

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

	X	
IN THE MATTER OF THE	:	
ADMINISTRATIVE APPEAL OF:	:	ADMINISTRATIVE REVIEW
	:	DOCKET NO.: KT110012RO
	:	
57 ELMHURST LLC,	:	RENT ADMINISTRATOR'S
	:	DOCKET NO.: KP110003OR
	:	
PETITIONER	:	TENANT(S): VARIOUS
	:	
	X	

ORDER AND OPINION DENYING PETITION FOR ADMINISTRATIVE REVIEW

On August 11, 2022, the above-named petitioner-owner filed a Petition for Administrative Review (“PAR”) against an order the Rent Administrator issued on July 7, 2022 (the “Order”), concerning the housing accommodation known as 94-25 57th Avenue, Elmhurst NY, wherein the Rent Administrator denied the owner’s application to restore the rent.

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

On April 4, 2019, various tenants filed an application for a rent reduction based upon decreased building-wide services. Specifically, the tenants’ asserted that: (1) the lock to the building’s entrance door was changed unnecessarily; (2) an insufficient number of keys were provided for the entrance door lock; (3) tenants were asked to sign new leases and include the signatures of additional household members as a condition for getting additional keys; (4) tenants were asked to pay for additional keys; and (5) that the intercom system does not work for most tenants. Based on the totality of the evidence contained in the record, the Rent Administrator issued an order on January 3, 2020, under Docket No. HP110012B, granting the tenants’ application for a rent reduction for the intercom and entrance door keys—access.

The owner subsequently filed a PAR against Docket No. HP110012B, which was denied on April 23, 2021, under Docket No. IM110042RO, after the record revealed that while the owner obtained Agency approval on March 12, 2010, under Docket No. XK110024OD, to modify the services from a traditional lock and key mechanism to an electronic card system, the owner failed to obtain Agency permission to modify the traditional intercom system to a system

ADMINISTRATIVE REVIEW DOCKET NO.: KT110012RO

that requires the use of the tenants' cellphone/landline to operate.¹ In addition, the record did not support that the owner provided keys to all tenants, despite the Agency's request for evidence of same.

The petitioner-owner then filed multiple applications to restore the rent: on April 7, 2021, which was granted in part under Docket No. JP110014OR, restoring rent for the intercom service, but not restoring rent for the entrance door keys—access; on December 29, 2021, which was denied under Docket No. JX110098OR; and on April 1, 2022, which was denied under Docket No. KP110003OR.² Regarding the underlying docket in the instant matter, Docket No. KP110003OR, the Rent Administrator found that while the owner asserted that services were restored, the owner submitted no documentation that entrance door keys were provided to the tenants as requested and the owner failed to respond to a request for information from the Agency dated May 20, 2022, in relation to the tenants' response refuting the owner's assertion that a sufficient number of keys were provided to the tenants. The owner then filed the instant PAR.

In the PAR, opposed by the tenants through counsel, the petitioner-owner asserts that the Rent Administrator's order should be reversed as the owner never received the May 20, 2022, request for information from the Agency; the owner has provided non-duplicable metal keys in accordance with the Rent Reduction Order under Docket No. HP110012B; the owner is not aware of any inspection that is referenced in the order under KP110003OR; the tenants' contention that they were not provided with an adequate number of keys is undermined by the fact that the tenants refuse to provide information and documentation necessary for the owner to issue keys, including identification; and the Rent Administrator continually includes Apts. [REDACTED], [REDACTED] and [REDACTED] which are not eligible for a rent reduction.

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

Pursuant to Section 2523.4 of the Rent Stabilization Code (the "Code"), 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.

Here, it is undisputed that the tenants of the subject building currently use a non-duplicable metal key to gain entry into the subject building. While the record supports that the Agency approved the modification of the building entry door mechanism from a traditional key system, and at the time of the Rent Administrator's findings on July 7, 2022 under the underlying

¹ On July 21, 2020, the owner filed an application to modify services by changing the key fob/key code system back to a traditional keyed entry and installing an intercom system which uses the tenants' landline or cellphone, which was granted on January 12, 2021, under Docket No. IS110004OD.

² Subsequent to the subject underlying order, Docket No. KP110003OR, the owner filed another rent restoration on July 20, 2022, under Docket No. KS110089OR which was denied after the Rent Administrator found that the owner failed to provide sufficient keys for Apts. [REDACTED] and [REDACTED].

ADMINISTRATIVE REVIEW DOCKET NO.: KT110012RO

proceeding, Docket No. KP110003OR, it did not appear that the owner provided a sufficient number of keys to tenants pursuant to Agency policy, thereby restricting access. As the Rent Administrator noted under the subject order, the owner did not provide documentation that entrance door keys were provided to the tenants as requested.

The Commissioner notes that Agency policy dictates all tenants and lawful occupants are to receive free keycards/non-duplicable keys. In this regard, there is no limit to the number of keycards/non-duplicable keys which may be issued for an apartment. Occupants of the apartment include children who are to be issued keycards/non-duplicable keys if their parent/guardian requests it. Tenants may also receive up to four (4) additional keycards/non-duplicable keys, at no charge, for employees and/or guests. Guests include family members and friends who can be expected to visit on a regular basis or visit as needed to care for a tenant or the apartment if the tenant is away. Employees, who may be contractors, professional caregivers, etc. may have an expiration date electronically placed on keycards/non-duplicable keys, which may be extended upon request by the tenant. It should be clarified that Agency policy does not indicate that owners shall provide unlimited keys without charge, but rather states that each tenant of record be provided with a key free of charge; however, the owner may not charge more than \$25.00 per replacement key. In addition, it is not unreasonable for an owner to request identification prior to the owner issuing a keycard/non-duplicable key, however, the owner may not record any data (e.g. driver's license number).

While the petitioner asserted that keys were provided to all tenants, no evidence was submitted with the owner's rent restoration application nor submitted to the Rent Administrator despite the Agency's request for such information to support the petitioner-owner's assertion, and further, there is no evidence to suggest that the petitioner-owner did not receive the request for additional information, such as United States Postal Service mail returned to the Agency. Nevertheless, the owner was provided an opportunity to respond to the tenants' assertions by way of this appeal proceeding and by a Request for Additional Information/Evidence on July 31, 2023, rendering any potential due process issue moot. The owner thereafter responded on August 7, 2023, reiterating its arguments that it is not required to provide an unlimited number of keys to tenants and that rents were restored for Apts. [REDACTED], and [REDACTED].

Additionally, the Commissioner clarifies that the subject Rent Administrator's order under Docket No. KP110003OR makes mention of an inspection; however, there is no date associated with the mentioned inspection and there is no evidence to suggest that an inspection was conducted under this docket.

With respect to the aforementioned apartments: [REDACTED] and [REDACTED], the Rent Administrator's order under Docket No. KP110003OR clearly indicates on page 2 that Apartments [REDACTED] and [REDACTED] are not entitled to a rent reduction under Docket No. HP110012B, and further, that rent was restored for Apartment [REDACTED] pursuant to the order issued on December 13, 2021, under Docket No. JP110014OR.

Based on the foregoing, the Commissioner finds that the Administrator properly relied on the evidence contained in the record under Docket No. KP110003OR and the owner has not

ADMINISTRATIVE REVIEW DOCKET NO.: KT110012RO

presented any evidence or claims on appeal to warrant reversal or modification of the Rent Administrator's order.

