

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

-----X
IN THE MATTER OF THE ADMINISTRATIVE APPEAL OF
[REDACTED]
PETITIONER
-----X
ADMINISTRATIVE REVIEW
DOCKET NO.: KQ210012RT
RENT ADMINISTRATOR'S
DOCKET NO: GW210067RV
OWNER: 395 Schenectady, LLC

ORDER AND OPINION GRANTING IN PART
PETITION FOR ADMINISTRATIVE REVIEW

Petitioner timely filed a petition for administrative review (PAR) of an order issued on April 6, 2022 by the Rent Administrator (RA) concerning the housing accommodation known as apartment [REDACTED] at 395 Schenectady Avenue, Brooklyn, NY 11213.

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

On November 14, 2018, the tenant filed a lease violation complaint alleging that the owner failed to furnish her with a copy of the executed renewal lease in a timely manner. She also alleged that she was not given the required 90 days to consider the renewal lease.

The owner answered the complaint by submitting an affidavit from an owner's representative stating that the renewal lease commencing October 1, 2018 was mailed to the tenant on May 23, 2018; that the tenant contacted the owner on June 30, 2018 claiming that she did not receive the lease; that another copy was mailed to her on July 17, 2018; that the tenant signed it on September 26, 2018; and then the lease was countersigned and returned to the tenant. A copy of the fully executed renewal lease was provided along with a mailing receipt partially dated May 2018.

The tenant submitted a reply stating that the partial mailing receipt is not evidence that the lease was timely mailed and that when she did receive the lease in July 2018, she had less than 90 days to consider it before it commenced.

The RA found that the records show that the renewal lease was mailed on May 23, 2018; that the tenant is in possession of the executed renewal lease; and that the tenant has filed a rent overcharge complaint under Docket Number FX210094R which is pending. The RA denied the

PAR Docket Number KQ210012RT

tenant's lease violation complaint and advised the tenant that rental amounts will be determined under Docket Number FX210094R.

On PAR, the tenant contends that the owner did not send the renewal lease in May 2018 but in July 2018 and therefore it was not timely to commence October 1, 2018.

The Commissioner agrees.

The Commissioner finds that the renewal lease commencing October 1, 2018 could not have been mailed in May 2018, given that it contained guideline increases established by the NYC Rent Guidelines Board by vote in June 2018. Therefore, it was more likely that the lease, which is itself dated June 30, 2018, was mailed on July 17, 2018. While the lease can commence October 1, 2018, the guideline increase cannot be collected until November 1, 2018. If the owner collected the increase as of October 1, 2018, it should be returned to the tenant with interest. The issue of any overcharge will also be addressed in Docket Number FX210094R.

THEREFORE, in accordance with the Rent Stabilization Law and Code thereunder, it is

ORDERED, that the petition for administrative review be, and the same hereby is, granted in part.

ISSUED:

JUL 08 2022



WOODY PASCAL
Deputy Commissioner



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

Right to Court Appeal

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

Note: During the period of the current Covid-19 emergency, as a courtesy, if the Article 78 proceeding is commenced by e-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 Number and the documents received by the court, i.e., Notice of Petition, Petition, and other e-filed 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 (DHCR)
OFFICE OF RENT ADMINISTRATION
GERTZ PLAZA
92-31 UNION HALL STREET
JAMAICA, NEW YORK 11433

-----X
IN THE MATTER OF THE ADMINISTRATIVE
APPEAL OF

Y. Zevzal 68-37 LLC
PETITIONER

ADMINISTRATIVE REVIEW
DOCKET NO.: KP110023RO

RENT ADMINISTRATOR'S
DOCKET NO: HX110024RV

-----X
TENANT: [REDACTED]

ORDER AND OPINION GRANTING PETITION FOR ADMINISTRATIVE REVIEW

The above-named owner filed a timely petition for administrative review (PAR) of an order issued on April 4, 2022 by the Rent Administrator (RA) concerning the housing accommodation in the premises known as apartment [REDACTED] at 68-37 Yellowstone Blvd., Forest Hills, NY 11375.

On December 12, 2019, the tenant filed a lease violation complaint, alleging that the owner failed to offer a renewal lease; and that the owner fraudulently claimed that the apartment is not rent-stabilized. DHCR served this complaint on the owner on December 16, 2019. The owner failed to answer the complaint.

