

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

ADMINISTRATIVE REVIEW
DOCKET NO.: LM110028RO

VIETOR APARTMENTS LLC

RENT ADMINISTRATOR'S
DOCKET NO: KW110024RV

PETITIONER

TENANT: [REDACTED]

-----X
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 December 20, 2022 by the Rent Administrator (RA) concerning the housing accommodation known as apartment [REDACTED] at 83-60 Vietor Avenue, Flushing, NY 11373.

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 in this proceeding.

On November 7, 2022, the tenant filed a lease violation complaint alleging that the owner failed to renew his lease which was set to expire on November 30, 2022.

The RA served the complaint on Vietor Apartments LLC at [REDACTED], with such mailing being returned by the post office. The RA also served Vietor Avenue Associates at [REDACTED], which address was based on a current property tax bill on record with the Department of Finance. That mailing was, upon information and belief, not returned to the agency.

The owner did not interpose an answer to the complaint and the RA granted it on default and directed the owner to renew the tenant's lease. The RA order was mailed to Vietor Avenue LLC at [REDACTED].

On PAR, the owner contends that it was not served the tenant's complaint; that its due process rights were violated; that, following review of the file after obtaining same by FOIL, the owner's name and address were incorrect on the service attempts; that the owner commenced a holdover proceeding in Civil Court based on the tenant's non-primary residence which requires investigation and witnesses; that this Court proceeding was filed prior to the tenant's filing of the lease violation complaint with DHCR; that the DHCR complaint was the tenant's strategy to

forum-shop and delay his eviction; and that various precedents ruled that the agency should defer to a pending court proceeding which commenced before the agency complaint.

The PAR is granted.

As a first matter, the Commissioner finds that the lease violation complaint should have been served on Viotor Apartments LLC at [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] which was the address on file in DHCR's registration system at the relevant time.

Given that the RA's decision was based solely on the owner's default, it is revoked.

The Commissioner will consider the owner's evidence submitted on PAR. This evidence indicates that, on August 26, 2022, the owner timely served a Notice of Non-Renewal on the tenant in connection with the expiring lease on November 30, 2022. This notice was served prior to the tenant's filing of the lease violation complaint with DHCR. After the lease ended, on December 8, 2022, the owner commenced a holdover proceeding in NYC Civil Court under Index Number L&T 318981/2022, based on non-primary residence. The Commissioner finds that since the owner served a Notice of Non-Renewal before the DHCR complaint was filed, the DHCR proceeding should have been dismissed. This is in accord with prior DHCR orders.


Based on the foregoing, the lease violation complaint is dismissed. If the Court decides in the tenant's favor and the owner does not renew his lease, the tenant may file another complaint with agency.

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 granted; and the Rent Administrator's order be, and the same hereby is, revoked.

ISSUED:

APR 13 2023



WOODY PASCAL
Deputy Commissioner



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

Right to Court Appeal

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

There is no other method of appeal.

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IN THE MATTER OF THE ADMINISTRATIVE
APPEAL OF

ADMINISTRATIVE REVIEW
DOCKET NO.: LN210019RT

██████████

PETITIONER

RENT ADMINISTRATOR'S
DOCKET NO:KW210067RV

-----X

OWNER: First Start, LLC

ORDER AND OPINION DENYING PETITION FOR ADMINISTRATIVE REVIEW.

The above-named tenant filed a timely petition for administrative review (PAR) of an order issued on January 23, 2023 by the Rent Administrator (RA) concerning the housing accommodation known as ██████████ apartment at 334 Putnam Avenue, Brooklyn, NY 11216.

On November 16, 2022, the tenant filed a lease violation complaint alleging that the owner refuses to give her a renewal lease for 2019. The tenant annexed an expired lease ending March 31, 2018 and a lease commencing September 1, 2022, which she signed "under protest" and which was not signed by the owner. Later, the petitioner provided copies of two stipulations of settlement, one under Index # 2088/18 which is dated March 22, 2019 and another under Index # LT-308908-21 which is dated May 25, 2022.

In the order under review, the RA terminated the proceeding based on the fact that the owner had offered a renewal lease in compliance with a stipulation of settlement in New York City Housing Court under Index # LT-308908-21.

On PAR, the tenant contends that the owner is not in compliance with a stipulation of settlement, dated November 16, 2019, under Index # 2088/18, a copy of which was provided with the PAR, and which stated that the owner would provide a renewal lease by November 29, 2019 to commence January 1, 2020. This settlement agreement was subsequent to March 22, 2019 agreement executed in court under the same index number which was provided to the RA.

