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.: KS410009RO

52 PARTNERS LLC
c/o J&M REALTY SERVICES CORP.

PETITIONER

RENT ADMINISTRATOR'S DOCKET NO.: KN410002RP

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ORDER AND OPINION DENYING PETITION FOR ADMINISTRATIVE REVIEW

On July 13, 2022, the above-named Petitioner-owner filed a Petition for Administrative Review ("PAR") against KN410002RP, an order the Rent Administrator issued on June 28, 2022 (the "order"), concerning the housing accommodation known as 457 Fort Washington Avenue, Apartment [redacted], New York, New York, wherein the Rent Administrator, based on a complete review of the record, and after the remit directed by the Decision and Order of Honorable Justice Shlomo Hagler, J.S.C. issued on November 19, 2018, granted the owner's rent restoration application, effective February 24, 2016.

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.

A review of the record reveals that on November 14, 2007, under Docket No. VH410100S, the Rent Administrator determined that the Legal Regulated Rent ("LRR") of the subject apartment was $1.00 per month as of January 13, 2006 pursuant to Section 2522.6 of the Rent Stabilization Code (the "RSC" or the "Code") and based upon a Vacate Order issued by the New York City Department of Housing Preservation and Development Code Enforcement Division, effective January 13, 2006.

Thereafter on March 17, 2009, a prior owner filed a rent restoration application with this Agency, however, such rent restoration application was denied on September 11, 2009 under Docket No. XC410048OR as the owner failed to submit information necessary to process the case.

On February 24, 2016, over six years and five months after the Rent Administrator's denial of the owner's first rent restoration application under Docket No. XC410048OR, the current owner

applied for rent restoration. Such rent restoration was granted on April 15, 2016 under Docket No. EN410061OR. The Rent Administrator therein found that the effective date of the rent restoration was May 1, 2008, the date the owner claimed the apartment was restored to habitability.

The subject tenant appealed the Rent Administrator's decision under Docket No. EN410061OR, which was processed under PAR, Docket No. EQ410034RT. Under Docket No. EQ410034RT, the Commissioner, on November 17, 2017, granted the tenant's PAR and modified the Rent Administrator's order, Docket No. EN410061OR, to change the effective date of the rent restoration from May 1, 2008 to March 1, 2016, the first of the month following the date of service of the owner's rent restoration application upon the tenant. The Commissioner found that the Rent Administrator erred in setting an effective date of May 1, 2008 as there was a final Agency order issued on September 11, 2009 under Docket No. XC410048OR that denied the owner's initial rent restoration application, and further, the owner failed to file the second restoration application more than six years after the denial of the first, and thus, the earlier effective date of May 1, 2008 would be substantially and significantly prejudicial to the tenant.

The Commissioner's aforementioned order, Docket No. EQ410034RT, was subsequently appealed in a proceeding commenced by the above-named Petitioner-owner pursuant to Article 78 of the Civil Procedure Law and Rules (Piermont Court, LLC. v. DHCR, Supreme Court of the State of New York, New York County, Index No. 150452/2018). During this Article 78 proceeding, the Honorable Justice Shlomo Hagler, J.S.C. vacated the subject PAR and remanded the case back to the DHCR to issue a determination consistent with the record of the Court. During this Article 78 proceeding, Justice Hagler stated that he was remanding the PAR order to DHCR to notify the tenant's attorney, the tenant, and the owner's attorney that there is a restoration order sought through May 1, 2008, thereby giving an opportunity for the tenant to have a position regarding the delay of the owner in applying for the rent restoration under Docket No. EN410061OR.

Pursuant to the Decision and Order of the Court under Index No. 150452/2018, the Commissioner, under Administrative Review Docket No. JR410006RP, remanded the proceeding to the Rent Administrator for the purpose of providing all parties with an opportunity to comment and offer evidence and for the Rent Administrator to reconsider this matter and render a determination addressing the effective date of the owner's rent restoration application for the subject premises. The Agency thereafter opened the instant remand proceeding under Docket No. KN410002RP. Based on the foregoing, the Agency, on April 13, 2022, served a Reopening Notice on the subject owner, the tenant, and their counsels providing each with the opportunity to comment. The tenant and their counsel were also served with a copy of the owner's application to restore rent and the owner's March 24, 2016 response submitted during the rent restoration proceeding under Docket No. EN410061OR.

On May 3, 2022, the tenant, through their representative, responded and objected to the owner's request to establish the effective date for restoration retroactively to May 1, 2008, asserting that the tenant should not be prejudiced by the owner's delay in filing for rent restoration as the subject owner and prior owner had the opportunity over the years to apply for such restoration while the tenant is an innocent party who made "no effort to prevent the current owner" or the

former owner from filing an earlier application to restore rent; that the owner should have filed a PAR after the first rent restoration application, Docket No XC410048OR, was denied on September 11, 2009; that the owner's reason for delay is unacceptable and lacks merit as the 7-A Administrator, who was appointed by the Civil Court to serve in the shoes of the owner for four years, failed to carry out their duty, and that the new owner should look to the 7-A Administrator for whatever damages they are seeking, and that moreover, the subject owner did not file an application until fifteen months after receiving ownership of the subject building; and that the DHCR should adhere to its own policy regarding the effective date for rent restoration wherein the retroactive date would be the first of the month following the date the tenant was served with the owner's application to restore rent.

On June 13, 2022, the owner, by counsel, filed a submission for the subject reopened proceeding, claiming that the DC-37 counsel cannot represent the tenant as members of District Council 37 Municipal Employees Legal Services ("DC-37") administer the Rent Regulations and this would create appearance of impropriety; that the tenant does not dispute that she resumed occupancy of the apartment in June of 2008 and continued to pay the reduced $1.00 per month; that the delay in filing the rent restoration was attributable to the 7-A Administrator appointed to manage the building for the prior owner who could no longer handle the management affairs at the time; and that the subject owner, Piedmont Court LLC, filed the new rent restoration application after the removal of the 7-A Administrator. The owner challenged the tenant's claim regarding prejudice asserting, essentially, that the tenant does not dispute that they have been in occupancy since being restored in June of 2008 and have been paying $1.00 a month.