Based on the foregoing, the RA issued this order on default, admitting the tenant's allegations and directing the owner to offer the tenant a renewal lease.

On PAR, the owner contends that it answered the lease-violation complaint and at the same time, also answered tenant's rent overcharge complaint under Docket Number HO110068R. The owner asserted that the premises is not rent-stabilized.

The PAR is granted and the RA order is revoked.

The record establishes that the owner answered both the underlying lease violation complaint and the overcharge complaint under Docket Number HO110068R. The agency placed a copy of the answer in the file for the overcharge case, but not in the lease violation file.

Based on receipt of the owner's answer, this lease violation complaint should have been consolidated with the overcharge case and decided jointly under Docket Number HO110068R, in which case the RA will also determine the rent-regulated status of the subject apartment. Until

PAR Docket Number KP110023RO

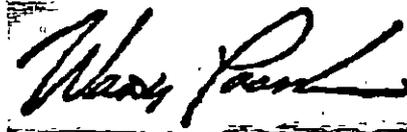
then, the directive to furnish a renewal lease was incorrect. The underlying RA order is hereby revoked.

THEREFORE, in accordance with the relevant Rent Stabilization Law and Code, it is

ORDERED, that the petition for administrative review be, and the same hereby is, granted and the RA order is revoked.

ISSUED:

JUL 12 2022



WOODY PASCAL
Deputy Commissioner



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

Right to Court Appeal

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

Note: During the period of the current Covid-19 emergency, as a courtesy, if the Article 78 proceeding is commenced by e-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 Number and the documents received by the court, i.e., Notice of Petition, Petition, and other e-filed 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 (DHCR)
OFFICE OF RENT ADMINISTRATION
GERTZ PLAZA
92-31 UNION HALL STREET
JAMAICA, NEW YORK 11433

.....X
IN THE MATTER OF THE ADMINISTRATIVE APPEAL OF
[REDACTED] ADMINISTRATIVE REVIEW
DOCKET NO.: KP210009RT
RENT ADMINISTRATOR'S
DOCKET NO.: IM210049RV

PETITIONER

OWNER: 864 49th LLC
.....X

ORDER AND OPINION DENYING PETITION FOR ADMINISTRATIVE REVIEW

Petitioner filed a timely petition for administrative review (PAR) against an order of the Rent Administrator (RA) issued on March 21, 2022 concerning the housing accommodation known as apartment [REDACTED] at 864 49th Street, Brooklyn, New York 11220.

In the order under review, the RA terminated the proceeding based on a finding that the petitioner is a current employee of Maimonides Medical Center (MMC), the tenant of record of the subject apartment, and that her occupancy of the apartment is incident to her employment with MMC. Based on the foregoing, the RA found that petitioner is not a rent stabilized tenant and therefore is not eligible to file a lease violation complaint with DHCR.

On PAR, the petitioner contends that she is the tenant of record, not MMC; that she is the rent stabilized tenant of the current owner, which purchased the building on November 29, 2018; that DHCR registrations have not been filed for the building; that she is not an employee of the current owner; that her husband is 66 years old and suffers from a number of health conditions; and that the Housing Stability and Tenant Protection Act (HSTPA) is relevant to her continued occupancy in the subject apartment.

In answer, the owner asserted that DHCR and the Civil Court of the City of New York have already determined that MMC's current and former employees, who commenced occupancy of an apartment related to their employment with MMC, are not rent stabilized tenants and are not entitled to a lease. Citing to PAR Docket No. IV210014RT and Maimonides Medical Center v. Maria Joseph, L&T 77536/19-KI, Civ. Court, Kings County.

In reply, the petitioner alleges that she requests a lease from the new owner because MMC is no longer the owner or even a "Master Lessee."

The Commissioner denies the PAR.

The petitioner took occupancy of the subject apartment pursuant to a Housing Agreement for Employees, dated October 22, 2001. As has been determined by DHCR and the courts, current employees of MMC are not issued leases and are not rent stabilized tenants. The apartment, indeed, is exempt from rent stabilization during the occupancy of the employee.

The record herein establishes that, although MMC has sold the building, MMC is the master lessee of the subject apartment and therefore the new owner has no obligation to offer a rent stabilized lease to the petitioner. The petitioner's occupancy of the apartment commenced incident to her employment with MMC which has continued subsequent to the sale of the building. Neither her husband's medical condition, nor the HSTPA law affects this determination.