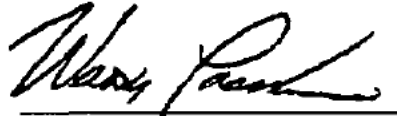
The Commissioner notes that on July 5, 2023, the Rent Administrator restored the rent for Apts. [REDACTED] and [REDACTED] under Docket No. KS110089OR. The Commissioner further notes that also under Docket No. KS110089OR, Apts. [REDACTED] and [REDACTED] acknowledged that they received keys and that Apt. [REDACTED] acknowledged receipt of keys under Docket No. JP110014OR, and therefore such apartment rents were also restored. However, the Rent Administrator did not restore the rents for Apts. [REDACTED], and [REDACTED]

The Commissioner notes that the petitioner filed another application to restore the rent on July 24, 2023, under Docket No. LS110060OR, which is currently pending.

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: **OCT 19 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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DIVISION OF HOUSING AND COMMUNITY RENEWAL
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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.: LU410003RT**

 :

**RENT ADMINISTRATOR'S
DOCKET NO.: KX410070OR
(JU410003B)**

PETITIONER
-----X

ORDER AND OPINION DENYING PETITION FOR ADMINISTRATIVE REVIEW

On September 6, 2023, the above-named petitioner-tenant filed a petition for administrative review (DHCR) against an order issued on August 11, 2023, by the Rent Administrator concerning the housing accommodations known as 206 East 87th Street, New York, New York, 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 in the tenant's response dated February 16, 2023, the tenant did not state that services (the stairs condition) were restored, but that it was significantly restored; and that it was just the tenant's opinion, as the tenant is not credentialed or licensed to determine that building structures are code compliant, and to ensure safety for all tenants and guests, DHCR should conduct an inspection.

The tenant further contends that the owner did not include an affidavit from an independent licensed architect or engineer stating that the stairs violations no longer exist; that the first and last name of the person who signed the owner's affirmation was not clearly identified and the managing agent's name was not indicated; that in-unit renovation work in vacant apartments commenced by

the owner around April of 2023 has put extra pressure on the stairs as materials were carried up and down the stairs daily, with no elevator; and that in tenant's opinion, the stairs condition between floors 2-4 have declined.

The owner, via counsel, opposed the tenant's petition, asserting that no special expertise is required to determine if the condition was restored, and that the owner's rent restoration application contained an invoice supporting that the conditions had been fixed.

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 September 7, 2021, the tenant commenced the initial proceeding under Docket No. JU410003B, wherein the tenant complained about the stair condition in the subject premises. On December 5, 2022, the Rent Administrator granted a rent reduction pursuant to the Agency's inspections of January 21, 2022 and March 16, 2022, wherein the Inspector found damaged/loose tiles on various treads and spongy/unstable steps on various areas from the 2nd to the 4th floors of the building stairways.

On December 15, 2022, the owner commenced the rent restoration proceeding herein below, which was served on the tenant on January 26, 2023.

The tenant, by written statement dated February 16, 2023, advised that services cited in the rent reduction order were restored. Specifically, the tenant stated that as of July 1, 2022, all damaged/loose tiles have been corrected, that the stairs located between floors 1 and 2 were 100% stable and 100% non-spongy, and that the stairs located between floors 2 and 4 were 95% stable and 95% non-spongy.

On August 11, 2023, the Rent Administrator granted the owner's rent restoration application, noting that the tenant advised by written statement dated February 16, 2023 that services cited in the underlying rent reduction order were restored.

The Commissioner finds that based on the tenant's confirmation during the rent restoration proceeding, that the work for which the rent reduction was granted, in the initial proceeding, had been corrected, a rent restoration was warranted. Additionally, the owner furnished an invoice from the contractor, T.F. Andrew Carpet One Floor & Home, who performed the restoration work.

Regarding the tenant's concern that subsequent usage could have put extra pressure on the stairs, the Commissioner notes that the tenant may file a fresh complaint regarding the new concern, if the facts warrant, as fundamental principles of the administrative review prohibit a party from raising an issue on appeal which was not raised below and precludes the Commissioner

from addressing such issue.


Based on the foregoing, the Commissioner finds that the Rent Administrator's order was correct as issued, and that the tenant's PAR has not established any basis to modify or revoke the Administrator's determination. Accordingly, the tenant's petition is denied.

THEREFORE, in accordance with the applicable sections 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:

NOV 03 2023



WOODY PASCAL
Deputy Commissioner



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Right to Court Appeal

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There is no other method of appeal.

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

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**IN THE MATTER OF THE
ADMINISTRATIVE APPEAL OF** :

**ADMINISTRATIVE REVIEW
DOCKET NO.: LU910014RO**

Crestwood Lake Heig :

**RENT ADMINISTRATOR'S
DOCKET NO.: LQ910025OR
(KN910081S)**

PETITIONER
-----X

ORDER AND OPINION DENYING PETITION FOR ADMINISTRATIVE REVIEW

On September 27, 2023, the above-named petitioner-owner filed a petition for administrative review (PAR) against an order issued on August 23, 2023, by the Rent Administrator concerning the housing accommodations known as 49 Beaumont Circle, Apartment █ Yonkers, 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 modification of the Rent Administrator's order and contends that the Rent Administrator's rent restoration order wrongly denied the owner a rent restoration as all conditions at issue had been corrected except for, allegedly, a single *de minimis* condition of rust spot on the bathtub drain, which cannot form the basis for maintaining a rent reduction order.

The owner argues that in a Non-Compliance (NC) proceeding before the DHCR, under Docket No. KS910002NC, the DHCR issued a Notice of Non-Compliance on February 1, 2023 for the items in the rent reduction order herein below (Docket No. KN910081S, issued May 18, 2022), and that by April 3, 2023, all the conditions stated in the rent reduction order had purportedly been corrected as confirmed by the Agency's inspection on April 4, 2023; that on April 26, 2023, based on that inspection, the DHCR issued a Notice of Compliance and the NC proceeding was closed; and that the existence of a *de minimis* condition does not warrant the denial of a rent restoration application.

The owner argues further that the tenants' rent reduction application under Docket No. LQ910076S, which alleged tub/shower conditions, *inter alia*, was terminated by an order dated August 14, 2023, which found all of the services regarding the tenants' complaint maintained.

The tenants of the subject apartment, by response dated October 11, 2023 contends that the rust condition has not been corrected and worsens daily as the rust spreads.

Sections 2500.3 and 2503.4 of the Emergency Tenant Protection Regulations (TPR) provide in pertinent part that a tenant may apply to the Division of Housing and Community Renewal (DHCR) for a reduction of the legal rent to the level in effect prior to the most recent guideline adjustment and the DHCR may so reduce the rent where it is found that the owner has been found to fail to provide and maintain services. Policy Statement 90-2 states that the Rent Administrator may rely on an Agency inspection when making a determination.

In the initial proceeding, under Docket No. KN910081S (filed February 20, 2022), the tenant complained of a decrease in various services. On May 18, 2022, based on an Agency inspection which was conducted at the subject premises on April 06, 2022, the Rent Administrator granted a rent reduction based on the finding of diminution in the various services¹, which included rust and stains around the bathtub drain, and rust colored stains on the tub surface.

On May 3, 2023, the owner commenced the rent restoration (OR) proceeding herein below, which was served on the tenants on May 22, 2023.

The records indicate that the Rent Administrator had requested an inspection in another proceeding, Docket No. LQ910076S, which was ongoing around the same time as the OR herein below, wherein the tenants' bathroom complaints, *inter alia*, were inspected, and that based on the Agency's inspection record (accompanied by photographic evidence) of the inspection conducted at the subject apartment on July 21, 2023, which indicated that the bathtub drain rust service was not restored as the bathtub drain cover was shown to have rust spots, the Rent Administrator denied the owner's rent restoration application.

