration proceeding suffices to determine whether or not the necessary repairs, pursuant to the tenants' complaint below, had been performed Further, the Commissioner finds that there were no procedural anomalies in the proceeding below

[5] Including LED lighting painting of the entire garage except the floors re stripping installation of new ventilation fans and windows (as needed)

Based on the foregoing, the Commissioner finds that, in accordance with the TPR and Agency policies and procedures, the Rent Administrator's properly found the garage service issue restored and the Rent Administrator's was supported by a rational basis contained in the record, namely the February 28, 2018 inspection report The Rent Administrator's reliance on the inspector's training and experience in the area of building inspections as well as the inspector's impartiality in conducting the inspection was reasonable

With respect to the two cases cited by the tenants, the Commissioner notes that they are not apposite herein In the Matter of [redacted] the Commissioner notes that while the Commissioner referenced the existence of the DOB violations, which confirmed the tenants' complaint of water penetration in the affected apartment, an independent DHCR inspection was conducted which indicated that the conditions which the owner claimed to have restored had not been restored With regard to the Matter of [redacted] et al, the Commissioner notes that the issue therein concerned elevator(s), and the Commissioner found that the tenants' claim that the DOB records were sufficient evidence to support their rent reduction claim was without merit and that the Rent Administrator properly found that a rent reduction was not warranted based on a DHCR inspection

Additionally, the Commissioner notes that the Rent Administrator properly predicated the decision in the subject rent restoration proceeding on the garage service issues underlying the related rent reduction order, docket number **FP910019B**[6] Additional service issues with the garage that the tenants may have which were not part of the underlying rent reduction order may not herein be addressed as the scope of the administrative review is limited to the items found not maintained by the Rent Administrator, in the initial proceeding, based on the tenants' initial complaint

The Commissioner notes the tenants' claim that their March 23, 2018 reply was not considered in the Rent Administrator's decision However, the record reveals that the tenants were provided with an opportunity to respond during the processing of the owner's rent restoration application, and a response dated March 5, 2018 with similar claims was contained in the record and considered during the pending Rent Administrator's proceeding The Commissioner notes that an administrative proceeding is not an open ended process Furthermore, the Commissioner notes that any due process claim by the tenants in this case is without merit as the Commissioner has reviewed the tenants' contentions as submitted in their appeal, which are akin to the contentions submitted in their response dated March 23, 2018

Based on the foregoing, the Commissioner finds that there is no basis to modify the portion of the Rent Administrator's order which indicated that the garage issue had been restored

The Commissioner notes that the tenants are not precluded from filing a fresh complaint, if the facts warrant

[6] As noted above the subject underlying service reduction order found that there were leaks damages and falling debris from the garage ceiling

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, denied, and that the Rent Administrator's order be, and the same hereby is, affirmed

ISSUED DEC 8 2021

WOODY PASCAL
Deputy Commissioner

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

Right to Court Appeal

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IN THE MATTER OF THE
ADMINISTRATIVE APPEAL OF

ADMINISTRATIVE REVIEW
DOCKET NO GR930052RT

[redacted] **&** [redacted]
Tenants' Representatives

RENT ADMINISTRATOR'S
DOCKET NO GN930014OR
(EM930003B)

PETITIONERS

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ORDER AND OPINION DENYING PETITION FOR ADMINISTRATIVE REVIEW

On June 13, 2018, the above-named petitioner-tenants' representatives filed a petition for administrative review (PAR) against an order issued on May 10, 2018, by the Rent Administrator concerning the housing accommodations known as 30 Park Avenue, Various Apartments, Mount Vernon, NY, wherein the Rent Administrator denied[1] the owner's rent restoration application

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

In the PAR, various tenants, through the tenants' representatives, request a modification of the Administrator's order and contend, in substance, that the portion of the Rent Administrator's order finding the parking garage as a restored service, despite ongoing work to repair the leaking roof and outstanding hazardous condition code violations issued by Mount Vernon Department of Buildings (DOB) indicating "defective, deplorable, unsafe and dangerous" condition(s), was premature, and that the parking garage should thus be included in services found not restored until such time as the garage repairs have been completed

[1] While the Rent Administrator found the garage condition restored the playground access was found not restored

The tenants argue further that the instant rent restoration decision is inconsistent with earlier Agency orders/findings on the same item[2], and that the Agency improperly found the garage a restored service when the garage roof and interior ceiling, although improved noticeably due to a year long repair, were still leaking especially with significant rainfall[3], which the management conceded[4]

The tenants contend that the inspection of February 28, 2018 was incomplete because it was conducted on a sunny day with no significant rainfall for three weeks prior, and no rainfall at all for almost a week, that the repair included asbestos remediation which could not be visually inspected, that the inspection did not include an exterior inspection of the roof which would have shown that there was ongoing repair work and that given the garage's long history of leaks, the inspection should not have been conducted under stated circumstances

The owner, represented by counsel, opposed the petition

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

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 failed to provide and maintain 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

The Commissioner notes that in the initial proceeding under Docket No **EM930003B,** a rent reduction was granted on January 23, 2017, for various items[5], including, in pertinent part, the garage for the subject premises, pursuant to the Agency's inspections, conducted at the subject premises on May 4, 2016 and June 1, 2016 Specifically, concerning the garage condition, the inspector noted that at the time of inspection, garage roof leaks were observed in various areas,

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[2] As for the Rent Administrator orders the tenants cited to regarding the subject garage the Commissioner notes that the basis for those orders were Agency inspections conducted prior to the subject inspection and are beyond the scope of the subject appeal The tenants also cite to the Matter of [redacted] Admin Rev Docket No CQ110031RT and the Matter of [redacted] et al, Admin Rev Docket No DM430010RT

[3] For example the during the four March 2018 Nor easters and April 16 2018 rainstorm

[4] That on January 25 2018 at a meeting with the management and tenants management conceded that the ceiling was still leaking but should cease when the repairs have been completed that in its MCI application before the Agency in a February 14 2018 submission the owner acknowledged that repairs to the parking garage were ongoing and the owner anticipated completion late spring/early summer and that at the City Court of the City of Mount Vernon on February 27 2018 the owner pled guilty to criminal charges based on the hazardous and defective condition of the garage

[5] The inspector reported following an inspection conducted on May 4 2016 and June 1 2016 the following defective services door lock main entry, ceiling vestibule intercom floor covering hall elevator garage janitor service building wide vermin control mailboxes and playground

including above parked cars, and puddles of water were on the ground in various areas, and that the garage exit doors/bar lock were defective

Subsequently, on February 2, 2018, the owner filed the rent restoration application herein below, wherein the owner claimed that repairs had been performed, where necessary The owner's rent restoration application was served on the tenants on February 12, 2018

The Rent Administrator requested an Agency inspection of the conditions which the owner claimed to have restored

On February 28, 2018, an Agency inspection was completed at the subject premises The inspection report indicated that there was no evidence of defective, deplorable, unsafe and dangerous conditions to the garage at the time of the Agency's inspection

The tenants submitted a response through the tenants' representatives dated March 23, 2018, opposing the owner's rent restoration application wherein the tenants argued that until the work to repair the purported hazardous conditions of the garage is completed and the DOB performs an inspection and approves the repairs, the rent reduction order(s) in connection with the garage work, *inter alia*, must remain in place

On May 10, 2018, pursuant to the DHCR inspection of February 28, 2018, the Rent Administrator denied the owner's rent restoration application based on the finding that not all the services noted in the underlying rent reduction order had been restored, to wit, that the playground access had not been restored[6]

Regarding the tenants' request that the Commissioner's order be based on the DOB inspection et al, the Commissioner notes that 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 *See* Matter of 113 117 Realty, LLC v DHCR, 2021 N Y Slip Op 06432 [1st Dept 2021] *citing to* Matter of Sherman v DHCR, 210 AD2D 486 [2nd Dept 1994] Additionally, any observable condition reported by the Agency's impartial inspector for which no alternative expertise is required could properly be relied on by the Agency In the instant case, the Commissioner notes that the tenants' service complaints below were issues discernable by visual inspection by the Agency's inspector, which the Rent Administrator relied upon in granting a rent reduction Thus, the Commissioner finds that an Agency inspection of the condition during the rent restoration proceeding suffices to determine whether or not the necessary repairs, pursuant to the tenants' complaint below, had been performed Further, the Commissioner finds that there were no procedural anomalies in the proceeding below

Based on the foregoing, the Commissioner finds that, in accordance with the TPR and Agency policies and procedures, the Rent Administrator properly found the garage service issue

[6] Prior to the rent restoration proceeding below the owner had filed one rent restoration application Docket No FO930042OR (against the initial Rent Administrator s rent reduction order Docket No EM930003B) which on August 15 2017 found various items restored including the intercom floor covering hall elevator service vermin control public area and mailboxes condition but not the garage condition and the playground access

restored and the Rent Administrator's decision was supported by a rational basis contained in the record, namely the February 28, 2018 inspection report The Rent Administrator's reliance on the inspector's training and experience in the area of building inspections as well as the inspector's impartiality in conducting the inspection was reasonable

With respect to the two cases cited by the tenants, the Commissioner notes that they are not apposite herein In the Matter of [redacted] the Commissioner notes that while the Commissioner referenced the existence of the DOB violations, which confirmed the tenants' complaint of water penetration in the affected apartment, an independent DHCR inspection was conducted which indicated that the conditions which the owner claimed to have restored had not been restored With regard to the Matter of [redacted] et al, the Commissioner notes that the issue therein concerned elevator(s), and the Commissioner found that the tenants' claim that DOB records were sufficient evidence to support their rent reduction claim was without merit and that the Rent Administrator properly found that a rent reduction was not warranted based on a DHCR inspection

Additionally, the Commissioner notes that the Rent Administrator properly predicated the decision in the subject rent restoration proceeding on the garage service issues underlying the related rent reduction order, docket number **EM930003B**[7] Additional service issues with the garage that the tenants may have which were not part of the underlying rent reduction order may not herein be addressed as the scope of the administrative review is limited to the items found not maintained by the Rent Administrator in the initial proceeding, based on the tenants' initial complaint

Based on the foregoing, the Commissioner finds that there is no basis to modify the portion of the Rent Administrator's order which indicated that the garage issue had been restored

The Commissioner notes that the tenants are not precluded from filing a fresh complaint, if 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, denied, and that the Rent Administrator's order be, and the same hereby is, affirmed

ISSUED

DEC 0 8 2021

WOODY PASCAL
Deputy Commissioner

[7] As detailed above the Rent Administrator in the initial proceeding found a rent reduction for the garage based on an Agency inspection that revealed roof leaks observed in various areas throughout the garage including above parked cars and puddles of water on the ground in various areas and the garage exit doors/bar lock were defective