The Commissioner notes that the Rent Administrator considered the facts and circumstances, including all submissions made during the proceeding, and based on the evidence in the record, the Rent Administrator determined that the application for rent restoration was not filed in a timely manner after the first rent restoration application was denied. The Administrator further determined that the tenant's continual payment of $1.00 per month should have raised concern with the building's management, thereby prompting an investigation that would have revealed that a rent restoration application was necessary, and that the fact that the prior owner and the 7-A Administrator failed to file their applications on time would not absolve the Petitioner of the need to file a timely rent restoration application. The Rent Administrator therefore determined that the effective date is February 24, 2016, the date the owner filed the application for rent restoration under Docket No. EN410061OR.

The owner was dissatisfied with this Rent Administrator's decision, hence this administrative appeal ensued.

In the PAR, the Petitioner-owner, through their counsel, requests a reversal of the Rent Administrator's order under Docket No. KN410002RP. The Petitioner claims, inter alia, that the tenant's representative, DC-37, "cannot represent the Tenant on this remand" because members of DC-37 "administer the rent stabilization and rent control systems" for the DHCR, and that to allow DC-37 to represent the tenant "creates an appearance of impropriety"; that the owner is the party prejudiced by the challenged effective date of the restoration and not the tenant as the tenant claimed, given that the tenant may repay rent arrears in 12 equal monthly installments; that the delay in filing a second rent restoration application after the first application was denied

is attributable to the appointment process for a 7-A Administrator and the 7-A Administrator's delay in filing an application to restore rent, and that this was noted in the Rent Administrator's March 24, 2016 order; that the former owner, Dorothea Levine, was not under any duty to file a PAR against the order that denied the initial rent restoration application, although it would have been wise for Ms. Levine to do so; and that the restoration of rent as of May 1, 2008 is not an abuse of the Rent Administrator's discretion as it is undisputed that the Vacate Order was rescinded over 14 years ago, the apartment restored to habitable condition, and the tenant restored to occupancy.

In the tenant's responses to the owner's PAR, the tenant asserts that DC-37 attorneys are not employed by DHCR, rather by the DC-37 Municipal Employees Legal Services Plan to provide legal services as one of the benefits bargained for in the DC-37 Employees Legal Services Trust to members of the union, of which the tenant is a retiree member; that this issue was previously addressed by the Commissioner in Docket No. EQ410034RT; that based on principles of equity and the intent of the Code, it would be unfair to allow the tenant to bear the brunt of the owner's failure to act timely as the tenant would be significantly prejudiced if the rent was retroactively restored effective May 1, 2008; that a retroactive effective date of May 1, 2008 would bring the total sum owed by the tenant to over $45,000.00 and that $45,000.00 would exceed the threshold amount if the tenant ever sought for assistance from a government agency; that the Rent Administrator erred in accepting the owner's claim that the delay in filing the rent restoration application was caused by the 7-A Administrator, and moreover, that the 7-A Administrator assumed the duties and obligations of the prior owner and the Petitioner is bound by same; that the 7-A Administrator was appointed and served in the shoes of the owner for approximately 4 years and failed to carry out their fiduciary duty to apply for a rent restoration, and therefore the owner should look to the 7-A Administrator for whatever damages they are seeking; that the Petitioner-owner delayed for up to 15 months in filing their rent restoration application after they were transferred ownership of the building; and that the Rent Administrator correctly set February 24, 2016 as the effective date for the restoration of rent.

The owner, in their rebuttal answers, claim that the tenant knew or should have known that after being restored to occupancy, rent would be due to the owner, and that the tenant negligently failed to escrow her payments bearing in mind that the $1.00 payment would not remain in perpetuity; that the owner would also be prejudiced by the February 24, 2016 effective date; and that the subject property has had four owners since the Vacate Order was issued, including 7-A Administration and other probate matters. The Petitioner reasserts that the May 1, 2008 effective date is the appropriate restoration date.

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 petition. After careful consideration of the entire evidence of record, the Commissioner is of the opinion that the petition should be denied, and the Rent Administrator's order affirmed.

At the outset, the Commissioner notes that there is no evidence of a conflict of interest, or an appearance of impropriety as claimed by the owner. Additionally, the owner's request to disqualify the tenant's attorney represents an impermissible interference with the tenant's right to

counsel of their choosing. Therefore, the owner's argument and request are without merit and are denied herein.

Policy Statement 90-2 provides that where DHCR issues an order restoring the rent, the retroactive date will be the first date of the month following the date the tenant is served with the owner's application to restore rent. Pursuant to Section 2523.3 of the Code and consistent with the provisions of Policy Statement 90-2, rent, which has been reduced to an LRR of $1.00 per month due to fire-related damages, may not be restored 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. However, a rent restoration application must be filed timely in order for the rent to be restored retroactively. An untimely filed rent restoration application may affect the effective date of the rent restoration.

Pursuant to RSC Sec. 2520.6 (i), an owner is defined as a fee owner, lessor, sublessor, assignee, net lessee... or any other person or entity receiving or entitled to receive rent for the use or occupation of any housing accommodation, or an agent of any of the foregoing. Pursuant to this subdivision, a court-appointed receiver is also considered an owner. It is a well-established principle of law that a new owner steps into the shoes of a prior owner and fully undertakes the obligations of the prior owner. As such, the owner's claim that the delay in filing the rent restoration application is attributable to the 7-A Administrator is unavailing and equally unpersuasive. Furthermore, the Petitioner-owner had an ample time to file an application to restore the rent when the ownership transferred to them, but they also delayed in submitting their application. The owner's explanation of the cause of the delay is without merit, and thus rejected.

