

**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.: LM110011RT**

██████████

PETITIONER

**RENT ADMINISTRATOR'S
DOCKET NO.: JV110095OR**

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ORDER AND OPINION DENYING PETITION FOR ADMINISTRATIVE REVIEW

On January 10, 2023, the above-named Petitioner-tenant filed a Petition for Administrative Review ("PAR") challenging JV110095OR, an order the Rent Administrator issued on December 8, 2022 (the "order"), concerning the housing accommodation known as 102-30 67th Street, Apartment ██████ Forest Hills, New York, wherein the Rent Administrator granted the owner's application to restore rent after the tenant failed to provide access to the apartment for a "No-Access" inspection scheduled for July 21, 2022.

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

In the PAR, the Petitioner requests a reversal of the Rent Administrator's order, averring that the "No-Access" inspection was fraudulently obtained by the owner and/or should never have been conducted; that the tenant was not afforded an opportunity to respond to all of the owner's submissions; and that the Petitioner will provide additional explanation upon receipt of the information requested under the Freedom of Information Law ("FOIL").¹

By the owner's response to this appeal, the owner requests that the Rent Administrator's order be affirmed as the tenant has failed to establish that the said order contains any errors of fact or law; and that the Petitioner-tenant has not denied that access was not provided at the No-Access inspection.

¹ The tenant requested an additional extension to respond on March 21, 2023, however, no further submissions have been received from the tenant during the processing of this appeal.

ADMINISTRATIVE REVIEW DOCKET NO. LM110011RT

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 rent reduction, upon application by a tenant, where it is found that an owner has failed to maintain required 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 allows the Rent Administrator to rely on an Agency's inspection report in determining if services at issue have been restored. Furthermore, Section 2523.4(d)(2) states that the objection to a rent restoration application by a tenant who failed to provide access for repairs at the time arranged by the DHCR for the inspection will be denied. Additionally, Policy Statement 90-2 provides that "[i]f the tenant denies access for the DHCR inspection, then the rent will be restored."

The Commissioner notes that in the initial proceeding, Docket No. HX110125S, the Rent Administrator, on November 13, 2020, granted the tenant a rent reduction based on a finding that the owner failed to control vermin infestation apartment-wide.

The records indicate that the owner commenced the rent restoration proceeding herein on October 28, 2021, wherein the owner alleged that the tenant was refusing access, supporting the allegation with evidence of the owner's August 26, 2021 and September 17, 2021 letters sent to the tenant requesting access (the Commissioner notes that the access letters were sent in compliance with Section 2523.4 (d)(2) which states that the owner should advise the Agency that the tenant has denied access and submit copies of two letters sent to the tenant trying to arrange access, each of which must have been sent certified mail, return receipt requested at least eight days before the proposed access date). The owner asserted that the owner provides a bi-monthly extermination services of which the Petitioner-tenant had not utilized since February 26, 2020.

The tenant was provided with an opportunity to respond to the owner's claims by serving the tenant with the owner's rent restoration application on November 17, 2021. On December 30, 2021, the tenant answered, claiming that the owner falsely requested no-access inspections on three occasions in the past but failed to provide the Agency with the tenant's responses to the access letters; that the tenant did not receive the above access letter dated September 17, 2021 as the tenant was on vacation at the time; and that the tenant continually reminded the owner about fixing the issues and the owner failed to do so.

By correspondence dated March 18, 2022, the owner, in response to the tenant's answer, refuted the tenant's claim that the tenant never denied access for repairs, and asserted that on February 10, 2022 the tenant, at the order of the Court, provided a limited access to the tenant's kitchen for the purpose of vermin control, and that a non-toxic spray (Essentria IC-3) was used at the subject apartment at that time; that on March 9, 2022, the tenant advised the Court that the tenant would not permit further use of the product in the subject apartment; and that the Court, again, directed the tenant to provide access on March 15, 2022 for the owner to seal up all entry points and set traps, which the owner accomplished.