The Commissioner notes that although the owner argues that the tenants' rent reduction application which alleged tub/shower conditions, *inter alia*, under Docket No. LQ910076S was terminated by an order dated August 14, 2023, which found all of the services that the tenants complained about maintained, the specifics concerning bathroom conditions in the tenants' complaint in that proceeding included *vibrating shower handles, floor tile grout cut feet, and grout peeling many areas*, while in the subject OR proceeding, based upon the initial rent reduction ordered under Docket No. KN910081S, the specific condition at issue was the *rust spots bathtub drain*, connoting that the bathtub drain rust was not part of the bathroom conditions found

¹ Tub/shower, as the hot/cold water faucet faceplate in the tub, shower was missing; ceiling leaks/stains, as the bathroom ceiling above the tub had bubbled paint; paint/plaster bathroom, as there was peeling paint throughout the bathroom ceiling and walls; pulsating shower handle, as the tub/shower handle pulsates while the shower was on and the toilet was flushed at the same time; the caulk/grout was loose and cracking/peeling around the tub; and there were rust and stains around the bathtub drain, and rust colored stains on the tub surface.

maintained in the proceeding under Docket No. LQ910076S. In addition, the Commissioner finds that the inspection report and photographic evidence from the Agency inspection conducted on July 21, 2023 does not support the owner's claim that the bathtub drain rust had been repaired. In substance, the Commissioner notes that the termination of the tenants' bathtub complaint in the other proceeding, Docket No. LQ910076S, did not include the portion relating to the bathtub drain rust.

The Commissioner finds that the Rent Administrator's determination was neither arbitrary nor capricious and was supported by a rational basis contained in the record, namely the July 21, 2023 Agency inspection report which revealed that the bathtub drain had rust spots around the tub drain cover still. The Rent Administrator properly requested an inspection to be conducted to facilitate the resolution of the owner's rent restoration application, and further, the Rent Administrator's reliance on the inspector's training and experience in the area of building inspections as well as the inspector's impartiality in conducting the inspection and taking the photographs was reasonable.

The Commissioner rejects the owner's *de minimis* argument concerning rust on the bathtub drain which was part of the original complaint but was never shown to have been corrected and thus finds that the Rent Administrator properly denied the owner's rent restoration application based thereon. Moreover, pursuant to DHCR Policy Statement 90-2, when a condition previously found not maintained has not been corrected in a workmanlike manner, the rent shall not be restored until all repairs have been completed in a workmanlike manner. Evidence in the Agency inspection report from July 21, 2023 indicates that the rusting of the bathtub drain was not repaired in a workmanlike manner as the rust was in existence at the time of inspection.

Furthermore, the Commissioner finds that the owner may not collaterally attack the rent reduction ordered for the bathtub drain rust by claiming that such rust condition is *de minimis* by way of this appeal proceeding as the Rent Administrator's order under Docket No. KN910081S was not appealed and is therefore final and binding on all parties. The Commissioner notes that the owner may file a new rent restoration application, if the facts warrant.

Based on the foregoing, the Commissioner finds 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.

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

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

ISSUED:

NOV 03 2023


WOODY PASCAL
Deputy Commissioner




State of New York
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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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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.: LQ210043RT
	:	
	:	RENT ADMINISTRATOR'S
	:	DOCKET NO.: KV210057OR
	:	
PETITIONER	:	
-----	X	

ORDER AND OPINION DENYING PETITION FOR ADMINISTRATIVE REVIEW

On May 31, 2023, the above-named petitioner-tenant filed a Petition for Administrative Review ("PAR") against an order the Rent Administrator issued on May 1, 2023 (the "Order"), concerning the housing accommodation known as 4800 14th Avenue, Apt.  Brooklyn, NY, wherein the Rent Administrator granted the owner's application to restore the rent.

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

On June 16, 1989, the previous tenant filed an application for a rent reduction based on various decreased services which was granted on November 8, 1991, under Docket No. DF210418S, based on *inter alia*, Agency inspections conducted on July 11, 1990, and on October 8, 1991. The inspections revealed that services with respect to the bathroom walls, intercom, apartment entry door paint, apartment entry door peephole, kitchen cabinet, shower rod, bathroom medicine cabinet and bedroom leaks and/or stains were found not maintained. The owner then filed a PAR on December 4, 1991, which was denied on November 25, 1992, under Docket No. FL210004RO.

The owner subsequently filed an application to restore the rent on October 25, 2022, which was granted on May 1, 2023, under Docket No. KV210057OR, after an Agency inspection conducted on March 7, 2023, revealed that all the underlying services found not maintained under Docket No. DF210418S were restored. The petitioner-tenant then filed the instant PAR on May 31, 2023.

ADMINISTRATIVE REVIEW DOCKET NO.: LQ210043RT

In the PAR, opposed by the owner, the petitioner-tenant asserts that the Rent Administrator's order should be reversed because the entry door to the subject apartment was found defective by the New York City Department of Housing Preservation & Development ("HPD") based on HPD inspections conducted on April 19, 2023, and on May 11, 2023.

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"), 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. Policy Statement 90-2 states that the Rent Administrator may rely on an agency inspection when making a determination. 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.

Here, the record supports that all services that were found not maintained under the original rent reduction order, Docket No. DF210418S, were restored at the time of the Agency inspection conducted on March 7, 2023. The record further supports specifically that there was no evidence of peeling paint and/or plaster to the apartment door and no defects to the apartment door peephole. The petitioner-tenant's submission of HPD violations relate to replacing or repairing "self-closing doors that is missing or defective." Such HPD conditions are beyond the scope of review as they were not included in the underlying rent reduction order under Docket No. DF210418S, and therefore, cannot be considered herein for the first time on appeal. As such, the petitioner has not set forth any basis to revoke the Rent Administrator's order.

The petitioner-tenant is advised to file a fresh complaint with this Agency, if the facts so warrant.

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

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

ISSUED: **NOV 9 2023**



Woody Pascal
Deputy Commissioner



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JAMAICA, NEW YORK 11433**

-----x
**IN THE MATTER OF THE ADMINISTRATIVE
APPEAL OF**

**ADMINISTRATIVE REVIEW
DOCKET NO.: JS210015RO**

CLARK WILSON INC.

PETITIONER

**RENT ADMINISTRATOR'S
DOCKET NO.: IO210016OR**

-----x
**ORDER AND OPINION GRANTING, IN PART, PETITION FOR ADMINISTRATIVE
REVIEW**

On July 26, 2021, the above-named Petitioner-owner filed a Petition for Administrative Review ("PAR") against IO210016OR, an order the Rent Administrator issued on June 21, 2021 (the "order"), concerning the housing accommodations known as 60 Clarkson Avenue, Various Apartments, Brooklyn, New York, wherein the Rent Administrator issued an order denying the owner's application to restore the rent, finding that the janitorial service building-wide cited in the order reducing rent under Docket No. DU210001B was not restored at the time of Agency inspection on June 10, 2021.

The Commissioner has reviewed the entire evidence of the record including that portion of the record that is relevant to the issues raised by the PAR. After careful consideration of the entire evidence of record, the Commissioner is of the opinion the petition should be granted in part and the Rent Administrator's order should be modified in accordance with this Commissioner's Order and Opinion.

In the PAR, the Petitioner by counsel, substantively contends that the Administrator erred in failing to restore the rent and/or in including those units which the Agency previously determined were not subject to the underlying 2016 rent reduction order Docket No. DU210001B; in the alternative, the order only found services which the "2020 Order" previously determined were restored; in the alternative, the order fails to adequately describe the location of the alleged remaining services; in the alternative, the unopposed and undisputed owner's purported engineer's letter proves the services were restored; and/or in the alternative, 13 of the complainants/units ("removed units") were removed from the rent reduction order by DHCR determinations in March and April of 2021 and, thus, should have been excluded from the underlying order.