Further, the longstanding policy of DHCR is that an owner is responsible for knowing whether or not there are outstanding rent reduction orders in effect. The purchaser of a building, or a new owner of a building, steps into the shoes of its predecessor in interest and assumes all the liabilities as well as assets of the previous owner, including those outstanding rent reduction orders that were issued prior to the purchase of the building. The existence of all DHCR orders and proceedings are available to purchasers and new owners of buildings upon request of the Agency. In this case, the previous owner failed to re-apply for rent restoration and the 7-A Administrator also failed to adhere to Agency policy and procedures and apply for the restoration. The current owner fails to offer a reasonable explanation for such lack of filing a rent restoration application that would provide for a different effective date. Furthermore, the Commissioner notes that the responsibility of the owner to file a rent restoration does not change just because the owner claims that the 7-A Administrator's failure contributed to the delay as well as changes in ownership and management of the building at four separate occasions. As the Rent Administrator found in the underlying order, the tenant's continued payment of $1.00 per month rent should have been enough for any of the building's management to realize that a rent restoration application was required.

The Commissioner finds that the owner's claim that the effective date should be May 1, 2008 is unavailing in this case. As previously noted, a prior owner's rent restoration application was denied under Docket No. XC410048OR on September 11, 2009 due to the owner's failure to

substantiate that the subject premises was restored to habitability. Accordingly, an effective date of May 1, 2008 is unreasonable and not warranted in this case.

The Commissioner notes that DHCR and the Courts look unfavorably upon owners who unreasonably files untimely applications to restore the rent, expecting tenants to repay large sums of money accrued over time. In such cases, the effective dates have been prospective.[1] Although it may seem unfair for a tenant to occupy an apartment and continue to pay the reduced rent of $1.00, it would be just as unfair to raise a tenant's rent retroactively because of an owner's failure to file a timely application to restore the rent. In accordance with law and consistent with DHCR's policy, it would be substantially and significantly prejudicial to the tenant to establish a May 1, 2008 effective date of rent restoration in this case as the owner failed to file for a new rent restoration application more than six years after the initial rent restoration was denied on September 11, 2009 under Docket No. XC410048OR.

The Commissioner finds that the tenant should not be made to bear the brunt of the owner's choice to not file a rent restoration application for more than six years from the time the initial application was denied on September 11, 2009. This Agency has a duty to ensure that its decisions are not inconsistent with the spirit and intent of the rent laws. See Matter of 305 Realty NY LLC, wherein the Court found that although it may seem unfair to the owner that the tenant was able to occupy the apartment and continue to pay the reduced rent of $1.00, "it would be just as unfair to raise the tenant's rent retroactively" because of the owner's failure to timely file the application for rent restoration. The Court found that, "here, equity does not weigh in petitioner[-owner]'s favor in that petitioner is requesting that the court remedy petitioner's error, not [the Agency's] mistake". Accordingly, the Commissioner finds that the owner's claim that the rent should be restored to May 1, 2008, more than seven years prior to the filing of the rent restoration application which was granted under Docket No. EN410061OR, is without merit and is merely self-serving.

Based on the foregoing, the Commissioner finds that the Rent Administrator properly and reasonably restored the rent effective February 24, 2016. Accordingly, the Petitioner's appeal is denied. The owner's PAR has not established any basis to revoke or modify the Rent Administrator's determination.

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: JAN 05 2024

Woody Pascal
Deputy Commissioner

[1] Matter of 305 Realty NY LLC v. DHCR, Supreme Court of the State of New York, County of Kings, Index No. 5044/2010; Matter of 98 Morningside, Inc., Admin. Review Docket No. BU410010RO; Matter of Highpoint Associates V, LLC, Admin. Review Docket No. XH410001RP.

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

Right to Court Appeal

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

There is no other method of appeal.

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IN THE MATTER OF THE ADMINISTRATIVE APPEAL OF

ADMINISTRATIVE REVIEW DOCKET NO.: LW910003RO

GEORGE MANAGEMENT

PETITIONER

RENT ADMINISTRATOR'S DOCKET NO.: LM910064OR

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ORDER AND OPINION DENYING PETITION FOR ADMINISTRATIVE REVIEW

On November 8, 2023, the above-named petitioner-owner timely filed a Petition for Administrative Review ("PAR") against an amended order[1] the Rent Administrator issued on October 6, 2023 (the "Order"), concerning the housing accommodation known as 188 Voss Avenue, Apt [redacted] Yonkers, NY, wherein the Rent Administrator denied the owner's application for a rent restoration.

The Commissioner having reviewed the PAR, 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 find that the petitioner's appeal does not have merit and should be denied.

In the PAR, the owner-petitioner requests that the Order be reversed and alleges, in substance, that: (1) the kitchen, living room, and bedroom windows are now in working condition, and the window balances, locks and all defective parts have been replaced and fixed; (2) the bedroom window leak was not part of the order to restore service and the bedroom

[1] The amended order issued on October 6, 2023 corrected the original order issued on October 5, 2023 under Docket No. LM910064OR wherein the amended order found that the kitchen window was restored based upon an Agency inspection conducted on September 29, 2023. The Rent Administrator noted that all other parts of the order issued on October 5, 2023 remain unchanged and that the amended order supersedes the previous order issued on October 5, 2023, and the new issuance date of October 6, 2023 is in full force and effect.

window leak happened during the "highest recorded rainfall in a single day on September 29, 2023", resulting in water finding intrusion point at the top of the window frame (it was allegedly sealed from the outside the next day). The tenant was offered an opportunity to respond by the service of the PAR on November 21, 2023.