ADMINISTRATIVE REVIEW DOCKET NO. LM110011RT

This owner's submission was served on the tenant on March 28, 2022. On April 21, 2022, the tenant responded and requested an extension of time to provide the requested information. On May 19, 2022, the Agency requested the tenant, to respond to the owner's March 18, 2022, submission and submit (1) the Housing Court Order stating that the tenant agreed to cease green extermination pest treatment; (2) whether access was granted on March 15, 2022 for inspection and sealing the entry points, including closets, and if the work was completed; and (3) to submit any Housing Court documents regarding the said matter, including the adjournment dates of April 8, 2022 and May 4, 2022.

Thereafter, on June 8, 2022, the tenant, in response, acknowledged that in as much as access was granted on March 15, 2022, the exterminator did a whitewash sealing of the windows leaving large holes unsealed; the exterminating products affected the tenant's health; that access was provided on three Court ordered dates, however, no entry points were sealed; and that the May 10, 2022 extermination was not properly done.

The Rent Administrator, in accordance with DHCR procedure, requested a "No Access" Agency inspection of the subject apartment to facilitate the resolution of the complaint and to ascertain the condition of the vermin control. A Notice of Inspection – For Access (Notice) was mailed to the tenant on July 7, 2022, which scheduled an inspection on July 21, 2022, between the hours of 10:30 AM and 11:00 AM wherein the tenant was advised that an inspection was scheduled with the Agency inspector and the owner and/or the owner's repair person(s) so as to provide access to the owner for the purposes of attending to repairs and/or the restoration of services. The Notice also advised the tenant that the failure of the tenant to keep the appointment would result in a determination based solely on the evidence presently in the record.

Thereafter, an Agency "No-Access" inspection was conducted at the subject premises on July 21, 2022. The record indicates that the manager and exterminator were present and ready to provide two types of treatment, a traditional powder treatment from Advion and an all-natural treatment from Essentria. The record shows that the tenant, as acknowledged, failed to provide access for the repair person to correct the conditions during the Agency inspection on July 21, 2022, as scheduled. The inspector noted in their report that they spoke with the tenant on July 20, 2022 wherein the tenant claimed that they were not going to be available for the inspection, first due to a court appearance, and then second due to work, however, the inspector informed the tenant that the inspection would still be attempted as it was a no access inspection.

Subsequently, on July 28, 2022, the tenant, in response to the Notice of Inspection, asserted that the No-Access inspection "is invalid" because the owner did not provide any notices that were not accommodated; the owner knew the tenant was not available on that date and at that time because the parties were in Supreme Court, and the owner insisted on proceeding with the inspection; that attending to the inspection would jeopardize the Petitioner-tenant's chances of extending the tenant's contract of work; that the owner insisted on treating the apartment with spray during this inspection, which would endanger the tenant's safety and health, and that no other treatments were proposed.

ADMINISTRATIVE REVIEW DOCKET NO. LM110011RT

As the tenant failed to provide access to the Agency inspector to perform a No-Access inspection, the Rent Administrator granted the owner's application to restore rent on December 8, 2022.

At the outset, the Commissioner notes that where the records indicate that an inspector was unable to conduct an Agency's scheduled inspection either through a tenant's refusal or the lack of cooperation by the tenant, the Rent Administrator may properly grant the owner's application and restore the rent. Based on the totality of evidence in the record, the Commissioner finds that the tenant's petition is without merit in this case as the record reveals that the Rent Administrator, on July 7, 2022, properly provided notice to the tenant of the scheduled Agency inspection, requesting access for the owner's repair person to restore services, and the tenant failed to be present as advised.

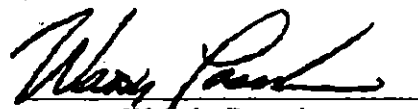
The Commissioner further finds that the Administrator conducted the proceeding below in accordance with established law, Agency practice, and principles of due process. Foremost, the Commissioner notes that the tenant was provided with an opportunity to respond to the owner's rent restoration application as well as the owner's claims raised in their March 18, 2022 submission, and the tenant in fact responded to such owner's claims on June 8, 2022. Furthermore, a No-Access inspection was properly requested as the evidence in the record reveals that the owner advised the Division about their effort in arranging access for repairs, supporting the allegation with evidence of the owner's August 26, 2021 and September 17, 2021 letters sent to the tenant for access to conduct repairs, in compliance with Section 2523.4 (d)(2) of the RSC.