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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

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
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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 JS430024RT

[redacted] APARTMENT [redacted] &
APARTMENT [redacted]

PETITIONERS

RENT ADMINISTRATOR'S DOCKET NO IR430022OR

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ORDER AND OPINION DENYING PETITIONS FOR ADMINISTRATIVE REVIEW

On July 16, 2021, the above named Petitioner tenants filed Petitions for Administrative Review ("PAR") against IR430022OR, an order the Rent Administrator issued on July 9, 2021 (the "order"), concerning the housing accommodation known as 210 West 150th Street, Various Apartments, New York, New York, wherein the Rent Administrator granted the owner's rent restoration application after an Agency inspection conducted at the subject premises on June 17, 2021 confirmed that the defective security cameras cited in the order reducing rent had been 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 PARs

In the PARs, the above named tenants of Apartments [redacted] and [redacted] request a reversal of the Rent Administrator's order and aver, in substance, that the security cameras for which an order to restore rent was granted are still not functioning, and that the Dunbar Tenants Association has entered into an agreement with Fairstead Management to restore services which has been scheduled to be completed sometime in September of 2021 The Petitioners submitted photos claimed to have been taken by the tenants depicting the condition of the alleged security cameras

The owner, through counsel, submitted an answer objecting to the tenants' appeals and request that the Administrator's order be affirmed as the Agency inspection report confirmed that the security cameras were restored at the time of inspection The owner further stated that the owner

is in the process of enhancing the security by upgrading the cameras, but that at all times while the security enhancement project is underway, all security cameras are operational

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

Pursuant to Section 2523 4 of the Rent Stabilization Code (the "Code") and Section 2202 16 of the New York City Rent and Eviction Regulations (the "Regulations"), the Rent Administrator is authorized by law to order a rent reduction upon application by a tenant when it is found that an owner has failed to maintain required or essential services Likewise, an owner is entitled to the restoration of rent once it is established that the required services cited in the rent reduction order have been restored Section 2527 5 (b) of the Code and Section 2207 5 (b) of the Regulations authorize the Administrator to request an inspection at any stage during a DHCR proceeding and New York Courts have held that the Agency has broad discretion to decide when an inspection is necessary Policy Statement 90-2 states that the Rent Administrator may rely on an Agency inspection when making a determination New York Courts have consistently upheld the reliability of Agency inspections

A review of the Agency's record shows that in the underlying proceeding, rent was previously reduced by order issued on October 5, 2018 under Docket GO430014B based on defective security cameras Thereafter, on June 30, 2020, the owner applied to restore rent affirming that it had restored the defective cameras cited in the order reducing rent The tenants were afforded an opportunity to respond to the owner's application by service of the owner's rent restoration application on July 2, 2020 The record shows that during the Rent Administrator's proceeding, various tenants submitted their answers to the owner's rent restoration application and refuted the owner's claim that it repaired the security cameras

The Rent Administrator requested an Agency inspection to confirm if service was restored as claimed by the owner On June 17, 2021, DHCR conducted an inspection at the subject premises to confirm the condition of the alleged security cameras The Agency's impartial inspector reported that the security cameras in the subject building were restored at the time of inspection as the cameras were working properly The inspector attached time/date stamped photographs of the security camera monitors to substantiate their inspection report Subsequent thereto, based upon a complete review of the record including the inspection report from June 17, 2021, the Rent Administrator determined that the security camera condition cited in the order reducing rent had been restored, and granted the owner's application to restore rent under Docket No IR430022OR, the subject of this appeal

The Commissioner notes the Petitioners' dispute with the inspector's findings However, the Commissioner finds that the Rent Administrator's determination was appropriate and was supported by a rational basis, namely the inspector's report and the photographic evidence that revealed the security cameras were operable at the time of the Agency inspection Thus, the Rent Administrator's reliance on the inspector's training and experience in the area of building inspections as well as his impartiality in conducting the inspection, taking photographs, and noting observations depicting the restored security cameras was reasonable and in compliance with Section 2523 4 of the RSC, Section 2202 16 of the Regulations, and Policy Statement 90-2

As noted above, the June 17, 2021 inspection report revealed that there were no defects to the subject building's security cameras at the time of inspection

Based on the foregoing, the Commissioner finds that the Rent Administrator correctly granted the owner a rent restoration and the tenants' PARs have not established any basis to modify or revoke the Rent Administrator's determination

The tenants are advised that they may file a fresh service application if the facts so warrant

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

ORDERED, that these petitions are denied and that the Rent Administrator's order is affirmed

ISSUED DEC - 9 2021

Woody Pascal
Deputy Commissioner

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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

[redacted]

PETITIONER

ADMINISTRATIVE REVIEW DOCKET NO JS430045RT

RENT ADMINISTRATOR'S DOCKET NO IR430025OR

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ORDER AND OPINION DENYING PETITION FOR ADMINISTRATIVE REVIEW

On July 30, 2021, the above-named Petitioner-tenant filed a Petition for Administrative Review ("PAR") against IR430025OR, an order the Rent Administrator issued on July 9, 2021 (the "order"), concerning the housing accommodation known as 226 West 150th Street, Various Apartments, New York, New York, wherein the Rent Administrator granted the owner's rent restoration application after an Agency inspection conducted at the subject premises on June 17, 2021 confirmed that the service issue of defective security cameras cited in the order reducing rent had been 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

At the outset, the Commissioner notes that the petition submitted by the Petitioner tenant can only be accepted as an individual petition as it did not contain the proper authorization to represent any other tenant, and thus, the PAR is being accepted as filed by the tenant in his individual capacity

In the PAR, the Petitioner-tenant seeks a modification of the Rent Administrator's order, averring substantively only 16 out of the 89 cameras in the entire complex were restored The Petitioner-tenant requests that all residents should still benefit from the rent reduction order considering that a tenant of one of the buildings (the 247 West 149th Street building) in their complex still receives a rent reduction and that there is a large section of the Dunbar complex insecure, affecting the security of the entire Dunbar population

The owner, through counsel, submitted an answer objecting to the tenants' appeal and requested that the Administrator's order be affirmed

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"), and Section 2202 16 of the New York City Rent and Eviction Regulations (the "Regulations"), the Rent Administrator is authorized by law to order a rent reduction upon application by a tenant when it is found that an owner has failed to maintain required or essential services Likewise, an owner is entitled to the restoration of rent once it is established that the required services cited in the rent reduction order have been restored Section 2527 5 (b) of the Code and Section 2207 5 (b) of the Regulations authorize the Administrator to request an inspection at any stage during a DHCR proceeding and New York Courts have held that the Agency has broad discretion to decide when an inspection is necessary Policy Statement 90-2 states that the Rent Administrator may rely on an Agency inspection when making a determination New York Courts have consistently upheld the reliability of Agency inspections

On March 19, 2018, the tenants commenced the initial proceeding by the filing of a complaint, alleging a diminution in building-wide services, specifically defective security cameras By order dated October 5, 2018 under Docket No GO430017B, the tenants who filed the complaint in the subject building, 226 West 150th Street, were granted a rent reduction and the Administrator directed the restoration of services The Rent Administrator based her decision on the DHCR inspection conducted at the subject premises on September 20, 2018, wherein the inspector confirmed the security cameras the tenants complained about for the subject building were not functioning at the time of inspection

Subsequently, on June 30, 2020, the owner filed the underlying rent restoration application herein, Docket No IR430025OR, asserting that the owner restored the security cameras found unmaintained under Docket No GO430017B The tenants were afforded an opportunity to respond to the owner's application by service on the tenants on July 2, 2020 Various tenants objected to the owner's rent restoration application claiming the security cameras were not restored, while one tenant responded agreeing that the defective condition was restored

The Rent Administrator requested an Agency inspection to ascertain if the defective security cameras, based upon which rent was reduced under Docket No GO430017B had been restored On June 17, 2021, the Agency's impartial inspector conducted an inspection of the subject premises

The Agency's inspection report confirmed that at the time of the inspection on June 17, 2021, the security cameras found not maintained originally in the initial proceeding had been restored and properly working for the subject building, 226 West 150th Street

On July 9, 2021, based upon a complete review of the record, including the inspection report which confirmed that the owner had fully resolved the underlying service issue of defective

cameras for the subject building, the Rent Administrator granted the owner's application to restore rent

The Commissioner notes the Petitioner's dispute with the inspector's findings However, the Commissioner finds that the Rent Administrator's determination was proper and supported by a rational basis, namely the inspector's report that revealed the security cameras were operable at the time of the Agency inspection Thus, the Rent Administrator's reliance on the inspector's training and experience in the area of building inspections as well as his impartiality in conducting the inspection and noting observations depicting the restored service at issue, specifically the security cameras for 226 West 150th Street, was reasonable and in compliance with Section 2523 4 of the RSC, Section 2202 16 of the Regulations, and Policy Statement 90-2 As noted above, the June 17, 2021 inspection report revealed that there were no defects to the subject building's security cameras at the time of inspection

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 any basis to modify or revoke the Rent Administrator's determination

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

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

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

ISSUED DEC 9 2021

Woody Pascal
Deputy Commissioner

State of New York
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Gertz Plaza 92-31 Union Hall Street
Jamaica, NY 11433
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Right to Court Appeal

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

There is no other method of appeal.