A review of the record below reveals that on January 25, 2022, the tenant applied for a decrease in the legal regulated rent as a result of a reduction in services. On June 1, 2022, under Docket No. KM910140S, pursuant to Sections 2502.6 and 2507.6 of the Emergency Tenant Protection Regulations, the subject rent decrease was granted, wherein the Rent Administrator determined that the apartment was uninhabitable and reduced the rent to $1.00 per month, effective March 28, 2022, the date of the inspection. The Rent Administrator, after a review of all parties' submissions and based on the inspection report, found that the apartment was uninhabitable due to the severity of the conditions in the apartment including defects relating to the windows apartment wide, bathroom wiring, bathroom, and walls apartment wide; the Rent Administrator noted that the tenant was residing in a hotel at the time of inspection and that there was a Notice of Mold Remediator Company License issued by the NYS Department of Labor posted. The Rent Administrator also advised that the owner may file an Owner's Application for Rent Restoration "upon restoration of the apartment to a habitable condition and notification to the tenant that they may resume occupancy of the subject apartment."

On January 23, 2023, under Docket No. LM910064OR, the owner applied for restoration of rent, claiming that the services had been restored. The tenant was offered an opportunity to respond by service of the owner's application on February 10, 2023. The tenant responded, claiming that mold was remaining as found by MI&T Mold Inspection & Testing, that the windows were never repaired and that there was a hole in the ceiling in the kitchen. On July 19, 2023, a copy of the tenant's response was provided to the owner. On August 18, 2023, the owner responded, asserting, in pertinent part, that the windows have been repaired and work as intended.[2]

On September 8, 2023, DHCR requested an inspection of the Premises. On September 29, 2023, the inspection was completed. The inspector found that two right side windows in bedroom #1 were leaking water into the apartment from the upper frames, and that the right living room window was loose in the frame.[3]

Based upon the Agency inspection conducted on September 29, 2023, the Rent Administrator denied the owner's application to restore rent, finding that the conditions cited in the order reducing rent had been partially corrected, with the windows in the bedroom 1 and living room as not restored. The Rent Administrator restored the rent to the level prior to the issue date of the underlying rent reduction order, Docket No. KM910140S, plus any lawful increases, effective September 29, 2023, the date of the physical inspection that found the

[2] The owner also claimed that mold remediation was performed and that on March 6, 2023, the City of Yonkers Department of Building issued a certificate of completion, however, such certificate was not attached as claimed.
[3] The inspector reported that the apartment appeared to be in a habitable condition and there were no vacate orders/violations posted on apartment entry or in building. The inspector also reported that the other conditions found not maintained under Docket No. KM910140S, including the kitchen windows, bathroom wiring, bathroom walls/ceiling, and apartment walls were restored.

apartment habitable. The Rent Administrator also simultaneously reduced the rent by the percentage of the most recent guideline adjustment effective September 29, 2023. Further, the Rent Administrator advised the tenant to refer the allegation of mold in the apartment to the NYS Department of Health.

Pursuant to Section 2503.4 of the Emergency Tenant Protection Regulations ("Regulations"), which governs Westchester County, 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 the required services cited in the rent reduction order have been restored. Section 2507.5(b) grants the Administrator the authority to conduct an inspection at any stage of a DHCR proceeding, and New York Courts have consistently held that the DHCR has broad discretion to decide if an inspection is necessary. Pursuant to DHCR Policy Statement 90-2, the Rent Administrator may rely on an Agency inspection when making a determination.

Based on the foregoing, the Commissioner finds that the Petitioner-owner has not presented any allegations of errors of law or fact to warrant reversal of the Rent Administrator's order. The Rent Administrator properly denied the owner's rent restoration application based on the inspection report by the Agency's impartial inspector which indicated that the above-mentioned conditions regarding the bedroom 1 and living room windows were found not corrected at the time of inspection on September 29, 2023. The Commissioner further finds that 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 inspections was reasonable. See the 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 owner is advised to file a fresh "Owner's Application to Restore Rent," 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:

JAN 05 2024

Woody Pascal
Deputy Commissioner

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

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IN THE MATTER OF THE ADMINISTRATIVE APPEAL OF :

ADMINISTRATIVE REVIEW
DOCKET NO.: LR210027RO

77 HALSEY LLC :

RENT ADMINISTRATOR'S
: **DOCKET NO.: KW210059OR**

PETITIONER

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ORDER AND OPINION DENYING PETITION FOR ADMINISTRATIVE REVIEW

On June 22, 2023, the above-named petitioner-owner filed a petition for administrative review (PAR) against an order issued on May 18, 2023, by the Rent Administrator concerning the housing accommodations known as 77 Halsey Street, Brooklyn, NY, wherein the Administrator denied the owner's rent restoration.

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, contending that *de minimis* conditions do not warrant rent reductions pursuant to Section 2523.4(e) of the Rent Stabilization Code[1] (RSC or the Code); that the Rent Administrator found certain conditions not restored in the rent restoration proceeding below, however, such conditions have minimal impact on the tenant, do not affect the use and enjoyment of the premises, and may exist despite regular maintenance of services; that it is unclear how a squeaky stair affects the tenant's use and enjoyment of the premises; that a temporary dirty floor cannot be construed as a reduction in services; that the common areas of a building have other residents and visitors passing through

[1] The RSC defines *de minimis* conditions as "Certain conditions complained of as constituting a decrease in a required service may be ***de minimis in nature***, and therefore do not rise to the level of a failure to maintain required service for the purposes of this section. Such conditions are those who have minimal impact on tenants, do not affect the use and enjoyment of the premises, and may exist despite regular maintenance of services." (Emphasis added).

them daily and thus completely impossible to be completely free of dirt; and that the allegation is clearly *de minimis* and the DHCR must reverse the rent restoration order.