The Commissioner finds that based on the evidence of record, the Rent Administrator correctly granted the owner's rent restoration application pursuant to Section 2523.4 of the RSC and DHCR Policy Statement 90-2. The Commissioner finds that the tenant's claims are without merit in this case. Accordingly, the tenant's PAR has not established any errors of law or fact with the Rent Administrator's decision. The Commissioner therefore finds that the tenant's PAR is denied, and the Rent Administrator's order is affirmed.

The tenant is advised that they may file a fresh service complaint 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: **JUL 21 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.

**STATE OF NEW YORK
DIVISION OF HOUSING AND COMMUNITY RENEWAL
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**IN THE MATTER OF THE
ADMINISTRATIVE APPEAL OF** :

**ADMINISTRATIVE REVIEW
DOCKET NO.: LQ230016RO**

FC 2501 LLC :

**RENT ADMINISTRATOR'S
DOCKET NO.: KV210069OR**

PETITIONER

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ORDER AND OPINION DENYING PETITION FOR ADMINISTRATIVE REVIEW

On May 22, 2023, the above-named petitioner-owner filed a petition for administrative review (PAR) against an order issued on May 11, 2023, by the Rent Administrator concerning the housing accommodations known as 2501 to 2511 Newkirk Avenue, Brooklyn, NY, wherein the Administrator denied the owner's application to restore rent.

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

The owner requests a reversal of the Rent Administrator's order and contends, in substance, that the initial Rent Administrator's order Docket No. PG230007B found *cracked and uneven cement in the front and the side of the building, constituting trip hazard*; that subsequently, there were rent restoration orders, and on January 31, 2020, under the rent restoration order Docket No. HO210010OR, the Agency found all services restored except "BLDG. FRONT/SIDE SIDEWALKS", with the order stating that an inspection conducted at the subject premises on December 28, 2019 found that the concrete walk was uneven *where the courtyard meets the archway. This is a trip hazard (emphasis added)*, connoting that the cracked and uneven cement in the front and side of the building had been repaired/restored, except for the one area of the concrete walk where the courtyard meets the archway; and that on October 31, 2022, i.e., in the proceeding herein below, Docket No. KV210069OR, the owner refiled for rent restoration with the only outstanding item being "the concrete walk where the courtyard meets the archway", but, the Rent Administrator denied the owner's rent restoration application for the condition that - "the sidewalk near the building entrance was cracked. Trip hazard present", which the owner argues is an unlisted service and/or a new issue, a service that a prior inspection had found restored. The owner indicated that the owner had requested a copy of the inspection report from the Agency and

reserves the right to supplement its PAR upon receipt of the report, however no further correspondence was received from the owner.

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.

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

On October 31, 2022, the owner commenced the rent restoration proceeding herein below, which was served on the tenant on November 2, 2022, claiming that the outstanding condition, the "sidewalk" had been restored on October 24, 2022.

Section 2527.5(b) of the Rent Stabilization Code authorizes the Rent Administrator to make investigations of the facts and conduct inspections at any stage of a DHCR proceeding. Additionally, pursuant to Policy Statement 90-2, where there is a dispute as to whether required services have been provided or are properly being maintained, the Rent Administrator may rely on the results of an Agency inspection by the Agency's impartial inspector who is not a party to the proceeding. *See also Matter of 113-117 Realty, LLC v. DHCR*, 199 AD3d 506 [1st Dept. 2021] citing to *Matter of Sherman v. DHCR*, 210 AD2d 486 [2nd Dept. 1994].

The Commissioner notes that the Agency records indicate the following: that in the initial proceeding, Docket No. PG230007B, the Rent Administrator requested an Agency inspection of the conditions complained of by the tenants, and that concerning the issue of the sidewalk(s), the inspector observed *cracked and uneven cement in the front and the side of the building - trip hazard*, based on which the Administrator, *inter alia*, granted a rent reduction on March 22, 2002, and subsequently, the owner filed the following rent restoration application: GN210026OR, HO210010OR, IT210019OR, KM210004OR and KV210069OR, the findings of which are examined below.