Accordingly, the RA's finding that the petitioner is not a rent stabilized tenant and not eligible to file a lease violation complaint with DHCR was in all respects correct.

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

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

ISSUED:

JUL 13 2022



WOODY PASCAL
DEPUTY COMMISSIONER



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

Right to Court Appeal

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

Note: During the period of the current Covid-19 emergency, as a courtesy, if the Article 78 proceeding is commenced by e-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 Number and the documents received by the court, i.e., Notice of Petition, Petition, and other e-filed 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 (DHCR)
OFFICE OF RENT ADMINISTRATION
GERTZ PLAZA
92-31 UNION HALL STREET
JAMAICA, NEW YORK 11433

-----X
IN THE MATTER OF THE ADMINISTRATIVE APPEAL OF
[REDACTED]
PETITIONER
-----X

ADMINISTRATIVE REVIEW
DOCKET NO.: KQ110013RT

RENT ADMINISTRATOR'S
DOCKET NO: IT110044RV

OWNER: Good Karma 818 LLC

ORDER AND OPINION DENYING PETITION FOR ADMINISTRATIVE REVIEW

The above-named petitioner filed a timely petition for administrative review (PAR) of an order issued on April 26, 2022 by the Rent Administrator (RA) concerning the housing accommodation known as apartment [REDACTED] at 123-32 82nd Avenue, Kew Gardens, NY 11415.

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

On August 14, 2020, the tenant filed an online lease violation complaint alleging that the owner refused to renew his lease and failed to furnish him with a signed copy of the lease.

In an answer, the owner's attorney stated that a lease renewal was sent to the tenant within the appropriate time period and attached a copy of the renewal lease dated January 20, 2020.

DHCR sent a notice to the tenant on April 1, 2022, inquiring if he had received the renewal lease submitted by the owner's attorney.

On April 18, 2022, the United States Postal Service (USPS) returned to DHCR the notice because the tenant had vacated the apartment and the time to forward the tenant's mail had expired.

The RA issued a termination order finding that as the tenant has vacated the subject apartment, the issue of the owner's failure to renew a lease is moot.

On PAR, the tenant contends that the issue is not moot because the owner has been

PAR Docket Number KQ110013RT

negligent in not returning his security deposit.

The Commissioner denies the PAR.

The RA properly found herein that the issue of a lease renewal raised in the tenant's complaint is moot given that he had vacated the subject apartment. The issue of whether an owner must return a security deposit is a private matter between the parties and may be resolved in a court of competent jurisdiction. It is not resolved by a DHCR administrative proceeding once the complaining tenant vacates the subject apartment.

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

ORDERED, that the petition for administrative review be, and the same hereby is, denied; and that the Rent Administrator's order be, and the same hereby is, affirmed.

ISSUED:

JUL 15 2022



WOODY PASCAL
Deputy Commissioner



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

Right to Court Appeal

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

Note: During the period of the current Covid-19 emergency, as a courtesy, if the Article 78 proceeding is commenced by e-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 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 (DHCR)
OFFICE OF RENT ADMINISTRATION
GERTZ PLAZA
92-31 UNION HALL STREET
JAMAICA, NEW YORK 11433

-----X
IN THE MATTER OF THE ADMINISTRATIVE
APPEAL OF



PETITIONER

ADMINISTRATIVE REVIEW
DOCKET NO.: KP410010RT

RENT ADMINISTRATOR'S
DOCKET NO: IQ410036RV

OWNER: NCR, LLC
-----X

ORDER AND OPINION DENYING PETITION FOR ADMINISTRATIVE REVIEW

The tenant filed a timely petition for administrative review (PAR) of an order issued on March 4, 2022 by the Rent Administrator (RA) concerning the housing accommodation known as apartment [REDACTED] at 428 West 47th Street, New York, NY 10036.

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 this PAR.

On May 28, 2020, the tenant filed a lease-violation complaint alleging that the owner set new rules regarding the \$50.00 price tenants must pay to get a copy of the entrance building key (FOB/chip) in case of loss or damage. She signed the lease rider on this matter, as the other tenants did, though she alleged that the tenants felt that the owner is making a big profit for an item which is necessary to have access to the building. The tenant also complained about proposed excessive fines and penalties set forth in renewal lease riders, like for example a proposed \$2,000 fine if a tenant is caught smoking in the building.