The owner argues also that the Rent Administrator acted in an arbitrary and capricious manner and the order was counter to considerations of equity and fair dealing: by disregarding the owner's proof that the services were being maintained; by failing to state how it was determined that the stairs "squeak" when stepped on; and by denying the owner's rent restoration application for services that were not part of the prior rent reduction order, in that in the initial rent reduction order under Docket No. IU210034B, it was indicated in the inspection report that, "The stairs squeak when stepped on and unworkmanlike repairs were done to the balusters-balusters need to be sanded and painted-TRIP HAZARD PRESENT", but the subject rent restoration order, Docket No. KW210059OR, added that "carpet is sinking at the nose of the stair thread", a condition that was not part of the underlying order, and that the DHCR is precluded from issuing a rent reduction order on services not initially alleged in the tenant's complaint and not a part of a prior order.

The owner submitted a supplement to its PAR, dated July 17, 2023, reiterating their PAR claims.

The tenant, conversely, made a submission dated July 21, 2023, alleging that the owner's *de minimis* argument is being raised for the first time on PAR and cannot thus be considered; that the conditions are not *de minimis*, as they have serious impact on the tenant's health, safety and ability to enjoy the tenant's apartment; that there is non-soundproofed partition (sheetrock) and wainscoting along the stairs and every squeaky step is heard in the tenant's apartment, seriously impeding the tenant's ability to rest, heal and quietly enjoy the subject apartment; that the tenant is awakened at all times of the night when the stairwell is in use; that the lobby and the vestibule were not properly maintained, similarly the stairs and common areas too, which are also not safe; that after the superintendent "cleaned" and vacuumed the carpet, spider webs, dirt, dust and stains remain; and that when the stairs are stepped on, squeaks occur and the areas "give" and the squeaks are heard through the stairwell.

Pursuant to Section 2523.4 of the Rent Stabilization 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 a complete review of the entire record, the Commissioner finds that the owner's petition should be denied.

In the initial proceeding under Docket No. IU210034B, on September 21, 2021, the Rent Administrator issued a rent reduction order, finding a decrease in various services, pursuant to the Agency's inspection of March 05, 2021, supported by photographic evidence, wherein the inspector observed the following conditions not maintained:

- Inadequate janitorial service in the vestibule as the vestibule needed to be properly swept and mopped.
- Inadequate janitorial service throughout the building stairs as the carpet on stairs needed to be properly vacuumed.
- Inadequate janitorial service throughout the building hallways as the carpet on stairs needed to be properly vacuumed.
- The stairs squeaked when stepped on and unworkmanlike repairs were done to the balusters. The balusters needed to be sanded and painted. And TRIP HAZARD was indicated as present.

On November 10, 2022, the owner commenced the rent restoration (OR) proceeding herein below, under Docket No. KW210059OR. The owner's OR application was served on the tenant on December 2, 2022, and by submission dated December 8, 2022, the tenant disagreed with the owner.

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 record below shows that the Rent Administrator requested an Agency inspection of the conditions found not maintained below, and that the inspection was conducted on April 27, 2023. The inspector's report indicated the following:

- Inadequate janitorial service in the vestibule. Evidence of dirt/dust and spiderweb.
- Inadequate janitorial service on the stairs between the 1st and 2nd floors. Area needs to be vacuumed properly.
- Inadequate janitorial service in the 1st floor hallway carpet. Evidence of dust/stains on the carpet leading to the stairs. Carpet needs to properly vacuumed/shampooed.
- The stairs squeaked when stepped on and the carpet is sinking at the nose of the stair thread, constituting a trip hazard present. However, the balusters were properly repaired.

Based on the inspector's report, the Rent Administrator denied the owner's rent restoration application on May 18, 2023, finding that the janitorial services in the vestibule, stairs, hall, and the stair condition were not restored.

Based on the foregoing, the Commissioner finds that the owner's arguments herein lack merit and are deemed merely self-serving as it is obvious that the items found not maintained in the underlying proceeding have not been resolved by the owner, as validated by the Agency's impartial inspector, not a party to the proceeding(s), who observed the continuous decreased

conditions during the inspection of April 27, 2023. Also, the owner's *de minimis* argument is not supported by the record, which did not indicate that the necessary cleaning was simply the everyday cleaning of the areas, and further, such areas in need of cleaning were not in discrete areas, but in common and highly visible areas. Furthermore, the Commissioner finds that the owner may not collaterally attack the rent reduction ordered under Docket No. IU210034B by way of this appeal proceeding as the Rent Administrator's order under Docket No. IU210034B has not been appealed and is therefore final and binding on all parties.

Nevertheless, the Commissioner clarifies that the underlying stair condition found not restored is for the squeaky stairs as squeaky stairs is the original condition found not maintained at the time of the underlying rent reduction ordered under Docket No. IU210034B. The carpet sinking at the nose of the stair tread does not form the basis of the underlying rent reduction order. Instead, the carpet sinking condition is noted as being observed by the Agency inspector at the time of the inspection on April 27, 2023. Accordingly, the owner is directed to correct such carpet sinking trip hazard condition within thirty (30) days from the issue date of this order. If the owner fails to make repairs, the tenant(s) may file a new complaint for same, if warranted.

Based on the foregoing, the Commissioner finds that the Rent Administrator's order remains in full force and effect, and the owner's PAR has not established any basis to modify or revoke the Rent Administrator's determination.

The Commissioner notes that the owner may file a fresh rent restoration application, if the facts warrant. Also, the tenant may file a fresh complaint regarding any new issue(s), if the facts warrant.

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:

FEB 09 2024

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

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

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IN THE MATTER OF THE ADMINISTRATIVE APPEAL OF

ADMINISTRATIVE REVIEW DOCKET NO.: LT610030RT

[redacted]

PETITIONER

RENT ADMINISTRATOR'S DOCKET NO.: KV610008OR

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ORDER AND OPINION GRANTING IN PART PETITION FOR ADMINISTRATIVE REVIEW

On August 30, 2023, the above-named petitioner-tenant timely re-filed a Petition for Administrative Review ("PAR") against an order the Rent Administrator issued on July 6, 2023 (the "order"), concerning the housing accommodation known as 1555 Grand Concourse, Apt [redacted] Bronx, New York, wherein the Rent Administrator granted the owner's application for a restoration of rent, effective November 7, 2019.