ADMINISTRATIVE REVIEW DOCKET NO. JS210015RO

A review of the Agency's record of proceeding reveals that on February 4, 2016, the Rent Administrator issued an order, Docket No. DU210001B, determining that a rent reduction was warranted based on decreased building-wide services, including janitorial services. The rent reduction ordered on February 4, 2016 under Docket No. DU210001B applied to 31 apartments.¹

In the proceeding below, the owner filed an owner's application to restore rent on March 3, 2020 asserting that janitorial services in the entire building had been restored and attached a letter from a company, KMP Design & Engineering, PLLC (hereinafter "KMP"), dated February 17, 2020, purporting to substantiate their claim that janitorial services were restored. The KMP letter asserted that the building was inspected by Ken Philogene, PE on February 17, 2020 for "compliance with DHCR complaint". The tenants were offered an opportunity to respond by service of the owner's application on March 10, 2020.

The Rent Administrator determined that an Agency inspection was warranted, and thereafter, the Administrator requested an Agency inspection to facilitate the resolution of the complaint. According to the Agency record, an inspection was conducted on June 10, 2021, by an impartial Agency inspector, whereupon the inspector observed that the at the time of the inspection, the janitorial services in the building had not been restored, specifying that janitorial services throughout the building were lacking in the hallways, stairs, and landing, with the building needing proper sweeping and mopping, and there was evidence of garbage and dirt throughout the building.

The Agency records show that it was based on the outlined conditions found not restored in the Agency inspection report from June 10, 2021 that the Rent Administrator, on June 21, 2021, denied the owner's rent restoration application under Docket No. IO210016OR, the subject of this appeal.

The Commissioner notes that during the pendency of this appeal, under the Remand proceeding Docket No. KT210001RP,² the Commissioner modified the Rent Administrator's order reducing rent under Docket No. DU210001B to reflect that such building-wide rent reduction only applies to Apartment [REDACTED]. Accordingly, the Commissioner herein modifies the underlying rent restoration order, Docket No. IO210016OR, to include a note that the only apartment subject to the order denying the owner's rent restoration application is Apartment [REDACTED].

The Commissioner notes that this determination is without prejudice and is subject to any changes in any findings of the Sapp v. Clark Wilson, Inc. case, Index No. 12230/15, upon appeal of said case to a higher Court(s) that are relevant to the issues herein. The tenants may file a new service reduction application(s) should the findings of such higher Court(s) so allow.

¹ Apartment Numbers [REDACTED], and [REDACTED]

² The Commissioner modified the order and determined that the building-wide rent reduction order under Docket No. DU210001B only applies to apartment number [REDACTED] as the subject tenant was able to substantiate that the tenant was entitled to the protections of the RSL and Code (the sole apartment listed in the order that is entitled to the protections of the RSL at this time).

ADMINISTRATIVE REVIEW DOCKET NO. JS210015RO

Based on the foregoing and a review of the record, it is the Commissioner's opinion that denial of the owner's application to restore rent in this case was proper as the inspection report reveals that at the time of inspection on June 10, 2021, janitorial services were not restored (janitorial services throughout the building were lacking in the hallways, stairs, and landing, with the building needing proper sweeping and mopping throughout the building). Here, the owner claimed to have restored services, thus, warranting an Agency inspection to confirm. However, an inspection by the Agency's impartial inspector contradicted the owner's claim as revealed in the Agency inspector's report and photographs. Pursuant to Policy Statement 90-2, the Rent Administrator may rely on an agency inspection when making a determination, and the New York Courts have consistently accorded great weight to DHCR inspections. Furthermore, Section 2527.5(b) provides that the Agency may make investigations of the facts and conduct inspections at any stage of a DHCR 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]. As such, the Commissioner finds that the Rent Administrator, in accordance with Section 2523.4 of the RSC and DHCR Policy Statement 90-2, properly requested an Agency inspection as well as relied on the evidence contained in the record and on the Agency inspection conducted on June 10, 2021. The Rent Administrator's reliance on the inspector's training and experience in the area of building inspections as well as the inspector's impartiality in conducting the inspection and taking the photographs was reasonable.

Additionally, the Commissioner finds that the prior rent restoration orders that the owner alludes to in their PAR did not find that the building-wide janitorial services were restored, and therefore such owner's claim is without merit and is merely self-serving.


Accordingly, the Commissioner affirms that part of the order under Docket No. IO210016OR wherein the Rent Administrator found that the janitorial services were not corrected; thus, the owner's rent restoration application was properly denied.

The Commissioner advises the owner to file a fresh rent restoration application if the facts warrant.

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

ORDERED, that this petition is granted, in part, on appeal, and that the Rent Administrator's order under Docket No. IO210016OR is hereby modified to include a note that the order denying the rent restoration under Docket No. IO210016OR only applies to Apartment [REDACTED] and that this determination is without prejudice and is subject to any changes in any findings of the Sapp case upon appeal of said case to a higher Court(s) that are relevant to the issues herein, and that the Rent Administrator's order under Docket No. IO210016OR is so otherwise herein affirmed, in accordance with this Commissioner's Order and Opinion.

ISSUED: **NOV 22 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
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.: KQ210023RO**

CLARK WILSON INC.

PETITIONER

**RENT ADMINISTRATOR'S
DOCKET NO.: JS210025OR**

-----X
**ORDER AND OPINION GRANTING, IN PART, PETITION FOR ADMINISTRATIVE
REVIEW**

On May 20, 2022, the above-named Petitioner-owner filed a Petition for Administrative Review ("PAR") challenging JS210025OR, an order the Rent Administrator issued on April 15, 2022 (the "order"), concerning the housing accommodations known as 60 Clarkson Avenue, Various Apartments, Brooklyn, New York, wherein the Rent Administrator issued an order denying the owner's application to restore the rent, finding that the janitorial service building-wide cited in the order reducing rent under Docket No. DU210001B was not restored at the time of Agency inspection on November 1, 2021.

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, through their representative, requests a reversal of the Rent Administrator's order, and avers that DHCR has no jurisdiction over 13 of the units included in the subject order as the DHCR previously found that those units are not subject to rent stabilization; that the owner was denied its constitutional and procedural due process since DHCR failed to notify the owner of the inspection date so that the owner was not afforded an opportunity to submit evidence regarding the inspection date prior to DHCR issuing the subject order; that alternatively, services were restored and/or previously determined to be restored; that alternatively, the subject order's description and location of the alleged services/conditions is

vague, broad, and inadequate; and/or alternatively, the Agency erroneously relied on an inspection rather than the engineer's statement submitted by the owner that was purportedly unopposed and undisputed. In the owner's subsequent submission, the owner by counsel, asserts that based on the decision of Honorable Justice Peter P. Sweeney (the "Sweeney decision"), which was affirmed by the Appellate Division, Second Department (Index No. 515780/2020), the DHCR must issue a superseding order finding the Agency has no jurisdiction over such units/occupants the Sweeney Decision found were not subject to protection under rent stabilization.

The occupant of apartment [REDACTED] objected to the owner's petition claiming that the janitorial services remain inadequate as the hallways, lobby, and staircases are frequently filled with trash; that the garbage receptacles overflow constantly, causing odor and vermin issues; that the elevator frequently smells like urine; and that personal items are stored in the hallways.

After careful consideration of the entire evidence of record, the Commissioner is of the opinion that the petition should be granted in part, and the Rent Administrator's order should be modified in accordance with this Commissioner's Order and Opinion.

Pursuant to Section 2523.4 of the Rent Stabilization Code (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.

A review of the Agency's records reveal that on February 4, 2016, the Rent Administrator issued a building-wide rent reduction order, Docket No. DU210001B, determining that a rent reduction was warranted based on decreased building-wide services, including, in relevant part, janitorial services. The rent reduction ordered under Docket No. DU210001B applied to 31 apartments.¹

In the proceeding below, the owner filed an owner's application to restore rent on July 14, 2021 asserting that janitorial services in the entire building had been restored on June 23, 2021. The tenants were offered an opportunity to respond by service of the owner's application on July 16, 2021.