- The Commissioner notes that during the inspection of April 6, 2018 under the rent restoration proceeding Docket No. GN210026OR, there was a finding of defective front and side sidewalks based on the inspector's report which indicated the following: (A) *Sidewalk is cracked and uneven directly across from the main entry of the building; Said conditions pose a TRIP HAZARD*, and (B) *Concrete walk where the courtyard meets the archway has a sunken and uneven lip; Said conditions pose a TRIP HAZARD*.
- Thereafter, the owner commenced the rent restoration proceeding under Docket No. HO210010OR, wherein an inspection was conducted at the subject premises on December 28, 2019, and the Rent Administrator thereafter, based on the results of the Agency inspection, found the "bldg. front/side sidewalks" not restored, noting *the concrete walk is uneven where the courtyard meets the archway, constituting a trip hazard*.

- Subsequently, under Docket No. IT210019OR, the bldg. front/side sidewalks were found not restored as an inspection was conducted at the subject premises on April 12, 2021 and the inspector reported the following defects: *Bldg. Front/Side Sidewalks: The concrete walk is cracked, uneven, and has a sunken lip where the courtyard meets the archway. The sidewalk directly across from the building's main entrance is cracked and uneven. Both conditions pose a trip hazard.*
- Penultimately, during the rent restoration proceeding Docket No. KM210004OR, the sidewalk(s) were found not restored, pursuant to an Agency inspection conducted on March 18, 2022, finding that: *1. There is a crack/uneven/sinking concrete around walkway where courtyard meets archway. This is a TRIP HAZARD, and 2. There is cracked/uneven sidewalk across the building's main entrance. This is a TRIP HAZARD.*
- Finally, under Docket No. KV210069OR herein below, the sidewalk service was found not restored as the Agency's inspector, pursuant to the inspection conducted on February 17, 2023, observed that *the sidewalk near the building entrance was cracked — TRIP HAZARD PRESENT.*

The Commissioner finds that the owner's argument herein lacks merit and is merely self-serving as the building front and/or side sidewalk issues have not been resolved by the owner. Although the owner handpicked the proceeding under Docket No. HO210010OR to argue that the issue had been resolved, given the sequence of the rent restoration proceedings and the Agency's inspections conducted thereto including in subsequent Agency findings under Docket Nos. IT210019OR and KM210004OR, which comprehensively described the building front and/or side sidewalk problems, the owner's claim that the Rent Administrator was precluded from denying the owner's restoration application for anything other than the "issue mentioned in the last inspection" is without merit. The Commissioner therefore finds that the Rent Administrator reasonably and properly relied on the Agency inspection report from February 17, 2023 to determine that the sidewalk service has not been restored.

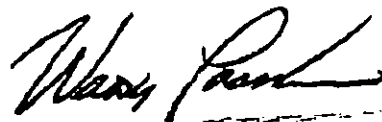
Based on the foregoing, the Commissioner finds that the Rent Administrator's order was correct as issued, and that the owner's PAR has not established any basis to modify or revoke the Administrator's determination. Accordingly, the owner's petition is denied. The Commissioner notes that the owner may file a fresh 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 this petition is denied, and that the Rent Administrator's order is affirmed.

ISSUED:

AUG 11 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
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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
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JAMAICA, NEW YORK 11433**

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IN THE MATTER OF THE
ADMINISTRATIVE APPEAL OF :

**ADMINISTRATIVE REVIEW
DOCKET NO.: KX210029RT**

[REDACTED] :

**RENT ADMINISTRATOR'S
DOCKET NO.: KO210027OR
(JU210147S)**

PETITIONER

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ORDER AND OPINION DENYING PETITION FOR ADMINISTRATIVE REVIEW

On December 28, 2022, the above-named petitioner-tenant filed a petition for administrative review (PAR) against a rent restoration order issued on November 30, 2022, by the Rent Administrator concerning the housing accommodations known as 116 Lenox Road, Apartment [REDACTED] Brooklyn, NY, wherein the Administrator granted the owner's application to restore rent.

The Commissioner has reviewed all of the evidence in the record and has carefully considered 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, in substance, that the challenged Rent Administrator's rent restoration order of November 30, 2022 which granted the owner's application to restore rent was in error; that the tenant disagrees with "the decision that was made on February 20, 2022"; that the tenant found out, on returning to the subject apartment, that the apartment was not ready as there was no heat, no stove, and no fridge for several months; that there was a violation for the gas and the tenant had to sleep elsewhere and buy cooked food for months; that the tenant had to clean the subject apartment to make it livable; and that the Agency's decision needs to be reversed as the management did not do what they claimed to have done.