The Commissioner has reviewed the record and carefully considered that portion relevant to the issues raised by this appeal.

In the PAR, the tenant seeks to reverse the Rent Administrator's order. The tenant asserts, in sum, 1) that the subject order was issued after a housing court decided on December 16, 2022, that the tenant was overcharged based on an "illegal 2019 rent increase"; 2) that the housing court order affects the months covered by the subject order, and to permit the subject order to "co-exist creates confusion"; 3) by requiring the tenant to repay rent pursuant to the subject order is unfair; 4) that the owner has not offered the tenant a renewal lease; and 5) that the tenant and their family could not re-enter their apartment in 2019 after the fire and instead lived in a homeless shelter. The tenant further contends that the partial Vacate Order was in effect from October 18, 2019 to March 15, 2021, and that the tenant was not permitted to re-enter the subject apartment due to both a NYC Department of Housing Preservation and Development ("HPD") partial Vacate Order and a New York City Department of Buildings ("DOB") full vacate order. The tenant submits, *inter alia*, a December 16, 2022 Civil Court, Bronx County Housing Court

Decision/Order assigned L &T Index No. 17283/20 ("Housing Court Decision") which found the owner overcharged the tenant in the amount of $191.67 per month from December 1, 2018 to December 16, 2022, and an undated printout for HPD Vacate Order # 150509 which listed an effective date of October 18, 2019 and a rescission date of March 15, 2021.

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

Pursuant to New York City Rent Stabilization Code ("RSC" or "the Code") Section 2523.4, 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 services. Where a hazardous condition causes a tenant to vacate their apartment, following a complaint of decreased services, the DHCR is empowered, pursuant to Section 2522.6 of the Code, to issue an order reducing a tenant's rent to a nominal amount until the landlord restores the premises to a habitable condition. It is the DHCR'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.

It is the general practice of the Agency to restore the rent for rent stabilized apartments effective the first day of the month following the date the tenant was served with the rent restoration application. However, DHCR's policy and practice further dictates that if an owner restores a fire-related damaged apartment to habitability after a $1.00 order has been issued and the tenant advises that occupancy has resumed, the Rent Administrator may grant the owner's rent restoration application to the level in effect prior to the date of the fire, effective the date the tenant is restored to occupancy. On the contrary, the failure to file a timely rent restoration application may affect the effective date of the rent restoration.

A review of the record reveals that on November 25, 2019, the tenant's legal regulated rent was established by the DHCR as $1.00 per month, effective October 4, 2019 under Docket No. HW610010S, upon the Rent Administrator's finding that a fire occurred on October 4, 2019 which caused the tenant to vacate the apartment involuntarily, and that a vacate order for the subject apartment was still active.

In the proceeding below, on October 3, 2022, the owner, by application, sought to restore the rent based on the owner's assertions therein that the tenant was restored to occupancy on November 6, 2019. The owner included with their application, *inter alia*, an HPD letter dated November 7, 2019 addressed to the owner which indicated, in relevant part, that based on an inspection conducted on November 6, 2019, the subject apartment, [redacted] was found habitable and that the subject apartment had been removed from Vacate Order # 150509, however, a Department of Buildings ("DOB") Vacate Order for all or part of the premises remained in effect at that time, and that the affected apartments may not be re-occupied until this Vacate Order is rescinded by DOB; and a letter in regards to the underlying reduction order, Docket No. HW610010S and dated November 20, 2019 from [redacted], Housing Specialist, advising DHCR that the tenant had been restored to possession in "apartment [redacted] on November 7, 2019. The Commissioner notes that the subject apartment is [redacted] and further, the owner did

not attach a copy of the owner's notification to the tenant of the availability of the restored apartment with the proof of mailing.

The tenant was afforded an opportunity to respond by service of the rent restoration application ("Initial Notice") on October 17, 2022. On October 28, 2022, the tenant responded, in substance, that there was an open "HPD rent-impairing violation" along with other active DOB violations; that they had been paying rent at the "full rate" for many months; that the owner "was approved for ERAP at the full monthly rent in March 2022"; and that the owner is attempting to lift the rent reduction order now because the tenant "fought them in housing court."

Based on the record, the Rent Administrator, on July 6, 2023, granted the owner's rent restoration application finding that the conditions or violations upon which the order was issued reducing the rent (Fire Damage and/or Health Safety Condemnation) had been corrected, and established November 7, 2019, as the effective date of the order. The Administrator noted that the owner stated the apartment was restored for occupancy on November 6, 2019. The Administrator further noted on page two of the order, that the evidence revealed that on November 25, 2019, HPD partially rescinded Vacate Order # 150509 for apartment [redacted] based on inspections conducted on November 6, 2019; that the Vacate Order was sufficiently abated for the subject apartment; and that a review of HPD and DOB records showed there were no open vacate orders for the subject premises.

At the outset, the Commissioner notes that, contrary to the tenant's assertions in the petition, there is nothing inconsistent or inappropriate with the subject order restoring the rent after the Rent Administrator found that Vacate Order # 150509 was rescinded. Furthermore, the fact that the tenant has obtained some type of remedy in a court of competent jurisdiction does not preclude DHCR from issuing a rent restoration order when it is found that an owner has restored required services as DHCR has concurrent jurisdiction with the courts over these matters. Accordingly, the tenant fails to provide a basis to revoke or modify this portion of the Rent Administrator's determination.

However, while the Commissioner finds that the Rent Administrator correctly determined that the Vacate Order # 150509 was rescinded that had rendered the subject premises uninhabitable, the Rent Administrator inadvertently established November 7, 2019, as the effective date of the order herein under appeal.