The owner opposed the PAR stating that it did provide a lease renewal as agreed by the parties and their attorneys in a subsequent court proceeding under Index # LT-308908-21.

The tenant replied that the only lease she received from the owner was dated August 8, 2022, which the tenant signed with the notation "under protest" as she signed the same way on her previous lease, and she sent the signed lease back to the owner; that the owner refused to send her a signed lease because she signed "under protest;" and that according to her lawyers, the owner should return her a signed lease because there was no issue with the previous lease with the same notation.

The Commissioner denies this PAR.

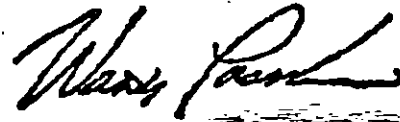
The evidence points to the fact that the owner complied with the most recent court stipulation of settlement under Index # LT-308908-21 by offering a renewal lease which was current during the RA proceeding. If not already done, the owner should return a fully executed copy of this lease to the tenant forthwith, notwithstanding her signing same under protest. The allegation concerning the owner's alleged non-compliance with the 2088/18 court stipulation of settlement is a matter which seems moot given that a 2019 lease would have already expired its term. However, the issue of the owner's alleged non-compliance may be addressed by the tenant directly with that court, not this agency.

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:

MAY 04 2023



WOODY PASCAL
Deputy Commissioner



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IN THE MATTER OF THE ADMINISTRATIVE
APPEAL OF

ADMINISTRATIVE REVIEW
DOCKET NO.: LP210001RK

RENT ADMINISTRATOR'S
DOCKET NO: KO210089RV

██████████
PETITIONER

OWNER: Drigby Corp.

-----X
**ORDER AND OPINION DENYING PETITION FOR ADMINISTRATIVE REVIEW
UPON RECONSIDERATION**

On or about March 30, 2022, the petitioner filed a lease violation complaint alleging that he moved into apartment █ at 853 Driggs Avenue, Brooklyn, New York on July 2, 2020 and that the owner was refusing to renew his lease which expired June 30, 2022.

The owner answered that petitioner was not the tenant of record on the expiring lease; that █ was the tenant of record; that she passed away during the term of the July 2020 renewal lease; that the owner only learned of petitioner after █ passed away when he informed the owner that he was the son of the tenant of record and was seeking succession rights; that the owner did not believe that petitioner even occupied the subject apartment; and that the owner reviewed the succession request and concluded that petitioner did not qualify for succession rights based on the fact that he did not reside with the tenant of record for two years before her passing. The owner asserted that it determined that petitioner maintained his primary residence in █ based on his driver's license, vehicle registration and voting record.

On May 26, 2022, the Rent Administrator (RA) requested that petitioner provide the death certificate, documents proving occupancy for two years prior to the death of the tenant of record, birth certificate, utility bills, rent checks/receipts, tax returns, school or medical records and state photo ID.

On July 12, 2022, the RA denied the complaint and terminated the proceeding based on

PAR Docket Number LP210001RK

the petitioner's failure to provide the requested documentation to prove succession rights.

In a Petition for Administrative Review (PAR), petitioner contends that he submitted all necessary documentation by hand to DHCR on June 7, 2022. Petitioner submitted a copy of DHCR's request for information which was date stamped June 7, 2022 at 10:20am in the Office of Public Information at Gertz Plaza along with documentary evidence on succession. The documents included a Social Security Medicare Drug Plan Costs, dated April 2, 2022, addressed to petitioner at the subject apartment; a birth certificate in Spanish; death certificate of [REDACTED] [REDACTED], dated January 8, 2022; Con Ed bill, dated May 31, 2022, addressed to petitioner at 184 Broadway Brooklyn, NY; postal money order dated May 3, 2022 for [REDACTED] in the amount of \$340.52; petitioner's driver's license valid until May 7, 2025 at the address [REDACTED]; Health First insurance records addressed to petitioner at the subject apartment; 2009, 2020 and 2021 tax returns for petitioner with his address being the subject apartment; 2020, 2021 and 2016 W-2s addressed to petitioner at the subject apartment; a Kings County Juror questionnaire dated May 2015 for petitioner at the subject apartment; Con Ed bill, dated October 3, 2022, addressed to petitioner at the subject apartment; National Grid bill, dated July 1, 2022, addressed to petitioner at 184 Broadway Brooklyn, NY and Chase bank records.

The owner opposed the PAR by arguing that the documents submitted do not prove succession rights.