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IN THE MATTER OF THE ADMINISTRATIVE APPEAL OF

[redacted]
(TENANT)

ADMINISTRATIVE REVIEW DOCKET NO JU610023RT

RENT ADMINISTRATOR'S DOCKET NO IM610061OR

PETITIONER

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ORDER AND OPINION DENYING PETITION FOR ADMINISTRATIVE REVIEW

On September 13th, 2021, the above-named petitioner-tenant filed a Petition for Administrative Review ("PAR") against IM610061OR, an order the Rent Administrator issued on September 2, 2021 (the ' Order"), concerning the housing accommodation known as 1711 Morris Avenue, Apt [redacted], Bronx, NY, wherein the Rent Administrator issued an order restoring the rent for the subject accommodations

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 reversed The Tenant claims that her daughter was in the apartment and the intercom was out of service, the Owner failed to do the necessary repairs

In response to the Tenant's PAR, the Owner's attorney opposed the Tenant's claims and argued that the matter should 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"), the Rent Administrator is authorized by law to direct the restoration of services and grant a rent reduction, upon application by a tenant, where it is determined that required services have not been maintained Likewise, an owner is entitled to a restoration of rent when it is established that the required services that were cited in the rent reduction order have been restored DHCR Policy Statement 90-2 states that the Rent Administrator may rely on an Agency inspection when making the determination in a matter Furthermore Section 2523 4 and Policy Statement 90-2

also provides that an objection to a rent restoration application by a tenant who fails to provide access at the time arranged by the DHCR for the inspection will be denied

A review of the Agency records show that rent was previously reduced in an order issued on October 3, 2019 under Docket No GX610121S for the subject apartment, the Rent Administrator finding that the intercom, vermin control in the apartment, and the kitchen window were not maintained

In the proceeding below, the Owner filed an application to restore the rent for the subject apartment with this Agency on January 16, 2020, claiming that the intercom, kitchen window and vermin issues were restored The Tenant was served with notice of the Owner's application (the "Initial Notice") on January 21, 2021 and the Tenant responded to the Initial Notice with a claim that there is a vermin problem, and the kitchen window is still defective

Notice if Inspection was mailed to the Tenant on April 19, 2021, scheduling an inspection of the subject premises for May 4, 2021 The Notice advised the Tenant that the failure to provide access to the inspector at the time of the inspection, without rescheduling, may result in a determination against the Tenant's interests On the date of the inspection, May 4, 2021 the Tenant failed to provide access to the subject apartment so that a DHCR inspector could conduct a physical inspection The inspection report reveals that the subject Tenant was not at the apartment at the time of the scheduled inspection

Based on the foregoing details, the Rent Administrator issued an order granting the restoration of the Tenant's rent

The Commissioner notes the Tenant's contention herein that the intercom is out of service However, this unsubstantiated claim by the Tenant does not warrant a modification or reversal of the Rent Administrator's order

Based on the foregoing, the Commissioner finds that the Rent Administrator correctly granted the Owner a rent restoration after the Tenant failed to grant access to the Agency's impartial Inspector on May 4, 2021 The Tenant's PAR has not established any basis to modify or revoke the Rent Administrator's determination

The Tenant is advised that she may file a new service complaint with 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 DEC 9 2021

Woody Pascal
Deputy Commissioner

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Right to Court Appeal

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SJR No.:16,513

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IN THE MATTER OF THE ADMINISTRATIVE APPEAL OF	:	REMIT PROCEEDING DOCKET NO.: GV410003RP
		ADMINISTRATIVE REVIEW DOCKET NO.: FS410025RO
P & I PROPERTY, LLC	:	
	:	RENT ADMINISTRATOR'S DOCKET NO.: FP410148OR (EO410005B)

PETITIONER

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ORDER AND OPINION DENYING PETITION FOR ADMINISTRATIVE REVIEW

On May 31, 2018, the Commissioner issued an order and opinion concerning the housing accommodations known as 47 Catherine Street, Apartment [redacted], New York, NY, which denied owner's petition for administrative review (PAR) under Docket No. **FS410025RO,** filed against the Rent Administrator's order Docket No. **FP410148OR,** which denied the owner a rent restoration.

Subsequently, pursuant to Article 78 of the Civil Practice Law and Rules, the above-named petitioner-owner, on August 2, 2018, commenced a proceeding against the Commissioner's PAR order, in the Supreme Court of the State New York, New York County, Matter of P&I Property, LLC v. DHCR, Index No. 156967/2018, before Justice Rakower (Eileen A.) Pursuant to a Stipulation of Settlement entered into by the parties (the Agency and the owner), dated September 19, 2018, the proceeding was remitted to the DHCR for further processing.

Procedural History

On March 4, 2016, the tenant commenced the initial rent reduction proceeding, Docket No. **EO410005B**, where the tenant alleged a decrease in various services at the subject premises[1]. The records indicate that the tenant submitted the tenant's letter informing the owner of the conditions on February 16, 2016. The Agency served the owner with a copy of the tenant's complaint on March 25, 2016.

On May 9, 2016, the owner responded, contending that the subject premises is kept in good condition at all times; that the tenant should address issues of concern to the owner; and that the premises never had a two-way intercom.

The Rent Administrator thus requested an Agency inspection of the conditions that the tenant complained about. The Agency's inspection, conducted on July 28, 2016, indicated reduction in a plethora of services[2]. Thus, the tenant's rent reduction application was granted on August 28, 2016.

Thereafter, the owner filed a PAR, Docket No. EU410055RO, contending that the order was issued erroneously in the name of the tenant's daughter, Sandy Tse, instead of Carlos Tse. On February 9, 2017, the Agency issued a PAR order modifying the order below, to reflect the tenant's name.

On April 10, 2017, the owner filed its rent restoration (OR) application, Docket No. FP410148OR, which was served on the tenant on May 2, 2017. The owner submitted its contract with [redacted] dated March 25, 2017, regarding the repair work in the subject premises. The tenant submitted an answer to the owner's rent restoration application on May 18, 2017, wherein the tenant stated that services were still not maintained.

The Agency's records indicate that there was a Non-Compliance (NC) proceeding, Docket No. FO410004NC, which was ongoing at the time that the OR herein was under

[1] The tenant complained that there was no two-way voice intercom at the entrance; that the lobby was very dirty with trash piling with minimal clearance; that the hall was very dirty; that the staircase was covered in dust, ash and cigarette butts, and the stairs were also cracking between the ground and first floor; that the premises was rat infested; that the fire escape was partially damaged and detached from the building; and that the stairway was heavily obstructed.

[2] In that there was: no evidence of intercom system or previous intercom system; inadequate janitorial services and trash can collectors, food garbage odor, stored tenant's items by the lobby/ground floor hallway near the staircase; inadequate mopping around the lobby/ground floor. inadequate janitorial services in the hallways as the hallways were noted as dirty and needing mopping. The inspector also found that the stairs needed mopping as there were spills of food, liquids and the tenants' waste, e.g., papers, ash, cigarette butts; that there were cracked and broken treads of steps between the ground and the first floors constituting trip hazard at the time of the inspection; broken horizontal front structural element of the fire escape metal stairs at the 4th floor, and rusted surface of the fire escape metal steps and peeling paint on the fire escape metal surface. However, the inspector indicated that there was no visual evidence of rats in public area, and no obstructive items/elements on the building stairway.

processing. An inspection, addressing essentially the same items as in the OR proceeding, was conducted under the NC proceeding on June 9, 2017, based upon which the Rent Administrator denied the owner's rent restoration application, as the inspector found evidence of liquid spills and dusty surface on the steps and the landing between the 4th floor and the roof door.

On July 17, 2017, the owner filed the PAR, the order to which is herein under review. In the PAR, the owner contended that all the decrease in services have been restored; that the owner did not receive the Notice of Inspection for the June 9, 2017 inspection; that the images mailed to the owner were labeled 1-4, and none of the images showed 4th floor stairway to the roof door or dusty surfaces and liquid spills. The owner's PAR was denied on May 31, 2018.

Subsequently, the owner commenced the Article 78 proceeding wherein the parties (the Agency and the owner) stipulated to have the proceeding processed further. The parties agreed to have a re-inspection of the subject premises.

Remit Proceeding

The Commissioner has reviewed the entire record and finds that the owner's petition must be denied.

The Commissioner notes that the report of the Agency's inspection of January 29, 2019[3], indicated that the inspector found dusty surface on the steps between the 4th floor and the roof door, a re-affirmation of the fact that the condition leading to the denial of the owner's rent restoration application was still in existence or had not been restored in a workmanlike manner.

Based on the foregoing, the Commissioner finds that the Rent Administrator's order in the OR proceeding, Docket No. FP410148OR and the Commissioner's order, Docket No. **FS410025RO** must be upheld.

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

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

ORDERED, that the Commissioner's order under Administrative Review Docket No. **FS410025RO** be, and the same hereby is, affirmed.

ISSUED: DEC 14 2021

WOODY PASCAL
Deputy Commissioner

[3] Which was conducted with Notice of Inspection served on the owner and the tenant.

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

There is no other method of appeal.

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

IN THE MATTER OF THE ADMINISTRATIVE APPEAL OF:	:	**ADMINISTRATIVE REVIEW DOCKET NO.: IU910014RT**
VARIOUS TENANTS OF 33 N. 3RD AVENUE, MOUNT VERNON, NY	:	**RENT ADMINISTRATOR'S DOCKET NO.: HW910047OR**
PETITIONER	:	

ORDER AND OPINION DENYING PETITION FOR ADMINISTRATIVE REVIEW

On September 14, 2020, the above-named petitioner-tenants filed a Petition for Administrative Review ("PAR") of an order the Rent Administrator issued on August 10, 2020(the "Order"), concerning the housing accommodation known as 33 N. 3rd Avenue, Mount Vernon, NY, wherein the Rent Administrator granted the owner's application to restore the 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 PAR.

On April 27, 2017, the petitioner-tenants filed an application to reduce the rent based on various decreased building-wide services. An Agency inspection conducted on November 15, 2017, found that: (1) the garage was under construction; (2) there was evidence of vermin in the public area; (3) the pool was demolished; (4) the playground was under construction; and (5) tenants were not able to access the tennis court(s). As a result, the Rent Administrator granted the petitioners' application for a rent reduction on December 11, 2017, under Docket Number FP910021B.

The owner filed an application to restore the rent on February 13, 2019; however, the application was denied on June 27, 2019, under Docket Number HN910155OR, following an Agency inspection conducted on June 14, 2019, which found that services with respect to the recreational facilities were not restored. In the same order, Docket Number HN910155OR, the Rent Administrator found that the garage condition and the vermin control were restored. The owner subsequently filed another application to restore the rent, which was granted on August 10, 2020 under Docket Number HW910047OR, after an Agency inspection conducted on July 11, 2019 in conjunction with Docket Number HN930143OR, revealed that the services with respect to the recreation area was restored, and further that the owner's application for modification of services with respect to the pool recreation area was granted on December 10,

2019, under Docket Number GP910015OD. The petitioners then filed the instant PAR on September 14, 2020. In the PAR, opposed by the owner, the petitioner-tenants assert that the Rent Administrator's order should be reversed as the rent restoration was based on "flawed" DHCR orders, Docket Nos. GP910012OD, GP910007OD, GP910013OD, and GP910015OD (hereinafter referred to as "the modification orders") that granted the owner's application to modify the recreational facilities. The tenants attached their PAR arguments against the modification orders, claiming that the owner removed the pool in 2016 without prior Agency approval; prior Agency decisions granted rent reductions for removal of the pool as it was a required service; the owner's assertion that the recreational pool area required a membership fee is false and was addressed by the tenants in response to the owner's application for a modification; the tenants should receive a permanent rent reduction for the removal of the pool which is a required service; and the order granting the owner's application for a modification incorrectly referenced Tenant Protection Regulations Section 2502.4, as opposed to Rent Stabilization Code Section 2522.4(e)(3).