The owner, submitting the purported project detail for the work performed in the subject apartment, *inter alia*, opposed the tenant's petition, arguing that the New York City Department of Housing Preservation and Development (HPD) inspected the subject apartment and found same to be safe, with all hazardous conditions abated; and argues that the tenant's claim of lack of heat is false as all the apartments in the subject premises are heated from the same source.

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), the Rent Administrator is authorized to order a rent reduction upon application of a tenant where it is found that the owner has failed to maintain required services. Where such tenant was forced to vacate their apartment because it is legally uninhabitable, following a complaint by such tenant, pursuant to Section 2522.6 of the Code, it is the Division's policy to establish the rent at \$1.00 per month to maintain the landlord/tenant relationship between the parties until such time as the apartment is restored to habitability and the subject tenant has resumed possession of the apartment or refused an offer to reoccupy the subject apartment.

Rent, which has been reduced to a \$1.00 per month due to fire-related damages, may not be restored to the legal regulated rent in effect prior to the effective date of the order establishing the legal regulated rent at \$1.00 per month, unless the owner files an application to restore the rent and DHCR determines that the fire-damaged apartment has been restored to habitability. In general, rent may be restored as of the date the apartment was restored to habitability, and the tenant resumed occupancy of the apartment, or the tenant declined to resume occupancy.

The Commissioner notes that in the initial proceeding, Docket No. JU210147S, on October 20, 2021, the Rent Administrator established the tenant's rent at \$1.00 per month, due to a fire incident which occurred in the building housing the subject apartment on July 24, 2021. The Rent Administrator noted that the HPD Vacate Order # 171452, issued for the subject apartment [REDACTED], was still active.

The owner commenced the rent restoration proceeding herein below on March 9, 2022, claiming that the owner restored all of the services for which a rent reduction was ordered and that the subject apartment had been restored for occupancy on February 20, 2022. The owner attached an HPD letter dated February 4, 2022, stating that the Vacate Order # 171452 issued for the subject premises on August 9, 2021 had been rescinded as a result of an inspection conducted on February 3, 2022; HPD noted that it was reported at that time that the hazardous conditions cited in the vacate order have been sufficiently abated.¹

The Commissioner notes that the Rent Administrator's record indicates that the tenant was served with a copy of the owner's rent restoration application on March 11, 2022, and a Final Notice Pending Default on May 2, 2022. However, the Rent Administrator's records indicate that

¹ Per the HPD Order to Repair/Vacate Order # 171452, attached to the owner's rent restoration application, if the "Department finds that the conditions rendering the dwelling or part unfit for human habitation have been corrected, it may revoke this vacate order".

the tenant failed to respond to any of the Agency's correspondence and that none of the correspondence mailed to the tenant below were returned by the United States Postal Service (USPS). Thus, the Rent Administrator's rent restoration order was issued on November 30, 2022, more than six months after the tenant was served with the Agency's Final Notice. The Rent Administrator noted in the subject order, Docket No. KO210027OR, that the HPD Vacate Order # 171452 issued for the subject premises was rescinded based upon an inspection conducted on February 3, 2022, and that a review of the HPD records revealed that there was no open Vacate Orders for the subject premises. The Rent Administrator also found that, based on the evidence in the record, rent is restored effective February 20, 2022, the date the owner stated the tenant was restored to occupancy, and that any arrears due to the owner as a result of the order may be paid in eighteen (18) monthly installments.

Based on the foregoing, the Commissioner finds that the tenant's PAR has not established any basis to modify or revoke the Administrator's determination. The Commissioner notes that the tenant claims in their PAR that they dispute the date February 20, 2022 as they returned to the apartment to find that it was not ready and that they had to clean the subject apartment to make it livable, that there was, allegedly, no heat, no stove, no fridge, and that there were plastic bags on the windows and dust and dirt everywhere. However, a review of the record reveals that the tenant failed to respond to the owner's rent restoration below, although afforded an opportunity to do so on multiple occasions (the Commissioner notes that the tenant does not dispute receiving such notices of the owner's rent restoration application below). Fundamental principles of the administrative appeal process and Section 2529.6 of the Code prohibit a party from raising issues on appeal which were not raised below. The tenant could have raised the very issues before the Administrator which are raised for the first time on appeal.