The tenant later supplemented her complaint concerning interest on her security deposit. Attached to this complaint supplement was a correspondence from the Bureau of Consumer Frauds which was responding to a tenant complaint regarding the same issue. In that proceeding, the owner answered that the interest earned on her security deposit was less than the 1% fee that the owner would be entitled to take if such interest was returned to the tenant.

In July 2020, the owner answered the initial complaint stating that there was no lease violation issue presented in the complaint; that the tenant executed a renewal lease in effect for the term October 1, 2020 to September 30, 2022; that the tenant has made numerous complaints which have been dismissed; that she is the sole tenant in the apartment but was given two extra

PAR Docket Number KP410010RT

key fobs as a courtesy at no charge; and that the same fee has been imposed for lost key fobs since 2017.

On January 27, 2022, in a response sent to a notice served by the RA, the tenant acknowledged that her complaint was not related to a renewal lease offer and that she signed a renewal lease which was currently in effect.

The RA issued an order denying the complaint and advised the tenant that only lease violation issues could be raised in the form of the complaint she filed. The RA further advised that if the tenant is disputing the amount of her security deposit, she may file a rent overcharge complaint.

On PAR, the tenant contends that the RA misinterpreted her complaint. She contends that she was merely asking for advice about the interest on her security deposit and that she took this issue to the NYS Attorney General. The tenant also contends that other issues, such as the owner's refusal to accept rent payments from her brother and the owner's refusal to give her a second building key fob for her brother in case of emergency, are being raised in her service complaint filed with the agency under Docket Number IQ410008B.

The owner answered that the tenant has not opposed the RA's determination; that she merely asks for clarification; and that the RA's order was therefore correct.

In reply, the tenant stated that she was merely asking for guidance, not to begin a new process; that the owner bringing new issues to terminate her complaint was unfair; and that the owner failed to send her a renewal lease within 3 months before the actual lease expired.

Having looked into all submissions of the parties and reviewed the record, the Commissioner denies this PAR.

The issue of interest on the security deposit is being raised with the NYS Attorney General and is not an issue that this agency can resolve.

The issues raised concerning the key fobs and the owner accepting rent checks from her brother were resolved under Docket Number IQ410008B in an order issued on July 28, 2021.

There is no evidence that the tenant paid any of the proposed fees or fines of which she complains and thus she has no claim for reimbursement, which would have to be raised in a rent overcharge proceeding anyway.

The Commissioner will not entertain any claim regarding the timing of the offer of the renewal lease because this issue was not raised in the proceeding below and is outside the scope of review for the Commissioner. Under §2529.6 of the Rent Stabilization Code (RSC), PAR

PAR Docket Number KP410010RT

review shall be limited to facts or evidence before the RA. The Commissioner notes that the basis of scope of review is twofold. First, scope of review promotes administrative efficiency in that it mandates that the parties to a dispute set forth all their arguments and supporting evidence to the initial administrative fact-finder, in this case the RA. Second, scope of review prevents the manufacturing of evidence after the parties have had a chance to see the initial administrative determination.

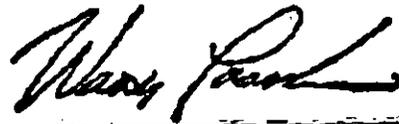
The RA order was in all respects correct when issued and is hereby affirmed.

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

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

ISSUED:

JUL 25 2022



WOODY PASCAL
Deputy Commissioner



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

Right to Court Appeal

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

Note: During the period of the current Covid-19 emergency, as a courtesy, if the Article 78 proceeding is commenced by e-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 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 (DHCR)
OFFICE OF RENT ADMINISTRATION
GERTZ PLAZA
92-31 UNION HALL STREET
JAMAICA, NEW YORK 11433

-----X
IN THE MATTER OF THE ADMINISTRATIVE
APPEAL OF

██████████, Tenant
and
93rd Building Corp., Owner

PETITIONERS

SJR#s: 17,093 and 17, 112

ADMINISTRATIVE REVIEW
DOCKET NOS.: KM410013RP
KM410014RP

RENT ADMINISTRATOR'S
DOCKET NO: FN410059RV

SUBJECT PREMISES:
Apartment ██████
179 East 93rd Street
New York, New York

-----X
**ORDER AND OPINION DENYING PETITIONS
FOR ADMINISTRATIVE REVIEW ON REMAND**

The tenant and owner filed timely petitions for administrative review (PARs) of an order issued on February 21, 2019 by the Rent Administrator (RA) which directed the owner to offer to the tenant a renewal lease for one or two years at the tenant's option based on the lawful rent of \$1,575 per month.