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

Pursuant to Section 2503.4 of the Tenant Protection Regulations ("Regulations"), which governs Nassau, Rockland and Westchester counties, 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 or an application to modify services has been granted. Moreover, Section 2502.4 of the Regulations states:

> "(b) An owner may file an application to decrease essential services for a reduction of the legal regulated rent, or to modify or substitute essential services at no change in the legal regulated rent, on forms prescribed by the division on the grounds that:
>
> (1) the owner and tenant by mutual voluntary written agreement, consent to a decrease in dwelling space, or a decrease in the services, furniture, furnishings or equipment, or to a modification or substitution of the essential services provided in the housing accommodation; or
>
> (2) such decrease, modification or substitution is required for the operation of the building in accordance with specific requirements of law; or...
>
> (3) (omitted for brevity)
>
> (4) such decrease, modification or substitution is not inconsistent with the act or this Subchapter. No such reduction in rent or decrease in services, or modification or substitution of essential services shall take place prior to the approval of the owner's application by the division, except that a service decrease, modification, or substitution pursuant to paragraphs (1) and (2) of this subdivision may take place prior to such approval."

In the instant matter, the record supports that the outstanding conditions found not maintained under Docket Number FP910021B, specifically, the recreational area facilities, were found restored pursuant to the Agency inspection conducted on July 11, 2019. The Commissioner finds that the Rent Administrator properly relied upon the Agency inspection.

The record further supports that the owner's application to modify services with respect to the removal of the pool recreation area was granted based on evidence contained in the record on December 10, 2019, under Docket Nos. GP910007OD, GP910012OD; GP910013OD; and GP910015OD (the Commissioner notes that the modification orders were affirmed on appeal under Docket Nos. IM910008RT, IM910009RT, IM910010RT, and IM910011RT). The Agency has the authority to grant a modification of services subsequent to the removal of same on a case-by-case basis, as was permitted in the instant matter. While prior orders granted rent reductions for the removal and/or inaccessibility of the pool, those orders were issued prior to the grant of the owner's application for modification. It should be noted that following the grant of the owner's application, rent reductions remained in effect until such time that any orders restoring the rent were granted.

Further, pursuant to Section 2510.3 of the Regulations, the Rent Administrator's review of evidence is limited to the evidence or facts in the record below. Here, the underlying Rent Administrator's proceeding, Docket No. HW910047OR, is in regard to the owner's rent restoration application. As such, any tenants' claims pertaining to the owner's modification of services orders, Docket Nos. GP910007OD, GP910012OD, GP910013OD, and GP910015OD, are beyond the scope of the subject appeal. The tenants are precluded from raising issues with the modification orders by way of a collateral attack in the instant appeal.

Based on the entire evidentiary record, the Commissioner finds that the Administrator properly relied on the record and as such, the petitioners have not set forth any basis to revoke the Rent Administrator's order.

The petitioner-tenants are advised to file a fresh complaint if the facts so warrant.

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

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

ISSUED: DEC 21 2021

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.

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

IN THE MATTER OF THE ADMINISTRATIVE APPEAL OF:	:	**ADMINISTRATIVE REVIEW DOCKET NO.: IU910018RT**
VARIOUS TENANTS OF 111 N. 3RD AVENUE, MOUNT VERNON, NY	:	**RENT ADMINISTRATOR'S DOCKET NO.: HW910043OR**
PETITIONER	:	

ORDER AND OPINION DENYING PETITION FOR ADMINISTRATIVE REVIEW

On September 23, 2020, the above-named petitioner-tenants filed a Petition for Administrative Review ("PAR") of an order the Rent Administrator issued on August 20, 2020(the "Order"), concerning the housing accommodation known as 111 N. 3rd Avenue, Mount Vernon, NY, wherein the Rent Administrator granted the owner's application to restore the 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 PAR.

On April 27, 2017, the petitioner-tenants filed an application to reduce the rent based on various decreased building-wide services. An Agency inspection conducted on September 14, 2017, found that: (1) the garage was in the process of being repaired; (2) the pool, playground, and tennis court were inaccessible to tenants; and (3) there was water damage to the bulkhead wall between the 7th floor and roof at staircase Z. As a result, the Rent Administrator granted the petitioners' application for a rent reduction on October 11, 2017, under Docket Number FP910020B.

The owner filed an application to restore the rent on February 13, 2019; however, the application was denied on June 14, 2019 under Docket Number HN910151OR, following an Agency inspection conducted on May 21, 2019, which found that services with respect to the garage, playground area, and ceiling in the public area were not restored. The owner subsequently filed another application to restore the rent, which was granted on August 20, 2020 under Docket Number HW910043OR, after an Agency inspection conducted on July 11, 2019 revealed that the services described above were restored, and further that the owner's application for modification of services with respect to the pool recreation area was granted on December 10, 2019, under Docket Number GP910013OD. The petitioners then filed the instant PAR on September 23, 2020.

In the PAR, the petitioner-tenants assert that the Rent Administrator's order should be reversed as the rent restoration was based on "flawed" DHCR orders, Docket Nos. GP910012OD, GP910007OD, GP910013OD, and GP910015OD (hereinafter referred to as "the modification orders") that granted the owner's application to modify the recreational facilities. The tenants attached their PAR arguments against the modification orders, claiming that the owner removed the pool in 2016 without prior Agency approval; prior Agency decisions granted rent reductions for removal of the pool as it was a required service; the owner's assertion that the recreational pool area required a membership fee is false and was addressed by the tenants in response to the owner's application for a modification; the tenants should receive a permanent rent reduction for the removal of the pool which is a required service; and the order granting the owner's application for a modification incorrectly referenced Tenant Protection Regulations Section 2502.4, as opposed to Rent Stabilization Code Section 2522.4(e)(3).

The owner opposed the petition, claiming that the tenants' PAR raises issues not relevant to the underlying rent restoration decision.

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

Pursuant to Section 2503.4 of the Tenant Protection Regulations ("Regulations"), which governs Nassau, Rockland and Westchester counties, 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 or an application to modify services has been granted. Moreover, Section 2502.4 of the Regulations states:

"(b) An owner may file an application to decrease essential services for a reduction of the legal regulated rent, or to modify or substitute essential services at no change in the legal regulated rent, on forms prescribed by the division on the grounds that:

(1) the owner and tenant by mutual voluntary written agreement, consent to a decrease in dwelling space, or a decrease in the services, furniture, furnishings or equipment, or to a modification or substitution of the essential services provided in the housing accommodation; or

(2) such decrease, modification or substitution is required for the operation of the building in accordance with specific requirements of law; or...

(3) (omitted for brevity)

(4) such decrease, modification or substitution is not inconsistent with the act or this Subchapter. No such reduction in rent or decrease in services, or modification or substitution of essential services shall take place prior to the approval of the owner's application by the division, except that a service decrease, modification, or substitution pursuant to paragraphs (1) and (2) of this subdivision may take place prior to such approval."

In the instant matter, the record supports that the outstanding conditions found not maintained under Docket Number FP910020B, specifically, relevant to the tenants' PAR, the recreational area facilities, were found restored following the Agency inspection conducted on July 11, 2019. The Commissioner finds that the Rent Administrator properly relied upon the Agency inspection.

The record further supports that the owner's application to modify services with respect to the replacement of a pool with other recreational facilities, was granted on December 10, 2019, under consolidated Docket Nos. GP910007OD, GP910012OD; GP910013OD; and GP910015OD, based on evidence contained in the record (the Commissioner notes that the modification orders were affirmed on appeal under Docket Nos. IM910008RT, IM910009RT, IM910010RT, and IM910011RT). The Agency has the authority to grant a modification of services subsequent to the modification of such services on a case-by-case basis, as was permitted in the instant matter. While prior orders granted rent reductions for the removal and/or inaccessibility of the pool, those orders were issued prior to the grant of the owner's application for modification. It should be noted that following the grant of the owner's application, rent reductions remained in effect until such time that any orders restoring the rent were granted.

Further, pursuant to Section 2510.3 of the Regulations, the Rent Administrator's review of evidence is limited to the evidence or facts in the record below. Here, the underlying Rent Administrator's proceeding, Docket No. HW910043OR, is in regard to the owner's rent restoration application. As such, any tenants' claims pertaining to the owner's modification of services orders, Docket Nos. GP910007OD, GP910012OD, GP910013OD, and GP910015OD, are beyond the scope of the subject appeal. The tenants are precluded from raising issues with the modification orders by way of a collateral attack in the instant appeal.

Based on the entire evidentiary record, the Commissioner finds that the Administrator properly relied on the record and as such, the petitioners have not set forth any basis to revoke the Rent Administrator's order.

The petitioner-tenants are advised to file a fresh complaint if the facts so warrant.

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

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

ISSUED: DEC 21 2021

Woody Pascal
Deputy Commissioner

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

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There is no other method of appeal.

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

IN THE MATTER OF THE ADMINISTRATIVE APPEAL OF:	:	**ADMINISTRATIVE REVIEW DOCKET NO.: IM930014RT**
VARIOUS TENANTS OF 33 N. 3RD AVENUE, MOUNT VERNON, NY	:	**RENT ADMINISTRATOR'S DOCKET NO.: HN930143OR**
PETITIONER	:	

ORDER AND OPINION DENYING PETITION FOR ADMINISTRATIVE REVIEW

On January 22, 2020, the above-named petitioner-tenants filed a Petition for Administrative Review ("PAR") of an order the Rent Administrator issued on December 17, 2019(the "Order"), concerning the housing accommodation known as 33 N. 3rd Avenue, Mount Vernon, NY, wherein the Rent Administrator granted the owner's application to restore the 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 PAR.

On January 15, 2016, the petitioner-tenants filed an application to reduce the rent based on various decreased building-wide services. Agency inspections conducted on May 4, 2016 and June 1, 2016, found numerous service deficiencies and specifically, *inter alia*, services with respect to the recreational playground/pool areas were decreased as the tenants do not have access to the playground, pool and tennis court areas. As a result, the Rent Administrator granted the petitioners' application for a rent reduction on January 23, 2017, under Docket Number EM930004B.

The owner then filed a PAR, which was granted in part, on July 28, 2017, under Docket Number FN930033RO, whereby the Commissioner upheld the Rent Administrator's order that found a decrease in various services including the recreational playground/pool areas, however, expunged the condition of the main entry door lock from the list of services found not maintained. The owner filed an application to restore the rent on March 2, 2017; however, the application was denied on August 15, 2017, under Docket Number FO930043OR, following an Agency inspection conducted on May 22, 2017, which found that various services, including access to the recreation area (pool, playground and tennis courts) were not restored. The owner subsequently filed another application to restore the rent, which was granted on December 17, 2019, under Docket Number HN930143OR, after an Agency inspection conducted on July 11,

2019, revealed that the services with respect to the recreation area was restored, and further that the owner's application for modification of services with respect to the pool recreation area was granted on December 10, 2019, under Docket Number GP910015OD. The petitioners then filed the instant PAR on January 22, 2020.

