



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

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The Effect of Defective Work on the Disposition of an Owner's Application for a Major Capital Improvement (MCI) Rent Increase

This Operational Bulletin is being issued pursuant to the New York City Rent Stabilization Code, New York City Rent and Eviction Regulations, New York State Emergency Tenant Protection Regulations and the New York State Rent and Eviction Regulations.

DHCR has not previously issued any formal directive or clarification on DHCR's policy concerning the granting of MCI rent increases when there are defective installations relating to an MCI. The lack of such guidance has made it difficult for owners and tenants to understand how certain defects impact the rent increase. Some recent appellate cases have indicated the need for DHCR to explain its policy regarding such determinations.

The issue arises after an owner files its application and the tenants are notified of the basis for the owner's request for a rent increase. In their written responses, the tenants may object to the workmanlike quality of the work done. The owner is then notified of any tenant objections and is given a reasonable time to address any defects.

An inspection may be performed if the tenants dispute the owner's claim that the improvement was properly made or properly repaired during the response time or, alternatively, DHCR may determine on its own that an inspection is warranted. (DHCR Fact Sheet #24)

Whenever an inspection shows defective installations of an MCI, DHCR has the discretion to deny the application in its entirety. As will be discussed below, alternatively, DHCR can grant the application and exempt those apartments affected by the defects. In order to determine which remedy is more reasonable, DHCR looks to the circumstances of each case.

See: Terrace Court LLC v DHCR et al, 18 N.Y.3d 446, 940 N.Y.S.2d 549 (2012)

An MCI must be comprehensive and benefit all tenants. (See Fact Sheet # 24) Where the defects in the work are pervasive, DHCR can deny the MCI based on lack of workmanlike quality or find that the work done was not sufficiently comprehensive so as to benefit all tenants. See Cenpark v DHCR, 257 A.D.2d 543 (1st Dept. 1999) In MCI installations where the work is central or integral to the entire building, but problems may only manifest themselves in individual apartments (leaks, for example), the owner will have the burden of proof of establishing the flaw is limited to a single apartment.

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The original document which contains signatures of authorization is on file at DHCR's Office of Rent Administration.

In determining whether MCI installations done within an individual apartment (such as windows) are done in a workmanlike manner, DHCR looks at the percentage of apartments affected by the defects. Generally, if 20% or more of the rent regulated apartments in the building contain defects, then such MCI installation may be denied in its entirety. Conversely, if less than 20% of the rent regulated apartments in the building have defects, the application may be granted with exemptions for those apartments with the defective work. DHCR is not strictly bound by this percentage and it can consider other factors such as the nature of the defects and the owner's response to notice given to it of the defects including the length of time to cure. An owner will be given notice and a reasonable opportunity to cure any defects prior to the issuance of the Rent Administrator's (RA) order. If an owner cures all defects prior to the issuance of the RA's order, then an owner's application may be granted in its entirety. If an owner takes an extensive period to cure, this may result in the application being dismissed.

When an MCI application is completely denied, no rent increase can be collected. Where there is a grant with permanent exemptions, an owner can collect a rent increase only from those apartments for which the increase was granted. For further information on the calculation of rent increases, see Fact Sheet #24 Major Capital Improvements (MCI). For information on the effect of rent reduction orders on the collectibility of MCI increases, see DHCR's Operational Bulletin 2014-2.

Woody Pascal
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