The Rent Administrator determined that an Agency inspection was warranted, and thereafter, the Administrator requested an Agency inspection to facilitate the resolution of the complaint. According to the Agency record, an inspection was conducted on November 1, 2021, by an impartial Agency inspector, whereupon the inspector observed that the at the time of the inspection, the janitorial services in the building had not been restored, specifying that janitorial services throughout the building were lacking in the hallways, stairs, and landing, with the building needing proper mopping.

The Agency records show that it was based on the outlined conditions found not restored in the inspection report from November 1, 2021 that the Rent Administrator, on April 15, 2022, denied

the owner's rent restoration application under Docket No. JS210025OR, the subject of this appeal.

The Commissioner notes that during the pendency of this appeal, under the remand proceeding Docket No. KT210001RP,² the Commissioner modified the Rent Administrator's order reducing rent under Docket No. DU210001B to reflect that such building-wide rent reduction only applies to Apartment [REDACTED]. Accordingly, the Commissioner herein modifies the underlying rent restoration order, Docket No. JS210025OR to include a note that the only apartment subject to the order denying the owner's rent restoration application is Apartment [REDACTED].

The Commissioner notes that this determination is without prejudice and is subject to any changes in any findings of the Sapp v. Clark Wilson, Inc. case, Index No. 12230/15, upon appeal of said case to a higher Court(s) that are relevant to the issues herein. The tenants may file a new service reduction application(s) should the findings of such higher Court(s) so allow.

Based on the foregoing, and a review of the record, the Commissioner finds that the Rent Administrator's denial of the owner's application to restore rent in the proceeding below was proper as the inspection report reveals that at the time of inspection on November 1, 2021, janitorial services were not restored (janitorial services throughout the building were lacking in the hallways, stairs, and landing, with the building needing proper mopping.) Here, the owner claimed to have restored services, thus, warranting an Agency inspection to confirm. However, an inspection by the Agency's impartial inspector contradicted the owner's claim in this case. Pursuant to Policy Statement 90-2, the Rent Administrator may rely on an agency inspection when making a determination, and the New York Courts have consistently accorded great weight to DHCR inspections. Furthermore, Section 2527.5(b) provides that the Agency may make investigations of the facts and conduct inspections at any stage of a DHCR 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]. As such, the Commissioner finds that the Rent Administrator, in accordance with Section 2523.4 of the RSC and DHCR Policy Statement 90-2, properly relied on the evidence contained in the record and on the Agency inspection conducted on November 1, 2021. The Rent Administrator's reliance on the inspector's training and experience in the area of building inspections as well as the inspector's impartiality in conducting the inspection and taking the photographs was reasonable.

Furthermore, the Commissioner notes that there is no Agency policy requiring that owners or tenants be given notice of impending building-wide inspections, the right to be present, or the right to comment on the resulting reports, nor does due process require such a policy. It was within the Rent Administrator's proper scope of discretion and authority to deem the record adequate to determine the owner's rent restoration application based upon the submissions from both parties and the Agency inspection report.

² The Commissioner modified the order and determined that the building-wide rent reduction order under Docket No. DU210001B only applies to apartment number [REDACTED] as the subject tenant was able to substantiate that the tenant was entitled to the protections of the RSL and Code (the sole apartment listed in the order that is entitled to the protections of the RSL at this time).

ADMINISTRATIVE REVIEW DOCKET NO. KQ210023RO

Additionally, the Commissioner finds that the prior rent restoration orders that the owner alludes to in their PAR did not find that the building-wide janitorial services were restored, and therefore such owner's claim is without merit and is merely self-serving.

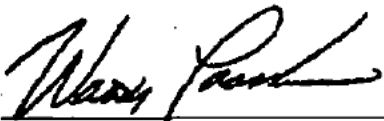
Accordingly, the Commissioner affirms that part of the order under Docket No. JS210025OR wherein the Rent Administrator found that the janitorial services were not corrected; thus, the owner's rent restoration application was properly denied.

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

ORDERED, that this petition is granted, in part, on appeal, and that the Rent Administrator's order under Docket No. JS210025OR is hereby modified to include a note that the order denying the rent restoration under Docket No. JS210025OR only applies to Apartment [REDACTED] and that this determination is without prejudice and is subject to any changes in any findings of the Sapp case upon appeal of said case to a higher Court(s) that are relevant to the issues herein, and that the Rent Administrator's order under Docket No. JS210025OR is so otherwise herein affirmed, in accordance with this Commissioner's Order and Opinion.

ISSUED:

NOV 22 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
OFFICE OF RENT ADMINISTRATION
GERTZ PLAZA
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JAMAICA, NEW YORK 11433**

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**IN THE MATTER OF THE ADMINISTRATIVE
APPEAL OF**

**ADMINISTRATIVE REVIEW
DOCKET NO.: LT210012RO**

CLARK WILSON INC.

PETITIONER

**RENT ADMINISTRATOR'S
DOCKET NO.: LM210013OR**

-----X
**ORDER AND OPINION GRANTING, IN PART, PETITION FOR ADMINISTRATIVE
REVIEW**

On August 22, 2023, the above-named Petitioner-owner filed a Petition for Administrative Review ("PAR") against LM210013OR, an order the Rent Administrator issued on July 28, 2023 (the "order"), concerning the housing accommodations known as 60 Clarkson Avenue, Various Apartments, Brooklyn, New York, wherein the Rent Administrator issued an order denying the owner's application to restore the rent, finding that the janitorial service building-wide cited in the order reducing rent under Docket No. DU210001B was not restored at the time of Agency inspection on May 26, 2023.

The Commissioner has reviewed the entire evidence of the record including that portion of the record that is relevant to the issues raised by the PAR. After careful consideration of the entire evidence of record, the Commissioner is of the opinion the petition should be granted in part and the Rent Administrator's order should be modified in accordance with this Commissioner's Order and Opinion.

In the PAR, the Petitioner-owner requests a reversal of the Rent Administrator's order for reasons of illegality and irregularity. The Petitioner claims that the DHCR had previously issued 31 orders, pursuant to a Supreme Court order issued on October 10, 2018,¹ wherein the Rent Administrator modified the underlying rent reduction order, Docket No. DU210001B, to remove

¹ The Supreme Court of the State of New York in Sapp et al. v. Clark Wilson, Inc., Index No. 12230/15.

the “subject apartment”. The owner claims that the Administrator erred in denying the owner’s application to restore rent based on the purported fact that the subject units had been removed from the rent reduction order upon which the underlying rent restoration order was based, and that the order is in direct contradiction of the Supreme Court decision. The owner annexed various documents including Administrative Determination Orders in support of their claim.

The tenant of Apartment [REDACTED] through their representative, opposes the owner’s claims, asserting that the subject tenant in Apartment [REDACTED] was not a party to the Supreme Court proceeding (Sapp et al v. Clark Wilson Inc. Index No. 12230/15) as claimed by the owner, and that [REDACTED] the tenant of Apartment [REDACTED] is a rent stabilized tenant; that the owner’s continued misstatements relating to the tenant’s tenancy warrant treble damages. The tenant further asserts that rent reduction, Docket No. DU210018B, was reopened under Docket No. KT210001RP based on this issue.

A subsequent correspondence received from the owner cites to the Commissioner’s order, Docket No. KT210001RP dated October 13, 2023, asserting that it was the Commissioner’s opinion that the rent reduction order and/or the underlying rent restoration order should apply to apartment [REDACTED] only, and as such, the Rent Administrator’s order herein should be revoked.

A review of the Agency’s records reveal that on February 4, 2016, the Rent Administrator issued an order, Docket No. DU210001B, determining that a rent reduction was warranted based on decreased building-wide services, including janitorial services. The rent reduction ordered under Docket No. DU210001B on February 4, 2016 applied to 31 apartments.²

In the proceeding below, the owner filed an owner’s application to restore rent on January 12, 2023 asserting that janitorial services in the entire building had been restored. The tenants were provided with an opportunity to respond by service of the owner’s application on January 17, 2023.