In the PAR, the petitioner-tenants assert that the Rent Administrator's order should be reversed as the rent restoration was based on "flawed" DHCR orders, Docket Nos. GP910012OD, GP910007OD, GP910013OD, and GP910015OD (hereinafter referred to as "the modification orders") that granted the owner's application to modify the recreational facilities. The tenants attached their PAR arguments against the modification orders, claiming that the owner removed the pool in 2016 without prior Agency approval; prior Agency decisions granted rent reductions for removal of the pool as it was a required service; the owner's assertion that the recreational pool area required a membership fee is false and was addressed by the tenants in response to the owner's application for a modification; the tenants should receive a permanent rent reduction for the removal of the pool which is a required service; and the order granting the owner's application for a modification incorrectly referenced Tenant Protection Regulations Section 2502.4, as opposed to Rent Stabilization Code Section 2522.4(e)(3).

The owner opposed the petition, claiming that the tenants' PAR should be denied as it is not proper to litigate the merits of the PAR challenging the modification orders in the subject appeal.

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

Pursuant to Section 2503.4 of the Tenant Protection Regulations ("Regulations"), which governs Nassau, Rockland and Westchester counties, 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 or an application to modify services has been granted. Moreover, Section 2502.4 of the Regulations states:

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>
> (1) the owner and tenant by mutual voluntary written agreement, consent to a decrease in dwelling space, or a decrease in the services, furniture, furnishings or equipment, or to a modification or substitution of the essential services provided in the housing accommodation; or
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> (2) such decrease, modification or substitution is required for the operation of the building in accordance with specific requirements of law; or...
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> (3) (omitted for brevity)

(4) such decrease, modification or substitution is not inconsistent with the act or this Subchapter. No such reduction in rent or decrease in services, or modification or substitution of essential services shall take place prior to the approval of the owner's application by the division, except that a service decrease, modification, or substitution pursuant to paragraphs (1) and (2) of this subdivision may take place prior to such approval."

In the instant matter, the record supports that the outstanding conditions found not maintained under Docket Number EM930004B, specifically, the recreational area facilities, were found restored pursuant to the Agency inspection conducted on July 11, 2019. The Commissioner finds that the Rent Administrator properly relied upon the Agency inspection.

The record further supports that the owner's application to modify services with respect to the removal of the pool recreation area was granted based on evidence contained in the record on December 10, 2019, under Docket Nos. GP910007OD, GP910012OD; GP910013OD; and GP910015OD (the Commissioner notes that the modification orders were affirmed on appeal under Docket Nos. IM910008RT, IM910009RT, IM910010RT, and IM910011RT). The Agency has the authority to grant a modification of services subsequent to the removal of same on a case-by-case basis, as was permitted in the instant matter. While prior orders granted rent reductions for the removal and/or inaccessibility of the pool, those orders were issued prior to the grant of the owner's application for modification. It should be noted that following the grant of the owner's application, rent reductions remained in effect until such time that any orders restoring the rent were granted.

Further, pursuant to Section 2510.3 of the Regulations, the Rent Administrator's review of evidence is limited to the evidence or facts in the record below. Here, the underlying Rent Administrator's proceeding, Docket No. HN930143OR, is in regard to the owner's rent restoration application. As such, any tenants' claims pertaining to the owner's modification of services orders, Docket Nos. GP910007OD, GP910012OD, GP910013OD, and GP910015OD, are beyond the scope of the subject appeal. The tenants are precluded from raising issues with the modification orders by way of a collateral attack in the instant appeal.

Based on the entire evidentiary record, the Commissioner finds that the Administrator properly relied on the record and as such, the petitioners have not set forth any basis to revoke the Rent Administrator's order.

The petitioner-tenants are advised to file a fresh complaint if the facts so warrant.

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

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

ISSUED: DEC 21 2021

Woody Pascal
Deputy Commissioner

State of New York
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Office of Rent Administration
Gertz Plaza, 92-31 Union Hall Street
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There is no other method of appeal.

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

IN THE MATTER OF THE ADMINISTRATIVE APPEAL OF:	:	**ADMINISTRATIVE REVIEW DOCKET NO.: IM930015RT**
VARIOUS TENANTS OF 111 N. 3RD AVENUE, MOUNT VERNON, NY	:	**RENT ADMINISTRATOR'S DOCKET NO.: HN930142OR**
PETITIONER	:	

ORDER AND OPINION DENYING PETITION FOR ADMINISTRATIVE REVIEW

On January 22, 2020, the above-named petitioner-tenants filed a Petition for Administrative Review ("PAR") of an order the Rent Administrator issued on December 17, 2019(the "Order"), concerning the housing accommodation known as 111 N. 3rd Avenue, Mount Vernon, NY, wherein the Rent Administrator granted the owner's application to restore the 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 PAR.

On January 15, 2016, the petitioner-tenants filed an application to reduce the rent based on various decreased building-wide services. An Agency inspection conducted on September 21, 2016, found numerous service deficiencies and specifically, *inter alia*, services with respect to the recreational playground/pool areas were decreased as the pool, playground, and tennis court was inaccessible to tenants. As a result, the Rent Administrator granted the petitioners' application for a rent reduction on January 23, 2017, under Docket Number EM930005B.

The owner then filed a PAR, which was granted in part, on August 3, 2017, under Docket Number FN930034RO, whereby the Commissioner upheld the Rent Administrator's order that found a decrease in the recreational playground/pool areas, however, expunged the condition of the compactor room sinks from the list of services found not maintained. The owner also filed an application to restore the rent, which was denied on August 15, 2017 under Docket Number FO930045OR, after an Agency inspection conducted on May 22, 2017 revealed that the services with respect to the recreational area were not restored.

The owner subsequently filed another application to restore the rent on February 13, 2019, which was granted on December 17, 2019, pursuant to an Agency inspection conducted on July 11, 2019, which revealed that services were restored and further, the owner's application for modification of services with respect to the pool recreation area was granted on December 10,

2019, under Docket Number GP910013OD. The petitioners then filed the instant PAR on January 22, 2020.

In the PAR, the petitioner-tenants assert that the Rent Administrator's order should be reversed as the rent restoration was based on "flawed" DHCR orders, Docket Nos. GP910012OD, GP910007OD, GP910013OD, and GP910015OD (hereinafter referred to as "the modification orders") that granted the owner's application to modify the recreational facilities. The tenants attached their PAR arguments against the modification orders, claiming that the owner removed the pool in 2016 without prior Agency approval; prior Agency decisions granted rent reductions for removal of the pool as it was a required service; the owner's assertion that the recreational pool area required a membership fee is false and was addressed by the tenants in response to the owner's application for a modification; the tenants should receive a permanent rent reduction for the removal of the pool which is a required service; and the order granting the owner's application for a modification incorrectly referenced Tenant Protection Regulations Section 2502.4, as opposed to Rent Stabilization Code Section 2522.4(e)(3).

The owner opposed the petition, claiming that it would be improper to litigate the merits of the PAR challenging the modification orders in the subject appeal.

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

Pursuant to Section 2503.4 of the Tenant Protection Regulations ("Regulations"), which governs Nassau, Rockland and Westchester counties, 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 or an application to modify services has been granted. Moreover, Section 2502.4 of the Regulations states:

> "(b) An owner may file an application to decrease essential services for a reduction of the legal regulated rent, or to modify or substitute essential services at no change in the legal regulated rent, on forms prescribed by the division on the grounds that:
>
> (1) the owner and tenant by mutual voluntary written agreement, consent to a decrease in dwelling space, or a decrease in the services, furniture, furnishings or equipment, or to a modification or substitution of the essential services provided in the housing accommodation; or
>
> (2) such decrease, modification or substitution is required for the operation of the building in accordance with specific requirements of law; or...
>
> (3) (omitted for brevity)
>
> (4) such decrease, modification or substitution is not inconsistent with the act or this Subchapter. No such reduction in rent or decrease in services, or modification or substitution of essential services shall take place prior to the approval of the owner's application by the division, except that a service decrease, modification, or substitution

pursuant to paragraphs (1) and (2) of this subdivision may take place prior to such approval."

In the instant matter, the record supports that the outstanding conditions found not maintained under Docket Numbers EM930005B and FO930045OR, specifically, as it relates to the subject PAR, the recreational area, were found restored following the Agency inspection conducted on July 11, 2019. The Commissioner finds that the Rent Administrator properly relied upon the Agency inspection.

The record further supports that the owner filed an application to modify services with respect to the removal of the pool recreation area, which was granted on December 10, 2019, under consolidated Docket Nos. GP910007OD, GP910012OD, GP910013OD, and GP910015OD, based on evidence contained in the record (the Commissioner notes that the modification orders were affirmed on appeal under Docket Nos. IM910008RT, IM910009RT, IM910010RT, and IM910011RT). The Agency has the authority to grant a modification of services subsequent to the removal of same on a case-by-case basis, as was permitted in the instant matter. While prior orders granted rent reductions for the removal and/or inaccessibility of the pool, those orders were issued prior to the grant of the owner's application for modification. It should be noted that following the grant of the owner's application, rent reductions remained in effect until such time that any orders restoring the rent were granted.

Further, pursuant to Section 2510.3 of the Regulations, the Rent Administrator's review of evidence is limited to the evidence or facts in the record below. Here, the underlying Rent Administrator's proceeding, Docket No. HN930142OR, is in regard to the owner's rent restoration application. As such, any tenants' claims pertaining to the owner's modification of services orders, Docket Nos. GP910007OD, GP910012OD, GP910013OD, and GP910015OD, are beyond the scope of the subject appeal. The tenants are precluded from raising issues with the modification orders by way of a collateral attack in the instant appeal.

Based on the entire evidentiary record, the Commissioner finds that the Administrator properly relied on the record and as such, the petitioners have not set forth any basis to revoke the Rent Administrator's order.

The petitioner-tenants are advised to file a fresh complaint if the facts so warrant.

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

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

ISSUED: DEC 21 2021

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

There is no other method of appeal.

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

IN THE MATTER OF THE ADMINISTRATIVE APPEAL OF:	:	**ADMINISTRATIVE REVIEW DOCKET NO.: IM930016RT**
VARIOUS TENANTS OF 30 PARK AVENUE, MOUNT VERNON, NY	:	**RENT ADMINISTRATOR'S DOCKET NO.: HQ930139OR**
PETITIONER	:	

ORDER AND OPINION DENYING PETITION FOR ADMINISTRATIVE REVIEW

On January 22, 2020, the above-named petitioner-tenants filed a Petition for Administrative Review ("PAR") of an order the Rent Administrator issued on December 17, 2019(the "Order"), concerning the housing accommodation known as 30 Park Avenue, Mount Vernon, NY, wherein the Rent Administrator granted the owner's application to restore the 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 PAR.