Procedural History

On February 15, 2017, DHCR commenced this rent overcharge proceeding upon the tenant's filing of Form RA-90, complaining about a lease violation because the owner refused to give a lease renewal and unlawfully overcharged her for years. The tenant alleged that the owner failed to furnish a signed copy of the new lease on Form RTP-8, failed to register the apartment with DHCR, and failed to abide with the rent laws. The tenant indicated that she moved into the apartment in 2005 on a one-year lease at a monthly rent of \$1,300.00; that her last lease was in 2007 with a monthly rent of \$1,395.91; and that she was paying \$1,581.00 per month as of the filing of the complaint.

In answer to the complaint, the owner claimed that the subject apartment had been deregulated; that the lease rider states that the apartment is deregulated; that the previous registered tenant in 2004 was ██████████, with a monthly legal regulated rent of \$1,298.00 and a collectible rent of \$1,100.00 per month; that attached is a copy of an RA order under Docket Number TF410119R; and that the legal regulated rent increased to \$2,371.91 per month

PAR Docket Numbers KM410013RP and KM410014RP

by, in part, an increase for individual apartment improvements (IAIs) completed in 2005.

In reply, the tenant denied the existence of any IAIs, and otherwise asserted that the owner fraudulently claimed deregulation to excessively raise the rent.

By a notice dated December 13, 2018, DHCR requested that the tenant provide evidence of rental payments. The tenant failed to provide such evidence.

DHCR also served the owner with a final treble-damage notice. The owner responded by submitting IAI documentation for the claimed cost of \$34,000.00. As a result, the owner calculated the 2005 monthly rent of \$2,371.91 as \$1,298 + \$223.91 (17.25% vacancy increase) + \$850 (1/40th of \$34,000 in IAIs). The owner also submitted copies of rent ledgers, showing tenant's rent arrears and underpayments.

The tenant requested an inspection of the premises. The RA scheduled same which resulted in the agency inspector finding defective vinyl floors, structure/support of building 1st floor needing repairs, and broken plastic laminate floor tiles.

The RA issued an order under Docket Number FN410059RV and found:

- (1) The owner offered a renewal lease listing a legal regulated rent of \$1,744.42 per month and a monthly preferential rent of \$1,550.00, which was not signed by the tenant, and which could not have been deemed since it was an improper offer. Based on this and other evidence, the correct legal regulated rent as of November 2017 was \$1,575.00 per month. The apartment is regulated.
- (2) The owner was not permitted to increase the rent by \$850.00 per month for the IAIs in 2005 because the DHCR inspection found that wood flooring was not installed, and HPD and DOB violations were issued on alleged new items.
- (3) The tenant's rent arrears of \$35,507.00 exceeds the calculated overcharges of \$151.53.

The tenant filed a PAR which was initially docketed under Docket Number HO410024RT. The owner also filed a PAR which was initially assigned Docket Number HO410006RO.

The Commissioner consolidated the PARs and issued an order denying both on October 31, 2019.

Both the tenant and the owner filed CPLR Article 78 proceedings against the consolidated PAR order in New York County Supreme Court under index numbers 162398/19 and 161754/19.

PAR Docket Numbers KM410013RP and KM410014RP

On September 17, 2020, the Hon. Lynn R. Kotler issued an order granting DHCR's cross motion to remand the matter back to the agency for further proceedings. The Court denied the tenant's motion to reargue the matter on December 7, 2020 and affirmed remand to DHCR.

The agency served the parties with Notice of Proceeding to Reconsider Order (under Docket Numbers KM410013RP and KM410014RP) on January 27, 2022.

On March 7, 2022, the Commissioner mailed the owner's counsel a correspondence informing them that in its August 21, 2018 submission to the RA, the owner submitted a rent ledger which appears to be missing two years (i.e. rent ledger starts with 10/1/12 and skips to 11/1/15). The Commissioner requested that the owner submit a full ledger.