In reply, petitioner states that he is a senior citizen who is only required to prove co-habitation for one year prior to his mother's death on January 8, 2022; that his driver's license has the address of his daughter at [REDACTED] because his daughter pays for the automobile insurance policy in exchange for his taking care of his three grandsons; and that the informant on the death certificate has no bearing on a succession claim.

The Commissioner, in an order issued on February 14, 2023 under Docket Number KV210002RT, accepted the tenant's evidence on PAR, but found that the tenant did not prove succession rights.

By an Order Granting Tenant's Request for Reconsideration and Reopening Proceeding, dated April 5, 2023, the Commissioner found that 853 Driggs Avenue is a/k/a 184 Broadway; that this information is verified by NYC Department of Buildings' records; and that DHCR's failure to consider the "a/k/a address" when analyzing the tenant's documents for a succession claim was an irregularity in a vital matter warranting reopening of the PAR proceeding for reconsideration.

On April 5, 2023, the Commissioner served the tenant's attorney and the owner with a reconsideration notice with the reopened PAR Docket No. LP210001RK.

PAR Docket Number LP210001RK

On April 6, 2023, the Commissioner served the tenant's attorney with a letter requesting proof of the tenant's residency in the subject premises, including utility bills from January 2021-January 2022, by April 26, 2023. There has been no response.

Upon reopening and reconsideration, the Commissioner finds that the tenant has not proven succession rights.

The evidence in the record fails to prove that the petitioner resided with his mother in the subject apartment for one year prior to her death. The petitioner failed to produce utility bills or other documents in his name addressed at either 853 Driggs Avenue or the a/k/a 184 Broadway from January 2021 to January 2022, the required one-year period before his mother's death. The tax returns and W-2s alone do not prove the residency requirement and the other documents produced in the former proceeding do not span the relevant time period.

Given that no succession is proven, a renewal lease need not be offered to petitioner.

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

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

ISSUED:

MAY 23 2023



WOODY PASCAL
Deputy Commissioner



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-----X
IN THE MATTER OF THE ADMINISTRATIVE APPEAL OF
[REDACTED] PETITIONER
ADMINISTRATIVE REVIEW
DOCKET NO.: LO410029RT
RENT ADMINISTRATOR'S
DOCKET NO: LN410018RV

-----X OWNER: 66 East 7th Street, LLC

ORDER AND OPINION DENYING PETITION FOR ADMINISTRATIVE REVIEW

The above-named tenant filed a timely petition for administrative review (PAR) against an order issued on March 13, 2023 by the Rent Administrator (RA) concerning the housing accommodation known as apartment [REDACTED] at 66 East 7th Street, New York, NY 10003 which terminated the tenant's lease violation complaint and found that the subject apartment is not under the jurisdiction of this agency.

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 PAR, the tenant contends that the owner has offered rent stabilized leases; that he did not receive the prior order of the agency; that there are inconsistencies in the registration history which prevent deregulation; and that there is evidence of owner harassment and decreased services in the building.

In opposing the PAR, the owner stated that the subject apartment was deregulated by a June 28, 2018 order under Docket Number DX410117R, which the tenant never challenged; that the tenant's excuse that he never received the deregulation order is no excuse because that order was served to the tenant's correct address on record, the subject apartment; and that the tenant's rent-stabilized lease and the apartment's registration history are irrelevant in overturning the deregulation order.

In reply, the tenant stated that numerous building notifications indicate break-ins of mail and packages; that he filed a police report on lost items burglarized in his apartment; that he never received the deregulation order; and that the registration history shows a rent-stabilized apartment before and after the purported deregulation.

PAR Docket Number LO410029RT

Based on the record and the law, the Commissioner denies the PAR.

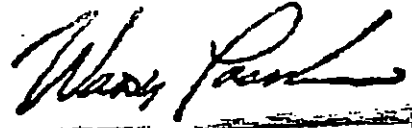
The evidentiary record demonstrates that the petitioner filed a rent overcharge complaint which was resolved on June 28, 2018 under Docket Number DX410117R, wherein the RA issued an order finding that that the subject apartment was deregulated due to high-rent vacancy upon the tenant taking occupancy as of April 15, 2013. The tenant did not file a PAR on this order, and it is therefore final and binding. The order was mailed to the tenant at the subject apartment which represents valid service of process of the order. Tenant's assertions, five years later, that he did not receive the order are without merit. Moreover, the fact that after 2018 the owner may have offered rent stabilized leases or may have registered the apartment as rent-stabilized is of no matter given that the apartment was deregulated as of the petitioner's move-in date. The owner's actions could not confer regulated status on the 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:

MAY 31 2023



WOODY PASCAL
Deputy Commissioner



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