On October 17, 2017, the petitioner-tenants filed an application to reduce the rent based on various decreased building-wide services. An Agency inspection conducted on February 28, 2018, found that: (1) recreational area including the pool, playground, and tennis court was inaccessible to tenants and/or was demolished; (2) there was inadequate trash disposal on the third floor; and (3) there was evidence of vermin in the public area. As a result, the Rent Administrator granted the petitioners' application for a rent reduction on March 14, 2018, under Docket Number FV930015B.

The tenants then filed a PAR against the Rent Administrator's order, Docket Number FV930015B, which was denied, on December 8, 2021, under Docket Number GP930080RT, whereby the Commissioner upheld the Rent Administrator's order regarding services that were found maintained. The owner also filed an application to restore the rent in regard to the same Rent Administrator's order, Docket Number FV930015B on September 10, 2018, which was denied on April 3, 2019, under Docket Number GU930100OR, after an Agency inspection conducted on February 22, 2019, revealed that access to the recreational areas were not restored. However, the Rent Administrator under Docket Number GU930100OR found that the janitorial services and vermin control were restored.

The owner subsequently filed another application on May 22, 2019 to restore the rent, which was granted on December 17, 2019 under Docket Number HQ930139OR, after an

Agency inspection conducted on August 5, 2019 revealed that recreation area was restored, and further that the owner's application for modification of services with respect to the pool recreation area was granted on December 10, 2019, under Docket Number GP910012OD. The petitioners then filed the instant PAR on January 22, 2020.

In the PAR, the petitioner-tenants assert that the Rent Administrator's order should be reversed as the rent restoration was based on "flawed" DHCR orders, Docket Nos. GP910012OD, GP910007OD, GP910013OD, and GP910015OD (hereinafter referred to as "the modification orders") that granted the owner's application to modify the recreational facilities. The tenants attached their PAR arguments against the modification orders, claiming that the owner removed the pool in 2016 without prior Agency approval; prior Agency decisions granted rent reductions for removal of the pool as it was a required service; the owner's assertion that the recreational pool area required a membership fee is false and was addressed by the tenants in response to the owner's application for a modification; the tenants should receive a permanent rent reduction for the removal of the pool which is a required service; and the order granting the owner's application for a modification incorrectly referenced Tenant Protection Regulations Section 2502.4, as opposed to Rent Stabilization Code Section 2522.4(e)(3).

The owner opposed the petition, claiming that the tenants' PAR raises issued not relevant to the underlying rent restoration decision.

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

Pursuant to Section 2503.4 of the Tenant Protection Regulations ("Regulations"), which governs Nassau, Rockland and Westchester counties, 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 or an application to modify services has been granted. Moreover, Section 2502.4 of the Regulations states:

> "(b) An owner may file an application to decrease essential services for a reduction of the legal regulated rent, or to modify or substitute essential services at no change in the legal regulated rent, on forms prescribed by the division on the grounds that:
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> (1) the owner and tenant by mutual voluntary written agreement, consent to a decrease in dwelling space, or a decrease in the services, furniture, furnishings or equipment, or to a modification or substitution of the essential services provided in the housing accommodation; or
>
> (2) such decrease, modification or substitution is required for the operation of the building in accordance with specific requirements of law; or...
>
> (3) (omitted for brevity)
>
> (4) such decrease, modification or substitution is not inconsistent with the act or this Subchapter. No such reduction in rent or decrease in services, or modification or

substitution of essential services shall take place prior to the approval of the owner's application by the division, except that a service decrease, modification, or substitution pursuant to paragraphs (1) and (2) of this subdivision may take place prior to such approval."

In the instant matter, the record supports that the outstanding conditions found not maintained under Docket Number FV930015B, specifically, the recreation facilities, were found restored following the Agency inspection conducted on August 5, 2019. The Commissioner finds that the Rent Administrator properly relied upon the Agency inspection.

The record further supports that the owner's application to modify services with respect to the replacement of a pool with other recreational facilities was granted based on evidence contained in the record on December 10, 2019, under consolidated Docket Nos. GP910007OD, GP910012OD; GP910013OD; and GP910015OD (the Commissioner notes that the modification orders were affirmed on appeal under Docket Nos. IM910008RT, IM910009RT, IM910010RT, and IM910011RT). The Agency has the authority to grant a modification of services subsequent to the removal of same on a case-by-case basis, as was permitted in the instant matter. While prior orders granted rent reductions for the inaccessibility of the recreational area, those orders were issued prior to the grant of the owner's application for modification. It should be noted that following the grant of the owner's application, rent reductions remained in effect until such time that any orders restoring the rent were granted.

Further, pursuant to Section 2510.3 of the Regulations, the Rent Administrator's review of evidence is limited to the evidence or facts in the record below. Here, the underlying Rent Administrator's proceeding, Docket No. HQ930139OR, is in regard to the owner's rent restoration application. As such, any tenants' claims pertaining to the owner's modification of services orders, Docket Nos. GP910007OD, GP910012OD, GP910013OD, and GP910015OD, are beyond the scope of the subject appeal. The tenants are precluded from raising issues with the modification orders by way of a collateral attack in the instant appeal.

Based on the entire evidentiary record, the Commissioner finds that the Administrator properly relied on the record and as such, the petitioners have not set forth any basis to revoke the Rent Administrator's order.

The petitioner-tenants are advised to file a fresh complaint if the facts so warrant.

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

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

ISSUED: DEC 21 2021

Woody Pascal
Deputy Commissioner

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

Right to Court Appeal

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

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There is no other method of appeal.

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

IN THE MATTER OF THE ADMINISTRATIVE APPEAL OF:	:	**ADMINISTRATIVE REVIEW DOCKET NO.: IM930017RT**
VARIOUS TENANTS OF 30 PARK AVENUE, MOUNT VERNON, NY	:	**RENT ADMINISTRATOR'S DOCKET NO.: HQ930200OR**
PETITIONER	:	

ORDER AND OPINION DENYING PETITION FOR ADMINISTRATIVE REVIEW

On January 22, 2020, the above-named petitioner-tenants filed a Petition for Administrative Review ("PAR") of an order the Rent Administrator issued on December 17, 2019(the "Order"), concerning the housing accommodation known as 30 Park Avenue, Mount Vernon, NY, wherein the Rent Administrator granted the owner's application to restore the 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 PAR.

On January 15, 2016, the petitioner-tenants filed an application to reduce the rent based on various decreased building-wide services. Agency inspections conducted on May 4, 2016 and June 1, 2016, found numerous service deficiencies and specifically, *inter alia*, services with respect to the recreational playground/pool areas were decreased as the playground is not usable, the pool is partially filled with gravel, there are plants growing in pool areas, the playground is not maintained, and the tenants do not have access to playground/pool and tennis court areas. As a result, the Rent Administrator granted the petitioners' application for a rent reduction on January 23, 2017, under Docket Number EM930003B.

The owner then filed a PAR, which was granted in part, on August 4, 2017, under Docket Number FN930030RO, whereby the Commissioner upheld the Rent Administrator's order that found a decrease in the recreational playground/pool areas, however, expunged the condition of the main entry door lock and the vestibule ceiling from the list of services found not maintained. The owner also filed an application to restore the rent, which was denied on August 15, 2017, under Docket Number FO930042OR, after the Rent Administrator found that services with respect to the garage and access to the recreational areas were not restored. Additional applications to restore the rent were also denied on May 10, 2018, under Docket Number GN930014OR and on April 3, 2019, under Docket Number GU930101OR, after the Rent Administrator found that services with respect to the recreational areas were not yet restored.

The owner subsequently filed another application to restore the rent on May 29, 2019, which was granted on December 17, 2019, under Docket Number HQ930200OR, after an Agency inspection conducted on October 7, 2019, revealed that the playground area was restored, and further that the owner's application for modification of services with respect to the pool recreation area was granted on December 10, 2019, under Docket Number GP910012OD. The petitioner-tenants then filed the instant PAR on January 22, 2020.

In the PAR, the petitioner-tenants assert that the Rent Administrator's order should be reversed as the rent restoration was based on "flawed" DHCR orders, Docket Nos. GP910012OD, GP910007OD, GP910013OD, and GP910015OD (hereinafter referred to as "the modification orders") that granted the owner's application to modify the recreational facilities. The tenants attached their PAR arguments against the modification orders, claiming that the owner removed the pool in 2016 without prior Agency approval; prior Agency decisions granted rent reductions for removal of the pool as it was a required service; the owner's assertion that the recreational pool area required a membership fee is false and was addressed by the tenants in response to the owner's application for a modification; the tenants should receive a permanent rent reduction for the removal of the pool which is a required service; and the order granting the owner's application for a modification incorrectly referenced Tenant Protection Regulations Section 2502.4, as opposed to Rent Stabilization Code Section 2522.4(e)(3).

The owner opposed the petition, claiming that the tenants' PAR raises issues not relevant to the underlying rent restoration decision.

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

Pursuant to Section 2503.4 of the Tenant Protection Regulations ("Regulations"), which governs Nassau, Rockland and Westchester counties, 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 or an application to modify services has been granted. Moreover, Section 2502.4 of the Regulations states:

> "(b) An owner may file an application to decrease essential services for a reduction of the legal regulated rent, or to modify or substitute essential services at no change in the legal regulated rent, on forms prescribed by the division on the grounds that:
>
> (1) the owner and tenant by mutual voluntary written agreement, consent to a decrease in dwelling space, or a decrease in the services, furniture, furnishings or equipment, or to a modification or substitution of the essential services provided in the housing accommodation; or
>
> (2) such decrease, modification or substitution is required for the operation of the building in accordance with specific requirements of law; or...
>
> (3) (omitted for brevity)

(4) such decrease, modification or substitution is not inconsistent with the act or this Subchapter. No such reduction in rent or decrease in services, or modification or substitution of essential services shall take place prior to the approval of the owner's application by the division, except that a service decrease, modification, or substitution pursuant to paragraphs (1) and (2) of this subdivision may take place prior to such approval."

In the instant matter, the record supports that the outstanding conditions found not maintained under Docket Number EM930003B, specifically, the recreational area facilities, were found restored following the Agency inspection conducted on October 7, 2019. The Commissioner finds that the Rent Administrator properly relied upon the Agency inspection.