The Rent Administrator determined that an Agency inspection was warranted, and thereafter, the Administrator requested an Agency inspection to facilitate the resolution of the complaint. According to the Agency record, an inspection was conducted on May 26, 2023, by an impartial Agency inspector, whereupon the inspector observed that the at the time of the inspection, the janitorial services in the building had not been restored, specifying that janitorial services throughout the building were lacking in the two elevators, and loose trash and dirty/stained floors throughout, with the building needing proper sweeping and mopping in the public areas, and the garbage rooms on all floors were overflowing with trash and creating spillage onto the hallway floors. The inspector also observed a live rat in the building as well as a foul odor.

The Agency records show that it was based on the outlined conditions found not restored in the inspection report from May 26, 2023 that the Rent Administrator, on July 28, 2023, denied the owner’s rent restoration application under Docket No. LM210013OR, the subject of this appeal.

ADMINISTRATIVE REVIEW DOCKET NO. LT210012RO

Pursuant to Section 2523.4 of the Rent Stabilization Code (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.

The Commissioner notes that during the pendency of this appeal, under the remand proceeding Docket No. KT210001RP,³ the Commissioner modified the Rent Administrator's order reducing rent under Docket No. DU210001B to reflect that such building-wide rent reduction only applies to Apartment [REDACTED]. Accordingly, the Commissioner herein modifies the underlying rent restoration order, Docket No. LM210013OR, to include a note that the only apartment subject to the order denying the owner's rent restoration application is Apartment [REDACTED].

The Commissioner notes that this determination is without prejudice and is subject to any changes in any findings of the Sapp v. Clark Wilson, Inc. case, Index No. 12230/15, upon appeal of said case to a higher Court(s) that are relevant to the issues herein. The tenants may file a new service reduction application(s) should the findings of such higher Court(s) so allow.

The Commissioner notes the tenant of Apartment [REDACTED] claim on PAR that they were not a party to the Supreme Court decision and submitted their leases between the tenant, [REDACTED] and the owner, Clark Wilson Inc., dated October 15, 2017, September 30, 2019, and December 13, 2021. However, the Commissioner notes that, as provided for under Docket No. KT210001RP, the underlying rent reduction order, Docket No. DU210001B was modified to reflect that the building-wide rent reduction order applies to only Apartment [REDACTED]. Moreover, the Agency records reveal that under Docket No. IU210029AD issued on March 18, 2021, Apartment [REDACTED] was removed from the rent reduction order under Docket No. DU210001B. The Rent Administrator's decision under Docket No. IU210029AD was not appealed and is therefore final and binding on all the parties. In light of the tenant of Apartment [REDACTED] claim herein on PAR, the Commissioner notes that a rent reduction proceeding is not the proper proceeding to determine rent regulation claims and therefore advises the tenant to file an Administrative Determination request with this Agency citing to this PAR decision, and/or file an overcharge complaint, if the facts so warrant.

Based upon the record of the Rent Administrator's proceeding, including the Agency inspection report, the Commissioner affirms that part of the order under Docket No. LM210013OR wherein the Rent Administrator found that the janitorial services were not corrected; thus, the owner's rent restoration application was properly denied.

The Commissioner advises the owner to file a fresh rent restoration application if the facts so warrant.

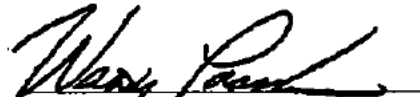
THEREFORE, in accordance with the relevant Rent Regulatory Laws and Regulations, it is

³ The Commissioner modified the order and determined that the building-wide rent reduction order under Docket No. DU210001B only applies to apartment number [REDACTED] as the subject tenant was able to substantiate that the tenant was entitled to the protections of the RSL and Code (the sole apartment listed in the order that is entitled to the protections of the RSL at this time).

ADMINISTRATIVE REVIEW DOCKET NO. LT210012RO

ORDERED, that this petition is granted, in part, on appeal, and that the Rent Administrator's order under Docket No. LM210013OR is hereby modified to include a note that the order denying the rent restoration under Docket No. LM210013OR only applies to Apartment [REDACTED] and that this determination is without prejudice and is subject to any changes in any findings of the Sapp case upon appeal of said case to a higher Court(s) that are relevant to the issues herein, and that the Rent Administrator's order under Docket No. LM210013OR is so otherwise herein affirmed, in accordance with this Commissioner's Order and Opinion.

ISSUED: **NOV 22 2023**


Woody Pascal
Deputy Commissioner



State of New York
Division of Housing and Community Renewal
Office of Rent Administration
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**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.: LV210018RO**

428 EAST 46 LLC

PETITIONER

**RENT ADMINISTRATOR'S
DOCKET NO.: KX210014OR**

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

On October 25, 2023, the above-named petitioner-owner timely re-filed a Petition for Administrative Review ("PAR") of an order the Rent Administrator issued on September 1, 2023 (the "order"), concerning the housing accommodation known as 428 East 46th Street, Apt [REDACTED] Brooklyn, New York, wherein the Rent Administrator denied the owner's rent restoration application upon finding the owner did not restore the enamel bathtub service.

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

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

In the PAR, the owner seeks a modification of the Rent Administrator's order based on their assertion that the Agency inspector misidentified "dirt" for "rust around the drain area of the tub", and in sum, claims there is no problem with the bathtub warranting the continuation of the rent reduction order. The owner, submitted with their petition, photographs purportedly depicting the bathroom in the subject apartment.

The tenant opposes the owner's PAR asserting, in sum, that the services have not been restored.

ADMINISTRATIVE REVIEW DOCKET NO. LV210018RO

Pursuant to Section 2523.4 of the Rent Stabilization Code (“RSC” or “the Code”), following a complaint by a tenant, DHCR is authorized to order a rent reduction where it is found that the owner has failed to maintain required or essential services. Likewise, an owner is entitled to the restoration of rent once it is established that all the required services cited in the rent reduction order have been restored. Policy Statement 90-2 permits the Rent Administrator to rely on an Agency inspection when making a decision. Section 2527.5(b) of the RSC gives the Administrator the authority to request an inspection at any stage of a DHCR proceeding and New York Courts have consistently recognized the reliability of DHCR inspections.

In the initial proceeding under Docket No. GW210166S, the tenant filed a complaint alleging a diminution in services in the kitchen, bathroom, living room and bedroom 1. On August 9, 2019, the Rent Administrator granted the tenant a rent reduction and directed the restoration of services, based on a diminution in services found to the kitchen sink, enamel tub, paint/plaster in the bathroom and the living room windows.

The record reveals that on June 1, 2021, the owner filed their first rent restoration application assigned Docket No. JR210003OR. On December 7, 2021, the Rent Administrator denied the owner’s application finding the owner had not restored the enamel bathtub and the paint/plaster in the bathroom services. Subsequently, the owner filed a second rent restoration application assigned Docket No. KP210089OR on April 25, 2022. On December 2, 2022, the Administrator denied the owner’s application finding that the enamel bathtub and the paint/plaster in the bathroom services had not been restored by the owner.

In the proceeding below, the owner filed their third application to restore the rent on December 8, 2022, claiming it restored the enamel bathtub and the paint/plaster in the bathroom services on December 6, 2022. The tenant submitted a response to the owner’s complaint (the “Initial Notice”) served on December 12, 2022, wherein the tenant claimed, in substance, that the owner had not restored any of the services, and that the owner does not remove mold or rust, as they just put fresh paint on it to make it “look new.”