Furthermore, the tenant's claim of returning to an uninhabitable apartment is not substantiated in the tenant's PAR.

The Commissioner advises that the tenant may file a fresh decrease in service complaint with this Agency for any services not being maintained, should the facts so warrant. The Commissioner also notes that the tenant is not precluded from seeking relief before a court of competent jurisdiction, if the facts warrant.

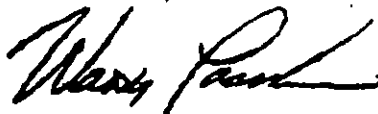
Accordingly, the tenant's petition is denied.

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:

AUG 31 2023



WOODY PASCAL
Deputy Commissioner



State of New York
Division of Housing and Community Renewal
Office of Rent Administration
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JAMAICA, NEW YORK, 11433**

	X	
IN THE MATTER OF THE ADMINISTRATIVE	:	
APPEAL OF:	:	
	:	ADMINISTRATIVE REVIEW
<u>1616 PRESIDENT STREET ASSOCIATES LLC</u>	:	DOCKET NO.: KW210023RO
(OWNER)	:	
	:	RENT ADMINISTRATOR'S
	:	DOCKET NO.: KN210069OR
PETITIONER	:	
	:	
	:	
	X	

ORDER AND OPINION DENYING PETITION FOR ADMINISTRATIVE REVIEW

On November 22, 2022, the above-named petitioner-owner timely filed a Petition for Administrative Review ("PAR") with a claim against KN210069OR, an order the Rent Administrator issued on October 25, 2022 (the "Order"), concerning the housing accommodation known as 1616 President Street, [REDACTED] Brooklyn, NY, wherein the Rent Administrator issued an order denying the owner's rent restoration application for the subject apartment.

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

In the PAR, the Owner requests that the Order be reversed (cancelled completely). The owner asserts that they know the door is defective, however, the owner is being denied access to repair it, as was DHCR at the time of the inspection, therefore the rent should be restored.

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

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

ADMINISTRATIVE REVIEW DOCKET NO.: KW210023RO

On December 20, 2021, under Docket No. JU210160S, a rent reduction was granted for the subject premises for the apartment entry door as the door did not close/lock properly and there was a gap between the door and frame (misaligned), at the time of the Agency inspection on December 1, 2021. Thereafter, the owner filed the subject rent restoration application on February 24, 2022. In the proceeding below, the owner claimed that the tenant was refusing to permit the owner/agent to restore the service which was the basis for the rent reduction order. Notice of the owner's application to restore rent was served on the tenant on February 28, 2022.

In order to facilitate the resolution of the proceeding, the Rent Administrator requested a "No Access" inspection to be conducted. On May 25, 2022, Notice of Inspection – For Access was mailed to both the tenant and owner, directing the parties that both the tenant and the owner and/or the owner's repair person to be present at the No Access inspection scheduled for June 8, 2022 between 10:00 AM and 1:00 PM so as to provide access for the purposes of attending to repairs and/or the restoration of services. The Notice also advised the parties that the failure of the owner and/or the owner's repair person to be present and ready to attend to repairs and/or restore services, or the failure of the tenant to keep the appointment would result in a determination based solely on the evidence presently in the record.

At the time of the Agency's No Access inspection on June 8, 2022, neither the tenant nor owner were present and did not provide access as requested. The inspector noted that there was evidence of a large gap between the door and frame at the time of the inspection, although no parties were present.

As a result of the Agency's No Access inspection conducted on June 8, 2022, the Rent Administrator denied the owner's rent restoration application on October 25, 2022, finding that the inspector found a large gap between the entry door and frame, and therefore a rent restoration was not warranted. The Rent Administrator also noted that neither the tenant nor owner were present for the inspection, therefore the closing and locking of the apartment entry door was deemed restored.