The record further supports that the owner's application to modify services with respect to the replacement of a pool with other recreational facilities, was granted on December 10, 2019, under consolidated Docket Nos. GP910007OD, GP910012OD; GP910013OD; and GP910015OD, based on evidence contained in the record (the Commissioner notes that the modification orders were affirmed on appeal under Docket Nos. IM910008RT, IM910009RT, IM910010RT, and IM910011RT). The Agency has the authority to grant a modification of services subsequent to the modification of such services on a case-by-case basis, as was permitted in the instant matter. While prior orders granted rent reductions for the removal and/or inaccessibility of the pool, those orders were issued prior to the grant of the owner's application for modification. It should be noted that following the grant of the owner's application, rent reductions remained in effect until such time that any orders restoring the rent were granted.

Further, pursuant to Section 2510.3 of the Regulations, the Rent Administrator's review of evidence is limited to the evidence or facts in the record below. Here, the underlying Rent Administrator's proceeding, Docket No. HQ930200OR, is in regard to the owner's rent restoration application. As such, any tenants' claims pertaining to the owner's modification of services orders, Docket Nos. GP910007OD, GP910012OD, GP910013OD, and GP910015OD, are beyond the scope of the subject appeal. The tenants are precluded from raising issues with the modification orders by way of a collateral attack in the instant appeal.

Based on the entire evidentiary record, the Commissioner finds that the Administrator properly relied on the record and as such, the petitioners have not set forth any basis to revoke the Rent Administrator's order.

The petitioner-tenants are advised to file a fresh complaint if the facts so warrant.

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

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

ISSUED: DEC 21 2021

Woody Pascal
Deputy Commissioner

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

Right to Court Appeal

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

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There is no other method of appeal.

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

----------X

IN THE MATTER OF THE
ADMINISTRATIVE APPEAL OF :

ADMINISTRATIVE REVIEW
DOCKET NO.: IM910018RT

VARIOUS TENANTS OF
30 PARK AVENUE, MOUNT VERNON, NY :

RENT ADMINISTRATOR'S
: DOCKET NO.: HQ910140OR
(FP910019B)

PETITIONERs

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ORDER AND OPINION DENYING PETITION FOR ADMINISTRATIVE REVIEW

On January 22, 2020, the above-named petitioner-tenants filed a petition for administrative review (PAR) against an order issued on December 17, 2019, by the Rent Administrator concerning the housing accommodations known as 30 Park Avenue, Various Apartments, Mount Vernon, NY, wherein the Administrator granted the owner's rent restoration application.

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

In the PAR, various tenants, through the tenants' representative, request a reversal of the Administrator's order and contend, in substance, that the Rent Administrator's order restoring rent for the owner, herein below, was based on the errors of law and facts committed in the modification of services (OD) proceedings commenced by the owner, Docket Nos. GP910012OD, GP910007OD, GP910013OD, and GP910015OD (hereinafter referred to as "the modification orders") wherein the Rent Administrator granted the owner's modification of services application, a decision which the tenants had appealed on January 13, 2020. The tenants attached their PAR arguments against the modification orders, claiming that the owner removed the pool in 2016 without prior Agency approval; prior Agency decisions granted rent reductions for removal of the pool as it was a required service; the owner's assertion that the recreational pool area required a membership fee is false and was addressed by the tenants in response to the owner's application for a modification; the tenants should receive a permanent rent reduction for the removal of the

pool which is a required service; and the order granting the owner's application for a modification incorrectly referenced Tenant Protection Regulations Section 2502.4, as opposed to Rent Stabilization Code Section 2522.4(e)(3).

The owner opposed the petition, claiming that the tenants' PAR raises issues not relevant to the underlying rent restoration decision.

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

Sections 2500.3 and 2503.4 of the Tenant Protection Regulations ("Regulations"), which governs Nassau, Rockland and Westchester counties, 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 failed to provide and maintain services. Moreover, Section 2502.4 of the Regulations states:

> "(b) An owner may file an application to decrease essential services for a reduction of the legal regulated rent, or to modify or substitute essential services at no change in the legal regulated rent, on forms prescribed by the division on the grounds that:
>
> (1) the owner and tenant by mutual voluntary written agreement, consent to a decrease in dwelling space, or a decrease in the services, furniture, furnishings or equipment, or to a modification or substitution of the essential services provided in the housing accommodation; or
>
> (2) such decrease, modification or substitution is required for the operation of the building in accordance with specific requirements of law; or...
>
> (3) (omitted for brevity)
>
> (4) such decrease, modification or substitution is not inconsistent with the act or this Subchapter. No such reduction in rent or decrease in services, or modification or substitution of essential services shall take place prior to the approval of the owner's application by the division, except that a service decrease, modification, or substitution pursuant to paragraphs (1) and (2) of this subdivision may take place prior to such approval."

The Commissioner notes that in the initial proceeding under Docket No. **FP910019B**, a rent reduction was granted on August 28, 2017, for garage/wall/ceiling/floor and recreational facilities at the subject premises. An inspection was conducted at the subject premises on August 10, 2017. The inspector had reported the following defect(s):

(1). Leaks, damages, and falling debris from the garage ceiling in various areas.
(2). No access to recreational area(s) — playground, pool, and tennis court(s).

Subsequently, the owner filed the rent restoration applications, Docket Nos. GN910010OR[1] and GU910096OR[2], wherein recreational facilities were found not maintained.

Thereafter, on May 22, 2019, the owner filed the rent restoration application herein below. The owner's rent restoration application was served on the tenants on June 10, 2019.

On December 17, 2019, pursuant to the DHCR inspection of September 4, 2019, the Rent Administrator granted the owner's rent restoration application as the Agency's inspection indicated that the recreational facility was ready for tenants' use. The Rent Administrator noted that the other services found in the underlying rent reduction order were found restored under Docket No. GN910010OR, and further, that the owner's application for Modification of Services regarding the pool was granted on December 10, 2019 under Docket No. GP910012OD.

The Commissioner notes that the tenants' PAR herein must be denied as access to the recreational facilities, upon which the tenants filed their complaint concerning recreational facilities, and upon which owner's rent restoration applications were denied in the two rent restoration proceedings for the subject premises prior to the rent restoration proceeding herein below, had been restored as evidenced by the Agency inspection report from September 4, 2019. The Commissioner finds that the Rent Administrator properly relied upon the Agency inspection and record when making the determination in this matter.

Additionally, the record further supports that the owner filed applications to modify services with respect to the replacement of a pool with other recreational facilities, which were granted on December 10, 2019, under consolidated Docket Numbers GP910007OD, GP910012OD; GP910013OD; and GP910015OD, based on evidence contained in the record (the Commissioner notes that the modification orders were affirmed on appeal under Docket Nos. IM910008RT, IM910009RT, IM910010RT, and IM910011RT). The Agency has the authority to grant a modification of services subsequent to the modification of such services on a case-by-case basis, as was permitted in the instant matter. While prior orders granted rent reductions for the removal and/or inaccessibility of the pool, those orders were issued prior to the grant of the owner's application for modification. It should be noted that following the grant of the owner's application, rent reductions remained in effect until such time that any orders restoring the rent were granted.

Further, pursuant to Section 2510.3 of the Regulations, the Rent Administrator's review of evidence is limited to the evidence or facts in the record below. Here, the underlying Rent Administrator's proceeding, Docket No. HQ910140OR, is in regard to the owner's rent restoration application. As such, any tenants' claims pertaining to the owner's modification of services orders, Docket Nos. GP910007OD, GP910012OD, GP910013OD, and GP910015OD, are beyond the scope of the subject appeal. The tenants are precluded from raising issues with the modification orders by way of a collateral attack in the instant appeal.

[1] The Rent Administrator found that the pool appeared to have been demolished; that the Tennis Court located at Sydney Avenue was padlocked, with no signs posted about use; and that the playground was not accessible due to ongoing construction.

[2] The Rent Administrator found that the playground/recreational facilities in the backyard were not completed yet as there was ongoing construction at the time of inspection.

Based on the entire evidentiary record, the Commissioner finds that the Administrator properly relied on the record and as such, the petitioners have not set forth any basis to revoke the Rent Administrator's order.

The petitioner-tenants are advised to file a fresh complaint if the facts so 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, denied, and that the Rent Administrator's order be, and the same hereby is, affirmed.

ISSUED: DEC 21 2021

WOODY PASCAL
Deputy Commissioner

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

Right to Court Appeal

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

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There is no other method of appeal.

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

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IN THE MATTER OF THE ADMINISTRATIVE APPEAL OF	ADMINISTRATIVE REVIEW DOCKET NO.: JT210004RT
[redacted]	
PETITIONER	RENT ADMINISTRATOR'S DOCKET NO.: IO210015OR

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ORDER AND OPINION DENYING PETITION FOR ADMINISTRATIVE REVIEW

On August 3, 2021, the above-named petitioner-tenant filed a timely Petition for Administrative Review ("PAR") of an order the Rent Administrator issued on July 1, 2021 (the "order"), concerning the housing accommodation known as 50 Linden Boulevard, Apt [redacted], Brooklyn, New York wherein the Rent Administrator granted the owner's rent restoration application finding the tenant failed to provide access to the subject apartment for the physical inspection scheduled for April 30, 2021.

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

In the PAR, the tenant seeks a reversal of the subject Rent Administrator's order, Docket No. IO210015OR, raising numerous claims attacking the order reducing the rent assigned Docket No. GP210332S, which underlies the subject rent restoration order, Docket No. IO210015OR, including an assertion that GP210032S was a fraudulent case since the tenants of the subject apartment did not file the subject rent reduction application. The tenant asserts that the owner cannot testify in this matter and has never "stepped foot inside the apartment." Additionally, the tenant raises multiple concerns about breaches of contract, leases, renewal leases, evictions during the pandemic, preferential rent, exhibits produced, "HPD violations," penalties for both false statements and official misconduct, and previously filed and unrelated rent reduction applications to justify the reversal of the Rent Administrator's order.

The owner, through its representative, opposes the petition asserting in relevant part that the tenant has raised allegations that are beyond the jurisdiction of the Agency, based on evidence not submitted below, and that the tenant has offered no claims to justify reversing the Rent Administrator's order.

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

The Agency records show that a rent reduction application was filed on April 27, 2018 alleging a diminution of services to the radiators, vermin control, kitchen, bathroom, living room, bedroom 1 and bedroom 2 and apartment-wide leaks/stains assigned Docket No. GP210332S. The tenant's rent reduction application was granted by the Rent Administrator on February 14, 2019 based on an Agency inspection, attended by both the tenant and owner, which found unmaintained the light fixture and wall(s) in the kitchen, the radiators apartment-wide, the paint/plaster in the bathroom, the floor/covering in bedroom 1, the paint/plaster in bedroom 2, the light fixture in the living room, leaks/stains apartment wide, and a lack of vermin control.