On March 15, 2022, the owner submitted copies of the missing rent ledger entries and stated that the error was caused by a change-over in computer systems in 2015. The owner also stated that no rent has been paid since 2017.

On March 21, 2022, in order to address the tenant's claim raised in the Article 78 court proceeding that she was never served with the owner's August 21, 2018 submission to the RA, the Commissioner served a copy of said submission on the tenant and requested that she provide proof of rent payments from February 2014 to the present. On March 21, 2022, under a separate cover, the Commissioner also served the tenant with the owner's March 15, 2022 submission.

On March 24, 2022, the Appellate Division, First Department denied the tenant's appeal and upheld Judge Kotler's decision to remand the matter to DHCR. The First Department also denied a requested stay of the agency proceeding.

On March 31, 2022, the tenant requested an extension to May 17, 2022 in order to seek new legal representation and to submit responses to the Commissioner.

To date, the tenant has not filed any responses or notified the Commissioner of new legal representation.

Commissioner's Decision on Remand

The PARs are consolidated because they involve common issues of law and fact.

Tenant's PAR KM410014RP

On PAR, the tenant alleges that the owner committed fraud by concealing the rent-regulated status of the apartment in October 2005 and by offering a "preferential rent;" that the RA must look beyond the four-year period of the rent history to determine the correct base date rent; that the owner inflated the rent in registrations filed between 2001 and 2003; that the owner

PAR Docket Numbers KM410013RP and KM410014RP

fabricated IAs in 2005; that there should have been a finding of overcharges dating back to 2005 with treble damages; that the RA incorrectly relied on the owner's rent ledger to determine arrears and that she did not have the opportunity to rebut said claim; and that the RA erroneously adopted allegations that were not part of the record.

The tenant's PAR is denied.

The record reveals that the RA reviewed the rental history of the apartment back to December 16, 2005 when this agency issued an order determining that the legal regulated rent was \$1,298.00 per month through August 2005 (TF410119R). Based on the former agency order, the RA was not compelled to review alleged improper registrations in 2001-2003. Indeed, rental events from 2001-2003 were reviewed in the prior order which was not subject to an appeal, and which is a final agency determination. Thereafter, the RA reviewed the rental events in 2005 leading up to the petitioner's occupancy, including claimed IAs which were disallowed. This led to a finding that the tenant's legal regulated rent upon occupancy was no more than \$1,521.91 in 2005, an amount which did not lead to deregulation. Review of subsequent rents revealed that the owner was entitled to charge the tenant \$1,575.00 per month in 2013, a mere \$54 increase over a period of nearly eight years, and in fact the tenant was charged less than that.

Based on the foregoing, the tenant's claim of a pre-base date review of the rental history based on fraud is without merit. Such review has already been performed. The allegations that the tenant was a month to month tenant without a valid lease was supported by the record and directly lead to a finding that the owner was not entitled to various increases both before and after the base date which he otherwise would have been entitled to had proper renewal leases been offered. This also directly led to the rent only being increased by \$54.00 over the course of the first eight years of the tenant's occupancy. As such, the tenant's assertion that the RA adopted allegations outside of the record, such as her being a month to month tenant, is without merit.

The allegation of fraud concerning IAs is moot given that said IAs were disallowed, and the 2005 vacancy legal regulated rent only included a vacancy increase above the rent previously determined by this agency. The Commissioner finds no fraudulent scheme to deregulate the apartment as the owner did produce some evidence of work performed in the apartment in 2005 which could have reasonably led the owner to believe, at that time, that he was entitled to a rent increase based on that work. The Commissioner notes that the contractor invoice does state that work, including wood flooring would be installed in said apartment, and that the owner paid for the work. The fact that this work, years later, was disqualified as legitimate IAs, does not lead to a finding of fraud. Moreover, although the owner gave a market lease to the tenant, he charged less than the purported legal rent of \$2,371.91 and did not increase the rent over several years further suggesting that there was no "scheme" to illegally deregulate the apartment. There is also no evidence that the owner attempted to file amended or false registration statements as in other cases finding a fraudulent scheme to deregulate an apartment.

PAR Docket Numbers KM410013RP and KM410014RP

The allegation that overcharges should have been found dating back to 2005 is without merit. While the rental history may be reviewed back to 2005, overcharges may not be awarded beyond the four years before the filing of the complaint. The evidence in this case also supports a finding that the minimal overcharge found was not willful and is not subject to treble damages.