Prompted by the aforementioned, the Rent Administrator requested that an Agency inspection be conducted. On May 16, 2023, the Agency inspector conducted the inspection and found evidence of rust around the drain area of the bathtub, and that there was no evidence that the bathroom ceiling had stains, cracks or peeling paint and plaster. Based on the Agency inspection, on September 1, 2023, the Rent Administrator denied the owner’s application to restore the rent as the enamel bathtub service was found not to have been restored.

The Commissioner notes the owner's contention herein that the enamel bathtub drain was dirty, and therefore the inspector was mistaken when the inspector determined there was rust around the drain in the bathtub. The Commissioner finds that the owner's claim in this appeal is without merit and is merely self-serving. As evidenced by the Agency inspection report from May 16, 2023, that was substantiated by photographic evidence showing the rust around the drain area in the enamel bathtub, the Commissioner finds that a denial of the owner’s rent restoration application was warranted in this matter (the Commissioner also notes that the subject tenant and Superintendent were present for the inspection). The Agency inspection report revealed that there was rust around the drain of the enamel bathtub at the time of the inspection.

Accordingly, the owner's unsubstantiated claim in this PAR does not warrant a modification or reversal of the Rent Administrator's order.

Furthermore, the Commissioner notes that the owner submitted photographs in the PAR which were not submitted in the proceeding before the Rent Administrator and thus this evidence is outside the Commissioner's scope of review which is limited to the evidence and issues raised before the Rent Administrator.

The Commissioner finds that based on the totality of the record, the Rent Administrator's order was correctly issued, and the Rent Administrator and Agency staff conducted the proceeding below in accordance with established law and practice, and principles of due process. The Rent Administrator's reliance on the inspector's training and experience in the area of building inspections, as well as the inspector's impartiality in conducting the inspection was reasonable. Consequently, the Commissioner finds that the owner has not presented any allegations of error of fact or law to warrant a modification or reversal of the Rent Administrator's order.

The owner is advised that they may file an "Owner's Application to Restore Rent" with this Agency, if the facts so warrant.

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

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

ISSUED:

DEC 01 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
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.: LV410017RO**

122 STREET PORTFOLIO LLC

PETITIONER

**RENT ADMINISTRATOR'S
DOCKET NO.: LN410101OR**

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

On October 23, 2023, the above-named Petitioner-owner timely re-filed a Petition for Administrative Review ("PAR") against an order the Rent Administrator issued on September 28, 2023 (the "Order"), concerning the housing accommodation known as 222 St. Nicholas Ave., New York, NY (the "Premises"), wherein the Rent Administrator denied the owner's rent restoration application under Docket No. LN410101OR, finding that the owner had not restored the following services: building entrance walkway, janitor service, floor covering in the lobby, paint and plaster in the public areas.

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

In the PAR, the owner requests a reversal of the Order, claiming, in substance, that (1) there was no issue on the property, (2) the building was regularly cleaned, (3) there were no damaged tiles and replacements were made, and (4) repairs were done in a workmanlike manner.

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

Pursuant to Section 2523.4 of the Rent Stabilization Code (the "Code"), the Rent Administrator is authorized by law to direct the restoration of services and grant a rent reduction,

ADMINISTRATIVE REVIEW DOCKET NO. LV410017RO

upon application by a tenant, where it is determined that required services have not been maintained.

Additionally, DHCR Policy Statement 90-2 states that the Rent Administrator may rely on an Agency inspection when making the determination in a matter. Furthermore, Section 2527.5 (b) provides that the Agency may make investigations of the facts and conduct inspections at any stage of a DHCR 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].

On March 22, 2021, a building-wide rent reduction order was issued under Docket No. IM410048B, where the Rent Administrator determined, in relevant part, that there was a decrease in the services at the Premises. The Rent Administrator found that the building entrance walkway, the janitorial services building-wide, the floor covering lobby, the floor covering the 4th floor, and the paint/plaster in the public areas were not maintained.

On August 16, 2022, the owner filed their first rent restoration application, Docket No. KT410048OR, which was denied on December 15, 2022. Under Docket No. KT410048OR, the Rent Administrator found that the floor covering the 4th floor was restored, however, the rest of the items found not maintained under Docket No. IM410048B were still not restored.

On February 15, 2023, the owner filed the subject rent restoration application under Docket No. LN410101OR, claiming that the services had been restored. On February 17, 2023, the tenants were served with the owner's application to restore rent ("Initial Notice").

Thereafter, the Rent Administrator requested an Agency inspection be conducted. The Agency inspection was completed on September 22, 2023. The inspector found the following conditions at the time of the inspection: that there was cracked concrete with hole on the front walkway of the building; that there were inadequate janitorial services in the lobby and all building hallways with poor mopping and debris; that some floor tiles in the lobby were cracked and damaged; and that drywall was repaired or painted in an unworkmanlike manner in the hallway of the 4th floor as there were bulging and non-sanded surfaces.

On September 28, 2023, the Rent Administrator denied the owner's application to restore the rent based on the Agency's inspection report that found that the enumerated services had not been corrected. The Order noted that other conditions cited in the underlying Rent Reduction Order were found restored on December 15, 2022 under Docket No. KT410048OR (the floor covering the 4th floor).

In light of the foregoing, the Commissioner finds that the Rent Administrator's order does not contain errors of fact and/or law, and that the Administrator's order is in accordance with established principles and procedures and the Agency's Policy Statement 90-2, as the Agency inspection revealed that there was cracked concrete and a hole in the walkway in front of the building, there were inadequate janitorial services throughout the building, there were cracked and protruding tiles in the lobby, and the 4th floor walls and ceiling were repaired in an unworkmanlike manner. The Rent Administrator's reliance on the inspector's training and

ADMINISTRATIVE REVIEW DOCKET NO. LV410017RO

experience in the area of building inspections, as well as the inspector's impartiality in conducting the inspection was reasonable and in accordance with the Code and Policy Statement 90-2.

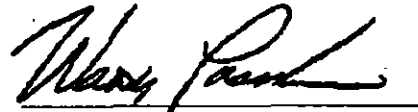
Based on the totality of the evidence, including the inspector's report, the Commissioner finds that the Rent Administrator properly denied the owner's application to restore rent, and further, the owner's unsubstantiated claims do not set forth any basis to revoke the Rent Administrator's order. Accordingly, the Commissioner rejects the owner's contentions raised in their appeal.

The owner is advised to file a fresh rent restoration application with this Agency, if the facts 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:



Woody Pascal
Deputy Commissioner

DEC 08 2023



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

**ADMINISTRATIVE REVIEW
DOCKET NO.: LN410024RT**



PETITIONER

**RENT ADMINISTRATOR'S
DOCKET NO.: JX410057OR**

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

On February 24, 2023, the above-named Petitioner-tenant re-filed a Petition for Administrative Review ("PAR") against JX410057OR, an order the Rent Administrator issued on December 15, 2022 (the "order"), concerning the housing accommodation known as 35 Hillside Avenue, Apartment [REDACTED], New York, New York, wherein the Rent Administrator granted the owner's rent restoration application finding the Vacate Order #160504, upon which an order was issued reducing rent to \$1.00 per month under Docket No. JN410035S, was rescinded for the subject apartment, and that the tenant was restored to occupancy as of September 29, 2021 based on the owner's statement in the owner's application.

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-tenant requests a reversal of the Rent Administrator's order, claiming that the Petitioner was charged for four months that they did not occupy the subject apartment due to construction. To substantiate their claim, the tenant annexed photographs purporting to show ongoing construction work, as well as a bill dated December 23, 2022 addressed to the tenant from the owner explaining that the tenant's monthly collectible rent has been restored effective September 29, 2021, and that the tenant would be retroactively charged a total of \$15,094.99 for the period of September 29, 2021 to December 31, 2022 as a result of the underlying rent restoration order, and utility statement from ConEdison, Inc. purporting to show that there was minimal and/no consumption of electricity or gas from October 27, 2021 to December 29, 2021, the periods the Petitioner claims the subject apartment was not occupied due to construction.