Foremost, the Commissioner notes that it is the policy of the Agency that an owner is required to complete an application for rent restoration upon restoration of the apartment to a habitable condition and notification to the tenant that they may resume occupancy of the subject apartment, and that a timely filing is essential for the tenant's rent to be restored as of the date of re-occupancy. In this case the Commissioner finds that the evidence shows that the owner delayed in filing the instant application to restore the rent more than two years and ten months after the owner claims that the tenant resumed occupancy on November 6, 2019 and after the Rent Administrator granted the tenant's rent reduction application on November 25, 2019 under Docket No. HW610010S (the owner's instant rent restoration application was filed on October 3, 2022). Moreover, the record is devoid of evidence indicating that the owner provided a copy of

the owner's notification to the tenant of the availability of the restored apartment with the proof of mailing.

The Commissioner finds that the tenant should not be made to bear the brunt of the owner's choice to not file a rent restoration application for almost three years from the time that the owner claims the tenant resumed occupancy on November 6, 2019 (per the owner's filed rent restoration application). This Agency has a duty to ensure that its decisions are not inconsistent with the spirit and intent of the rent laws. See Matter of 305 Realty NY LLC v. DHCR, Supreme Court of the State of New York, County of Kings, Index No. 5044/2010, wherein the Court found that although it may seem unfair to the owner that the tenant was able to occupy the apartment and continue to pay the reduced rent of $1.00, "it would be just as unfair to raise the tenant's rent retroactively" because of the owner's failure to timely file the application for rent restoration. The Court also found that, "here, equity does not weigh in petitioner[-owner]'s favor in that petitioner is requesting that the court remedy petitioner's error, not [the Agency's] mistake." Accordingly, the Commissioner finds that the rent should not have been restored to November 7, 2019, almost three years prior to the owner's filing of their rent restoration application.

In light of the foregoing, the Commissioner finds that the effective date, November 7, 2019, as set in the underlying order under Docket No. KV610008OR, to be incorrect warranting a modification. The Commissioner notes that in the underlying rent reduction proceeding assigned Docket No. HW610010S, the Agency's record shows that the HPD Vacate Order for the subject premises was still open at the time of the issuance of the rent reduction order on November 25, 2019.[1] Furthermore, here the Commissioner notes that a fire occurred on October 4, 2019 for which the rent was set at $1.00 on November 25, 2019 (effective October 4, 2019) to maintain the landlord and tenant relationship, and that the owner failed to file a rent restoration application until October 3, 2022, which are facts that are undisputable.

Based on the foregoing, the Commissioner finds that the Rent Administrator's order under Docket No. KV610008OR is herein modified to state that the rent is restored to the level in effect prior to the rent reduction order plus any lawful increases which are collectible from the effective date of this order, effective October 3, 2022, the date the owner filed the instant rent restoration application asserting that services had been restored.[2] The Rent Administrator's order, as modified herein, is so otherwise affirmed.

The Commissioner notes that the subject Rent Administrator's order was addressing the subject rent restoration order under Docket No. KV610008OR. The tenant is advised to file a fresh Application for a Rent Reduction Based Upon Decreased Building-Wide Services(s), and/or an Application for a Rent Reduction Based Upon Decreased Service(s) – Individual Apartment, if the facts so warrant. With regard to the tenant's claim that the owner failed to offer the tenant a renewal lease, the tenant is advised to file with this Agency a "Tenant's Complaint of Owner's Failure to Renew Lease and/or Failure to Furnish a Copy of a Signed Lease" (Form RA-

[1] The Commissioner notes that the Administrator's order under Docket No. HW610010S, which granted the tenant's rent reduction application on November 25, 2019, was not appealed and is therefore final and binding on the parties.
[2] Restoration is limited to the rent reduction granted under the related docket number, and has no effect on other reductions, if any, which may remain in effect.

90), if the facts so warrant. With regard to the tenant's claim that the owner overcharged the tenant, the tenant is advised to file with this Agency a "Tenant's Complaint of Rent and/or Other Specific Overcharges in a Rent Stabilized Apartment" (Form RA-89), 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 granted in part, and the Rent Administrator's order is modified in accordance with this Order and Opinion, and that the Rent Administrator's order is so otherwise herein affirmed, and further,

ORDERED, that the owner is directed to repay any excess rents which may have become due to the subject tenant as a result of this determination in equal monthly installments, over the course of the next twelve months.

ISSUED:

FEB 09 2024

Woody Pascal
Deputy Commissioner

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

STATE OF NEW YORK
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IN THE MATTER OF THE ADMINISTRATIVE APPEAL

ADMINISTRATIVE REVIEW DOCKET NO.: KN110002RT

[redacted]

PETITIONER

RENT ADMINISTRATOR'S DOCKET NO.: HR110138OR

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ORDER AND OPINION, GRANTING IN PART, PETITION FOR ADMINISTRATIVE REVIEW

On February 1, 2022, the above-named Petitioner-tenant filed a Petition for Administrative Review ("PAR") against HR110138OR, an order the Rent Administrator issued on December 29, 2021 (the "order"), concerning the housing accommodation known as 140-11 Ash Avenue, Apartment [redacted], Flushing, New York, wherein the Rent Administrator granted the owner's rent restoration application effective May 1, 2019, finding that the fire damage upon which orders were issued reducing rent to $1.00 per month under Docket Nos. EW110175S and FO110030S, were restored and the subject tenant resumed occupancy.