Thereafter, in the proceeding below, the owner filed its application to restore the rent on March 3, 2020, claiming it had attempted to restore the services found unmaintained in the underlying rent reduction order, but the tenant did not allow them access to the apartment. The owner asserted that on January 3, 2020 it mailed an access letter to the tenant requesting access to the apartment via first class mail and certified return receipt requested. When the owner failed to receive a response, on January 23, 2020, the owner mailed a second access letter to the tenant requesting access to the apartment via first class mail and certified return receipt requested. The owner submitted its proof of mailing to the Rent Administrator.

The tenant was afforded an opportunity to respond by service of the rent restoration application on July 1, 2020. The tenant answered stating the services have not been restored by letter dated July 10, 2020. Thereafter, by correspondence dated April 17, 2021, the tenant stated that after submitting her response to the owner's rent restoration application the tenant felt "someone else falsified and forged" the underlying rent reduction application. In addition, the tenant filed a second letter also dated April 17, 2021 stating "DHCR can go ahead and decide on this docket, but I will not be a willing participant to this proceeding."

Subsequently, the Rent Administrator requested an agency inspection be conducted. On April 14, 2021, Notice of Inspection – For Access was served on the tenant, advising the tenant that an inspection of the subject premises was scheduled for April 30, 2021 between 9:30AM and 10:00AM, and that the failure to keep this appointment would result in a determination based solely on the evidence presently in the record. On April 30, 2021, the Agency inspector reported

that the tenant failed to keep the scheduled appointment and that the owner's contractor was present and ready to work. The inspector noted he was not able to access the tenant's apartment.

On July 1, 2021, the Rent Administrator, based on the record, granted the owner's rent restoration application after deeming the conditions cited in the order reducing rent to have been restored as the tenant failed to provide DHCR access to the subject apartment for the purpose of a physical inspection on April 30, 2021.

The Commissioner finds the request by the tenant to reverse the Rent Administrator's order in this proceeding is without merit as the tenant's claims do not refute the Agency Inspector's findings that the tenant failed to provide access to the apartment for a physical inspection on April 30, 2021. Moreover, the Commissioner notes that the tenant's petition has not alleged any error in the subject Rent Administrator's order, Docket No. IO210015OR. Section 2529.1 of the Rent Stabilization Code requires a PAR to allege the errors upon which the order being appealed is based. Section 2529.8 authorizes dismissal of a PAR if it substantially fails to comply with the provisions of the Rent Stabilization Law or Code.

Furthermore, the Commissioner finds that the tenant cannot attack the Rent Administrator's rent reduction order in Docket No. GP210332S in the appeal herein as such collateral attack is impermissible and outside of the scope of the Commissioner's review in this proceeding.

Based on the foregoing, the Commissioner finds that the Rent Administrator correctly granted the owner's rent restoration application which was based on the tenant's failure to provide the Agency's impartial Inspector access to her apartment. The tenant's PAR has not established any basis to modify or revoke the Rent Administrator's determination. Accordingly, the Commissioner finds that the tenant 's PAR is denied.

The tenant is advised to file a fresh service reduction 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: DEC 27 2021

Woody Pascal
Deputy Commissioner

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

Right to Court Appeal

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There is no other method of appeal.

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

IN THE MATTER OF THE ADMINISTRATIVE APPEAL OF	:	
BX 2860, LLC	:	ADMINISTRATIVE REVIEW DOCKET NO.: JS630013RO
PETITIONER	:	RENT ADMINISTRATOR'S DOCKET NO.: HV630090OR (BI630001B)

ORDER AND OPINION DENYING PETITION FOR ADMINISTRATIVE REVIEW

On July 8, 2021, the above-named petitioner-owner filed a petition for administrative review (PAR) against an order issued on June 3, 2021, by the Rent Administrator concerning the housing accommodations known as 2860 Decatur Avenue, Various Apartments, Bronx, 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 that the inspector's finding of a pair of gloves, a small paper bag and small bottle is a *de minimis* condition that should not warrant a rent reduction as the premises was generally clean and that the owner should not be held accountable for tenants' random acts.

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

Pursuant to Section 2202.16 of the New York City Rent and Eviction Regulations, the 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, Docket No. **BI630001B**, the Rent Administrator issued a rent reduction order on April 14, 1988, pursuant to inadequate janitorial

services, as the Agency's inspector found the public area of the subject premises dirty during an Agency inspection.

On October 7, 2019, the owner commenced the rent restoration ("OR") proceeding herein below, wherein the owner indicated that the dirty public area condition had been resolved. On October 21, 2019, the tenants were served with a copy of the owner's rent restoration application.

The Agency's records indicate that during the OR proceeding, the Rent Administrator requested an Agency inspection of the subject premises, which was conducted on January 7, 2021. Said inspection did not find public area janitorial services restored. The inspector noted "evidence of dirty public area", "garbage under stairs".

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.

Based on the foregoing, the Commissioner finds that the Rent Administrator's order was correct as issued, based on the inspector's report, by the Agency's impartial inspector who is not a party to the proceeding, of January 7, 2021, which confirmed a diminution in the janitorial service. Moreover, a failure to maintain janitorial services building-wide is not a *de minimis* condition as claimed by the owner, and further, such condition warrants the denial of the owner's rent restoration application. Accordingly, the Commissioner finds that there is no basis to revoke or modify the Rent Administrator's order.

The Commissioner notes that the owner has filed a rent restoration application, Docket No. **JS630066OR**, which is pending.

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

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

ISSUED: DEC 27 2021

WOODY PASCAL
Deputy Commissioner

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

Right to Court Appeal

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There is no other method of appeal.

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

IN THE MATTER OF THE ADMINISTRATIVE APPEAL OF	
[redacted]	**ADMINISTRATIVE REVIEW DOCKET NO.: JU210001RT**
PETITIONER	**RENT ADMINISTRATOR'S DOCKET NO.: IO210082OR (FX210009HW)**

ORDER AND OPINION DENYING PETITION FOR ADMINISTRATIVE REVIEW

On September 3, 2021, the above-named petitioner-tenant filed a petition for administrative review (PAR) against an order issued on August 2, 2021, by the Rent Administrator concerning the housing accommodations known as 50 Linden Blvd., Apartment [redacted], New York, 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 the portion of the record relevant to the issues raised by the petition.

The tenant requests a reversal of the Rent Administrator's order and contends, *inter alia*, that the DHCR indicated that Violation #120700 was no longer in existence only because the owner filed the rent restoration application under "apartment [redacted]" and not "apartment [redacted]". The tenant also raised numerous issues that did not pertain to the instant issue, inadequate heat service and/or the rent restoration proceeding below.

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, Docket No. **FX210009HW**, commenced by the tenant on December 13, 2017, for inadequate heat and/or hot water, on February 9, 2018, the Administrator granted the tenant a rent reduction. This decision was based on the

confirmation of reduced heat service as indicated in the New York City Department of Housing Preservation and Development database which showed that a Violation #120700 was issued for the lack of said service to the subject apartment.

On March 23, 2020, the owner commenced the rent restoration ("OR") proceeding herein below, wherein the owner indicated that the heat condition had been resolved. On July 8, 2020, the tenant was served with a copy of the owner's rent restoration application.

The tenant's submitted a response dated July 27, 2020, contending, *inter alia*, that repairs have not been made.

The Agency's records indicate that during the OR proceeding, the Rent Administrator made another search into the HPD database, and the database indicated that Violation #120700 for inadequate heat service was no longer in the database. Thus, the Rent Administrator granted the owner's rent restoration application.

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 there is no basis to modify or reverse the Rent Administrator's determination.

The Commissioner notes that at the time of the issuance of the instant Commissioner's order, a search into the HPD database did not indicate any heat violation for the subject tenant or the subject building. Thus, the tenant may file a fresh complaint, if the facts warrant. Additionally, the Commissioner checked and re-confirmed that the tenant's address in the DHCR database was entered as "apartment [redacted]".

Concerning all issues of concern outside of the heat service herein below, the Commissioner notes that the tenant may visit the Agency's website @ https://hcr.ny.gov and/or contact the DHCR Public Information Unit at 1 (833) 499-for further help, regarding the unit(s) handling those issue(s).

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: DEC 30 2021

WOODY PASCAL
Deputy Commissioner

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

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There is no other method of appeal.

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

IN THE MATTER OF THE ADMINISTRATIVE APPEAL OF:	:	**ADMINISTRATIVE REVIEW DOCKET NO.: JR410042RT**
[redacted]	:	**RENT ADMINISTRATOR'S DOCKET NO.: GX410128OR (FR410019B)**
PETITIONER	:	

ORDER AND OPINION DENYING PETITION FOR ADMINISTRATIVE REVIEW

On June 14, 2021, the above-named petitioner-tenant filed a petition for administrative review (PAR) against an order issued on May 21, 2021, by the Rent Administrator concerning the housing accommodations known as 301 W 130th Street, Various Apartments, 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 tenant requests a modification of the Rent Administrator's order and contends that only building 410 has a guard from 5:30AM to 9:30PM; that the building 410 guard was placed in building 301 for the May 13, 2021 inspection, and after a few nights, for 1 hour; that there was still no guard for building 301; that the hall vents are still out; and that the Agency should conduct an unannounced inspection.

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, Docket No. **FR410019B**, on August 9, 2018, the Administrator granted the tenants a rent reduction based on the Agency's inspection of the subject premises, conducted on November 9, 2017, wherein the inspector found various items not maintained.

On December 24, 2018, the owner commenced the rent restoration ("OR") proceeding herein below, wherein the owner indicated that all the conditions in the underlying rent reduction order had been corrected.

The Agency's records indicate that during the OR proceeding, the Rent Administrator requested an agency inspection of the items found not maintained in the initial proceeding, and the Agency's inspection was conducted on May 13, 2021.

The inspection report indicated, specifically as it relates to the hallway vents, that at the time of the Agency's inspections, the vents were operating properly. With regard to the security guard issue, the inspector reported that there was a security guard in attendance during the inspection, and that the building manager advised that there was security guard service 24/7 with 12-hour shift per guard. However, as the owner's prior submission had indicated that there was no security guard service provided for the subject premises and did not refute the tenants' allegation[1] that 24/7 security guard was removed, the Rent Administrator did not issue a rent restoration regarding the instant item.

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 there is no basis to modify or reverse the Rent Administrator's determination.

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

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

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

ISSUED: DEC 30 2021

Woody Pascal
Deputy Commissioner

[1] When the allegation was made under Docket No. GU410035RO.

State of New York
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