ADMINISTRATIVE REVIEW DOCKET NO. LN410024RT

The Commissioner notes that the owner was served with the instant appeal and given an opportunity to challenge same. The record indicates that the owner did not refute the Petitioner's claim that they were not in occupancy due to construction for the months noted above.

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

The Commissioner notes that pursuant to Section 2523.4 of the New York City Rent Stabilization Code ("RSC" or the "Code"), the Rent Administrator is authorized to order a rent reduction, upon application by 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 is restored to occupancy or refused an offer to reoccupy the subject apartment.¹

DHCR's policy and practice further dictates that, in general, rents 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.

In the initial rent reduction proceeding under Docket JN410035S, on April 20, 2021, the Rent Administrator established the legal regulated rent as \$1.00 per month as of February 1, 2021, the date of the fire which caused the tenant to vacate the subject apartment involuntarily. The Rent Administrator noted that the New York City Department of Housing Preservation and Development ("HPD") Vacate Order # 160504 for the subject apartment, [REDACTED], was still active, and that the owner acknowledged that the subject apartment was rendered unsafe and uninhabitable due to a fire on February 1, 2021.

Subsequently, on December 16, 2021, the owner filed an application to restore rent based on the claim of the restoration of occupancy of the subject apartment on September 29, 2021. The owner included a copy of a form statement that had lines to be filled in, purporting to be signed by the subject tenant on September 29, 2021, wherein the tenant acknowledged that the subject apartment had been restored to habitability, however, such statement left blank the date the tenant returned to the subject apartment. Moreover, instead of a date indicating when the tenant returned to occupancy, the statement had a handwritten note that stated there were areas in need of "fix[ing]".

The Agency records indicate that on January 24, 2022, the subject tenant was initially served with the owner's rent restoration application. The tenant was again notified of the owner's application and provided with an opportunity to respond in a notice dated March 2, 2022. However, there is no evidence that the tenant responded to the owner's rent restoration application.

¹ The owner shall provide with their rent restoration application the notification to the tenant that they may resume occupancy of the subject apartment, or evidence that the tenant(s) surrendered their rights to the apartment.

ADMINISTRATIVE REVIEW DOCKET NO. LN410024RT

The record also reveals that on April 12, 2022, the Rent Administrator sent a "Request for Additional Information/Evidence" ("Request") to the owner and requested that the owner provide the date the apartment was restored to habitability; the date the tenant resumed occupancy, or evidence of the tenant's declining to resume occupancy; who is currently occupying the apartment or is the unit vacant; if occupied, to provide a copy of the initial lease; to provide a copy of the owner's notification to the tenant of the availability of the restored apartment, and the notice to be dated and proof of mailing to the tenant's current mailing address; if the tenant has resumed paying the legal regulated rent, ("LRR"), and to specify the date the tenant started paying the LRR if so; and provide additional documentation regarding the related Vacate Order.

On May 4, 2022, the owner responded to the request and provided a letter from HPD confirming that the Violation Order #160504 issued on February 18, 2021 for the subject apartment, [REDACTED] was rescinded following an inspection conducted on August 25, 2021. The owner also asserted that the apartment was returned to habitability on September 9, 2021, the date of the HPD letter rescinding the subject vacate order, and that the tenant signed the "return letter" dated September 29, 2021. Attached to the owner's response was the same letter previously provided, purporting to be signed by the subject tenant dated September 29, 2021 that asserted that the apartment was restored to habitability (the Commissioner notes that the letter did not indicate the date the tenant reoccupied the subject apartment, and that said letter contained a note indicating that the apartment needed to be properly fixed), and also the subject tenant's purported initial lease dated September 28, 2000, as well as a rent ledger for the period September 2020 through April 2022 which showed that the tenant was being charged \$1.00 per month from February 2021 through April 1, 2022.

Thereafter, the Rent Administrator, on December 15, 2022, determined that a rent restoration was warranted, and granted the owner's rent restoration application under Docket No. JX410057OR, effective September 29, 2021, the date the owner claimed that the tenant was restored to occupancy.

The Commissioner having reviewed the Petitioner's appeal and any and all supporting documentation, any and all statements made by the affected parties, the underlying case file and all relevant Rent Regulatory Laws and Regulations finds that the tenant's appeal has merit and should be granted.

Generally, when an owner applies to restore the rent after a \$1.00 order has been issued, DHCR policy and practice dictates that if an owner restores a fire-related damaged apartment to habitability after a \$1.00 order has been issued and provides evidence that the tenant has been notified that they may resume occupancy of the subject apartment or with evidence that the tenant declined to resume occupancy, the Rent Administrator may grant the owner's rent restoration application, effective the date the tenant is restored to occupancy. However, the Commissioner may consider any and/or all equitable factors bearing on a case during an administrative review, as the DHCR has a duty to ensure that its decisions are not inconsistent with the spirit and intent of the rent laws.

ADMINISTRATIVE REVIEW DOCKET NO. LN410024RT

The Commissioner notes that the tenant did not respond to the owner's application below. However, the Commissioner may accept evidence during a PAR proceeding that could not have been reasonably offered or included in the proceeding prior to the issuance of the order of the Rent Administrator (see Matter of Stern v. DHCR, 250 A.D.2d 403 (1st Dept. 1998)). The Commissioner therefore notes that the ConEdison, Inc. statement the tenant provided on appeal is dated December 20, 2022, after the subject Rent Administrator's order restoring rent was issued, and therefore could not have been provided during the Rent Administrator's proceeding. Moreover, the tenant was not notified during the Rent Administrator's procedure that the owner's claim that the tenant was restored to occupancy as of September 29, 2021, if unrebutted, would result in a retroactive effective date of September 29, 2021.

In light of the above, the Commissioner, having considered the facts and issues involved herein, including the evidence submitted below and on PAR, finds that the evidence reveals that there were still issues to be fixed within the apartment on September 29, 2021, and that the tenant did not return as of September 29, 2021 as the date of when the tenant returned was left blank in the owner's letter purported to be signed by the tenant. Furthermore, as evinced from the utility bill submitted by the Petitioner-tenant on PAR, there was minimal usage of electricity and no gas usage from October 2021 through December 2021, which supports the tenant's assertion that the tenant was not in occupancy during the months in question. Moreover, the record reveals that the owner was served with this tenant's claims and evidence submitted on PAR, and the owner did not submit any objections to the tenant's claims on appeal. The Commissioner further notes that there is no evidence in the record indicating that the mail to the owner was returned to the Agency as undeliverable. Under established principles of law, an article which was mailed to the proper address is presumed to have been received. Accordingly, the Commissioner finds that the owner was properly served, but they failed to rebut this tenant's claim.

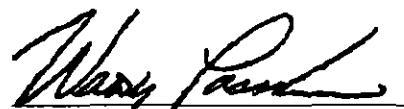
Based on the foregoing, the Commissioner finds that the tenant's PAR is granted, thereby modifying the Rent Administrator's order under Docket No. JX410057OR to reflect an effective date of January 1, 2022, being the first day of the month the tenant claims to have returned to the subject apartment after construction and which is supported by the ConEdison, Inc. Statement.

The owner may pay any arrears owed as a result of this Commissioner's order within 12 months from the date of the issuance of this order.

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

ORDERED, that this petition is granted, and that the Rent Administrator's order, Docket Number JX410057OR, is hereby modified to reflect an effective date of January 1, 2022 in accordance with this Order and Opinion, and the Rent Administrator's order, Docket Number JX410057OR, is herein so otherwise affirmed.

ISSUED: **DEC 20 2023**



Woody Pascal
Deputy Commissioner



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