The tenant's claim of lack of due process is belied by the fact that the tenant, on remand, was served with a copy of the owner's August 21, 2018 submission as well as the rent ledger and had an opportunity to, and did not, respond to this evidence and also did not produce evidence of rental payments. The RA properly determined that there were rent arrears based on a finding of the legal and collectible rents as well as the owner's rent ledger which has not been refuted. The owner's entitlement to collect any arrears, however, is ultimately a decision for a court of competent jurisdiction.

The Commissioner has considered any remaining claims of the tenant and finds them to be without merit.

Owner's PAR KM410013RP

On PAR, the owner contends that because the RA found no fraud, the RA cannot deny that the listed items in the invoice were completed in 2005; that the tenant has enjoyed these IAIs without complaining for 14 years; that, based on the IAIs, the RA should increase the 2005 monthly rent to \$2,371.91 per month; that the mere finding by an inspector that the floors were not wood should not have made the RA disallow the approval of at least \$27,000.00 worth of IAIs; that the RA can allow a portion of IAIs; that the history of the apartment shows that the monthly rent has exceeded the \$2,000.00 monthly threshold so that the tenant cannot demand a rent-stabilized lease; and that the four-year rule bars the tenant from questioning the validity of the IAI rent increase.

The owner's PAR is denied.

Under Rent Stabilization Code §2526.1(a)(2)(iii), and as confirmed by numerous court cases, the agency has the authority to review the rental history of the apartment prior to the standard four-year base date to determine whether the apartment is subject to rent stabilization. Such review can be made even in the absence of an allegation of or finding of fraud.

In support of the IAIs, the owner produced an invoice for \$34,000 from BoBo Construction dated August 1, 2005, but which was signed before a notary public on June 20, 2017. The invoice is marked "paid." The itemization of work includes \$9,000 for demolition; \$4,000 for garbage removal; \$6,900 for new hardwood flooring; \$8,000 for new sheetrock throughout the apartment; \$3,000 for a new kitchenette, \$300 for a new toilet bowl, \$800 for new windows and \$2,000 to sand/prime/paint the apartment. The owner also submitted a signed statement from the contractor that the work was performed in July, August and September of

PAR Docket Numbers KM410013RP and KM410014RP

2005 and that the contractor's invoice was paid in full. In opposition to the IAIs, the tenant submitted various photographs of the apartment showing old walls, moldings and fixtures in the apartment, and arguing that she viewed the apartment in September 2005 and saw no evidence of a gut renovation or on-going work.

While the RA asserted that the owner "documented" the cost of the IAIs in the contractor invoice, the IAIs were nevertheless disallowed based on other factors, including an agency inspection and subsequent violations issued by HPD. The Commissioner affirms disallowance of the IAIs for the reasons set forth herein.

DHCR Policy Statement 90-10, in effect at the time of the IAIs, provides that IAIs must be supported by adequate documentation which should include at least one of the following: (1) cancelled checks contemporaneous with the completion of work; (2) invoices marked paid in full contemporaneous with the completion of the work; (3) signed contract agreement; or (4) contractor's affidavit indicating that the installation was completed and paid in full.

The Commissioner finds that the documentation submitted by the owner concerning the IAIs was insufficient under DHCR Policy Statement 90-10. The petitioner did not produce any cancelled checks contemporaneous with the work performed. The invoice submitted was not a contemporaneous document as it was signed and notarized in 2017. Moreover, there was no signed contract agreement and the letter from the contractor was not an affidavit made under the penalty of perjury (it was simply a notarized letter).

Even were the Commissioner to find that the invoice for \$34,000 was contemporaneous with the work in 2005, the IAIs were still properly disallowed. The agency inspection confirmed that wood floors were not installed in the apartment which supports the disallowance of \$6,900 for this item. The combined costs of \$13,000 for demolition and garbage removal were properly disallowed as same are not qualifying IAIs (except in the case of a complete gut renovation which did not occur here). Similarly, new sheetrock and sanding/priming/painting at a combined cost of \$10,000 are not IAIs and are repair/maintenance items (again except in the case of a complete gut renovation which did not occur here). The tenant also produced photographs of her walls and baseboards showing old, damaged plaster surfaces and moldings which rebuts the installation of new sheetrock throughout the apartment. The addition of a new toilet at \$300.00, without any other bathroom renovations, was also properly disallowed as a repair. The lack of any other work in the bathroom also belies the owner's claim of a gut renovation. The charge of \$800.00 for new "windows" also does not qualify as an IAI given that the tenant alleges this was a studio apartment with one window that was defective from the time she moved in and did not provide any ventilation (which is documented by written correspondence between the tenant and the owner). Finally, the description on the invoice of "new kitchenette" at a cost of \$3,000 is insufficient to support a rent increase for this claimed IAI. Kitchen renovations should be itemized and have more detailed descriptions of the work, including cabinets, appliances, sink, countertop, etc., in order to qualify as an IAI.