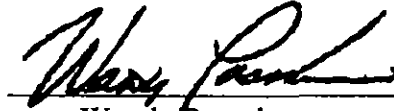
The Commissioner notes the owner's contention herein that they are being denied access to repair the door and therefore the rent should be restored. However, this unsubstantiated claim by the owner does not warrant a modification or reversal of the Rent Administrator's order. The record below reveals that the Agency requested a "No Access" inspection and directed the owner that the owner and/or the owner's repair person to be present for the inspection for the purposes of attending to repairs and/or restoration of services. As mentioned above, the owner and/or their repair person failed to be present at the time of the Agency's inspection. Therefore, the Rent Administrator properly denied the owner's application to restore rent as the inspector noted the owner was not present, and that there was a large gap between the entry door and frame as it was closed. Accordingly, a rent restoration was not warranted in this case.

Based on the foregoing, the Commissioner finds that the Rent Administrator correctly denied the owner's rent restoration application, and the owner's PAR has not established any basis to modify or revoke the Rent Administrator's determination. The owner is advised that it may file an "Owner's Application to Restore Rent," if the facts so warrant.

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

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

ISSUED: **SEP 7 2023**

A handwritten signature in black ink, appearing to read "Woody Pascal", written over a horizontal line.

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.

inspection report specifically noted that there was no peeling paint/plaster on the ceiling of the ground floor hallway/lobby.¹

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

Pursuant to Section 2202.16 of the New York City Rent and Eviction Regulations (the "Regulations") and 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. Similarly, an owner is entitled to the restoration of rent when this Agency establishes that the required services that were cited in the rent reduction order have been restored at the subject premises. DHCR Policy Statement 90-2 permits the RA to rely on an Agency inspection when making a determination.

A review of the Agency records reveal that a building-wide rent reduction was ordered on June 23, 1987 under Docket No. AK430032B wherein the RA determined that the following services were not maintained based on an Agency inspection: (1) ground floor public hallway has exposed electric wiring; (2) plaster peeling in ground hallway ceiling; requires plastering and painting. Beams are exposed; and (3) public areas require cleaning. The RA found that for the rent controlled tenants, the maximum legal rent was reduced by \$10.00 per month,² effective the first rent payment day following the issue date of the Order, and for the rent stabilized tenants, the rent was reduced to the level in effect prior to the last rent guideline increase which commenced before the effective date of the Order, January 1, 1987 (the first rent payment day after DHCR informed the Owner of the Tenants' complaint).³

Thereafter, the Owner applied for a rent restoration on February 5, 1990, which was granted in part on September 26, 1990 under Docket No. EB430010OR. The RA determined that the public areas were clean, and therefore restored the rent for such restored service, however, based on the results of an Agency inspection, determined that the following services were not restored: (1) ground floor public hallway had exposed electric wiring, and (2) peeling paint and plaster on ground floor hallway ceiling. Beams were exposed.

The Owner thereafter applied for another rent restoration on March 30, 2021, which was granted in part on April 14, 2022 under Docket No. JO430113OR. The RA therein determined that, based on an Agency inspection, the ground floor wiring services were restored, however, found that the ground floor hallway ceiling had peeling paint/plaster and water stains, and therefore not restored (the RA noted that there were no exposed beams).⁴

¹ Notice of the owner's petition was provided to the tenants on June 15, 2023, however, no responses were received.

² The breakdown is: (1) \$3.00 for ground floor public hallway exposed electric wiring; (2) \$4.00 for plaster peeling in ground hallway ceiling; requires plastering and painting. Beams are exposed; and (3) \$3.00 for public areas require cleaning.

³ Docket No. AK430032B was affirmed on appeal under Docket No. BG410112RO.

⁴ Docket No. JO430113OR was affirmed on appeal under Docket No. KQ430022RO.

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On October 28, 2022, the Owner filed the subject application to restore the rent, alleging the restoration of the peeling paint and water stains at the subject premises. The Tenants were served with notice of the Owner's application (the "Initial Notice") on November 17, 2022 and Agency records show that the Tenants did not respond to the Initial Notice. Hence, an Agency inspection was conducted by an impartial DHCR inspector at the subject building on March 23, 2023.

During the inspection, the DHCR inspector noted the following regarding the paint/plaster in the hallway of the building:

- a. Inspected and found no peeling paint or plaster on the ceiling of the ground floor hallway/lobby at the time of inspection.
- b. Inspected and found no exposed beams on all hallways of the building at the time of inspection.
- c. Inspected and found chipped paint and plaster on edges (vertical and horizontal) of the arch on ground hallway near stairway at the time of inspection.
- d. Note: cracks/peeling plaster on the walls of all hallways and stairway at the time of inspection.