PAR Docket Numbers KM410013RP and KM410014RP

Given the deficiencies in the owner's IAI evidence; the agency inspector's findings; the tenant's photographs; the fact that maintenance and repair items cannot qualify as IAIs; and that other claimed IAIs were either refuted or lacked sufficient itemization and detail, the Commissioner finds that there should have been no rent increase based on IAIs.¹ This ultimately led to a finding by the RA that the rent did not surpass the deregulation threshold and that the apartment was rent stabilized. This was the correct finding based on this record.

As noted above, any claimed rent arrears are an issue between the owner and the tenant to be decided in a court of competent jurisdiction.

The Commissioner has considered any remaining claims of the owner and finds them to be without merit.

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

ORDERED, that upon court remand, the tenant's PAR and the owner's PAR are consolidated and denied; and that the Rent Administrator's order is affirmed.

ISSUED

AUG 02 2022



Woody Pascal
Deputy Commissioner

¹ Given the lack of evidence to support the IAIs, the Commissioner need not reach any conclusion as to whether the work was performed while the former tenant was still in the apartment, as was alleged by Ms. Hefti.



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 e-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 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 (DHCR)
OFFICE OF RENT ADMINISTRATION
GERTZ PLAZA
92-31 UNION HALL STREET
JAMAICA, NEW YORK 11433

-----X
IN THE MATTER OF THE ADMINISTRATIVE
APPEAL OF

██████████
PETITIONER

ADMINISTRATIVE REVIEW
DOCKET NO.: KS210018RT

RENT ADMINISTRATOR'S
DOCKET NO: JW210058RV

OWNER: 56 Winthrop, LLC

-----X
ORDER AND OPINION DENYING PETITION FOR ADMINISTRATIVE REVIEW

The tenant filed a timely petition for administrative review (PAR) of an order issued on June 17, 2022 by the Rent Administrator (RA) concerning the housing accommodation in the premises known as apartment █████ at 56 Winthrop Street, Brooklyn, New York.

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 this PAR.

The RA found that on November 29, 2021, the tenant filed a lease violation complaint claiming that the owner failed to offer her a renewal lease on the same terms and conditions that were contained in the expiring lease; that the owner is charging her a monthly rent of \$802.49 instead of the Disability Rent Increase Exemption (DRIE) frozen rent amount; that the record shows that the owner offered the tenant a renewal lease dated October 1, 2021 with a commencement date of March 1, 2022; that the tenant is advised to sign the lease and return it to the owner; that the record also shows that the tenant commenced an overcharge proceeding under Docket Number JW210049R which is pending; and that given that lease violation is the only issue in the instant proceeding, the proceeding is terminated.

On PAR, the tenant alleges that she cannot sign the lease because it does not contain the frozen rent amount of \$674.31 and that the lease violation complaint should be remanded to the RA to consolidate with the pending rent overcharge proceeding.

The PAR is denied.

Given the timeliness of the lease renewal offer and the requirement that a renewal lease be signed in order to continue DRIE benefits, it was prudent for the RA to direct the signing of the lease. The issue of whether the lease contains the correct rent amount and whether surcharges noted in the lease are correct will be decided in the rent overcharge proceeding.

PAR Docket Number KS210018RT

pending under Docket Number JW210049R wherein the RA can direct the lease to be amended, if necessary.

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

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

ISSUED:

SEP 14 2022



WOODY PASCAL
Deputy Commissioner



State of New York
Division of Housing and Community Renewal
Office of Rent Administration
Gertz Plaza, 92-31 Union Hall Street
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 e-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 Number and the documents received by the court, i.e., Notice of Petition, Petition, and other efiled documents to DHCRLegalMail@nysdcr.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.