On May 3, 2023 under Docket No. KV410065OR, the RA in the subject Order denied the Owner's rent restoration application, finding that the paint/plaster in the hall was not restored due to the inspector finding the following: (1) chipped paint/plaster on vertical and horizontal edges of arch on the ground hallway near stairway at the time of inspection, and (2) cracked and peeling plaster on all hallway walls and stairways at the time of inspection.

Based on the foregoing, the Commissioner finds that the Petitioner-owner has established a basis to reverse the Rent Administrator's determination, thereby granting the Owner's rent restoration application on appeal. As noted above, the underlying rent reduction Order found that the following services were not maintained: (1) ground floor public hallway exposed electric wiring, (2) plaster peeling in ground hallway ceiling; requires plastering and painting; beams exposed, and (3) public areas require cleaning. Subsequent thereto, services were restored for the following conditions: (1) public areas clean, and (2) ground floor wiring. The only service left to be restored from the underlying rent reduction Order was the ground hallway ceiling which had peeling paint/plaster and water stains (however there were no exposed beams). Therefore, based upon the March 23, 2023 inspection report, which specifically notes "[i]nspected and found no P/P on the ceiling of ground floor hallway/lobby ATOI," the Commissioner herein finds that the sole condition remaining, the ground hallway ceiling, is hereby restored.

Accordingly, the Rent Administrator's Order under Docket No. KV410065OR is herein reversed, thereby granting the Owner's rent restoration application for the sole remaining condition, the ground hallway ceiling, and further finding that for the rent controlled tenants, the rent is restored by \$4.00 per month which is collectible from the first of the month following the RA's order, June 1, 2023, and further, for the rent stabilized tenants, the rent is restored to the level in effect prior to the rent reduction plus all lawful increases, effective the first of the month

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following the date of service on the Tenants of the Owner's application to restore rent which is December 1, 2022. Any arrears owed as a result of this Commissioner's Order and Opinion may be paid in equal monthly installments equal to the monthly rent reduction taken.

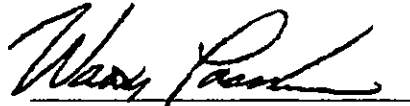
As for the conditions the inspector noted in the March 23, 2023 report, specifically the (1) chipped paint and plaster on edges (vertical and horizontal) of arch on ground hallway near stairway, and (2) cracks/peeling plaster on walls of all hallways and stairway, the Owner is herein directed to repair such conditions within thirty (30) days of this Commissioner's Order and Opinion. If the services are not restored, the tenants are advised to file a fresh building-wide rent reduction complaint, should the facts so warrant.

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

ORDERED, the petition is herein granted, and the Rent Administrator's Order under Docket No. KV410065OR is herein reversed, thereby granting the Owner's rent restoration application on appeal, in accordance with this Commissioner's Order and Opinion.

ISSUED:

SEP 22 2023



Woody Pascal
Deputy Commissioner



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Division of Housing and Community Renewal
Office of Rent Administration
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Right to Court Appeal

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ADMINISTRATIVE REVIEW DOCKET NO.: JO110018RT

application 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.

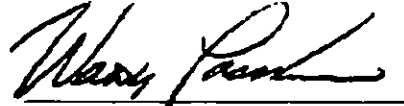
The record reflects that at the time the Rent Administrator granted the owner's application for a rent restoration with respect to the subject underlying rent reduction issued on November 18, 2016 under Docket No. ER110020B for the failure to maintain the access to the garage roof/patio, the owner was granted permission to replace the rear door to the garage roof/patio with a window for which the tenant has been granted a permanent rent reduction for pursuant to an order issued by the Rent Administrator on May 8, 2019 under Docket No. EX110007OD (there is no evidence that the tenant appealed such Rent Administrator's Decision under Docket No. EX110007OD and any claims pertaining to such Rent Administrator's Decision is beyond the scope of the subject appeal). The Commissioner therefore finds that the subject Rent Administrator's order under Docket No. HR110027OR was proper in light of Docket No. EX110007OD.

THEREFORE, in accordance with the relevant Rent Regulatory Laws and 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:

SEP 29 2023



Woody Pascal
Deputy Commissioner



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