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 seeks a reversal of the Rent Administrator's order averring there are both errors in fact and law in the order, in that: that the rent was restored as of May 1, 2019, but the complaining tenant, [redacted] was not restored to occupancy until April of 2020; that after the apartment was rendered uninhabitable in November 2016 due to fire damage, and a vacate order was issued on January 18, 2017, the owner failed to make repairs and restore the apartment to a habitable condition, and that when the owner finally repaired the conditions, the owner did not restore the apartment to its previous condition but rather added a room, changed the closets, added electrical outlets, and set the apartment up as two bedrooms or as if the tenant would not return; that an Agency inspection revealed such defects and the DHCR ordered the owner to restore the apartment to its previous condition under the Complaint of Harassment proceeding (Docket No. GN110003HL) and Affirmation of Non-Compliance

proceedings (Docket Nos. GT110011NC and GT110012NC); that pursuant to proceedings under Docket Nos. GN110003HL, GT110011NC, and GT110012NC, during the parties' conference held on March 5, 2019, it was agreed in the parties' stipulation that the owner would pay a penalty and complete repairs and restore the apartment to habitable conditions immediately; that an inspection was conducted on April 23, 2019, wherein the inspector reported several conditions that were not repaired in a workmanlike manner, notably, the uneven floor was noted to be a trip hazard and that the windowsills were not replaced; that thereafter on December 29, 2021, another inspection was conducted and the DHCR inspector did not only observe the new conditions but observed similar defects to the floors as reported in the inspection conducted previously; that restoring the rent means the DHCR is declining from enforcing the terms of the stipulation, thereby rewarding the owner for non-compliance; and that while the inspector did find the apartment restored to habitability, it was not restored to habitability for the tenant as the floor hazard creates a fall risk, is unsafe, and the reason the tenant did not reside in the subject apartment, and that the tenant was compelled to return due to safety concerns resulting from Covid-19 pandemic. The tenant requests that the owner be directed to correct the conditions agreed to in the stipulation, including repairing the floor in a workmanlike manner.

The owner did not submit a response to the Petitioner's appeal during this administrative review, although afforded with an opportunity to do so on February 14, 2022.

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

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] 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.

DHCR's policy and practice further dictates that, in general, if an owner restores a fire-related damaged apartment to habitability after a $1.00 order has been issued and the tenant advises that occupancy has resumed, the Rent Administrator may grant the owner's rent restoration application, restoring the rent 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 proceedings under Docket Nos. EW110175S and FO110030S, on January 10, 2017 and April 12, 2017, respectively, the Rent Administrator established the legal regulated rent as

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

$1.00 per month as of November 12, 2016, the date of the fire which caused the tenant to vacate the subject apartment involuntarily.

A review of the Agency's records reveal that the subject tenant filed with this Agency a Tenant's Statement of Complaint(s) – Harassment, Docket No. GN110003HL, on February 5, 2018. Thereafter on August 14, 2018, the subject tenant also filed Tenant Affirmations of Non-Compliance, Docket No. GT110011NC (relating to Docket No. FO110030S) and Docket No. GT110012NC (relating to Docket No. EW110175S). Agency inspections were conducted at the subject premises under the tenant's harassment proceeding, Docket No. GN110003HL, on August 28, 2018, November 13, 2018, and April 23, 2019. The inspection report from the April 23, 2019 inspection disclosed that: the wall erected between the kitchen and the dining room had been removed and had been returned to the original appearance; the side walls to the kitchen entrance have been replaced with no visible damage to the kitchen area or cabinets therein (the tenant claimed the walls were not exactly where they previously were); the linen closet was restored (tenant claiming the shelving was not strong enough); that the foyer area floor had been repaired and is no longer uneven or buckling, however, the floor was not level, there was no trip hazard evident pertaining to the foyer flooring; the entry to the bedroom and living room were approximately 1" lower than the foyer floor, creating a trip hazard; the windowsills have been covered with ceramic tiling and there were peeling paint and plaster and stains on the window frames in the bedroom and living room; no odor was noticeable in the subject apartment; the cold water pressure in the kitchen and bathroom was adequate; the bathroom sink, vanity, and bathtub have been replaced (the toilet paper holder and towel holder were not replaced in the bathroom); no evidence of defective wiring/fixtures or lighting fluctuation throughout the apartment at the time of inspection; the tenant claimed that the refrigerator is larger than the one they previously had and that the stove was smaller, and that the sink in the kitchen had two basins and now only has one.[2]

Subsequently, on June 24, 2019, the owner filed the instant application to restore rent asserting that the owner had restored the conditions for which rent was reduced, and that the tenant was restored to occupancy as of April 1, 2019. The owner's application was accompanied by a report of an inspection conducted by this Agency on April 23, 2019 under Docket No. GN110003HL.

The owner's rent restoration application along with the above-mentioned report were sent to the Petitioner-tenant on July 5, 2019. On July 25, 2019, the Petitioner responded and disputed the owner's claim that the subject apartment was restored and raised various issues that were still present in the apartment, specifically, the flooring condition which the tenant claimed was a trip hazard, and issues with the kitchen cabinets, linen closet, windowsills, odor, fire escape gate, appliances, kitchen sink, and the bathroom bathtub and vanity.

On February 7, 2020, the owner, in support of their rent restoration request, provided a copy of the "recent Dismissal Request (November 07, 2019)" that was conducted on November 29, 2019 and December 6, 2019 by the New York City Department of Housing Preservation and Development ("HPD"), wherein violations in the subject apartment were "dismissed", as well as a copy of the DHCR's inspection report from April 23, 2019 under Docket No. GN110003HL.

[2] The Commissioner notes that Docket Nos. GN110003HL, GT110011NC, & GT110012NC were subsequently closed on March 15, 2021.

Thereafter, the Rent Administrator requested an inspection of the apartment under the subject rent restoration proceeding, Docket No. HR110138OR. On March 8, 2021, an inspection was conducted at the subject apartment by the Division's impartial inspector. According to the inspection report, the inspector noted that at the time of inspection: the apartment entry door and frame needed painting; no defects to the apartment entry door lock; no evidence of defects on the ceiling/wall except the living room window and radiator had evidence of peeling paint and plaster and the work done on the living room baseboard needs to be done in a workmanlike manner as they needed to be painted; evidence of leak stains on the closet by the bathroom shelves; no evidence of defects on the floor except unlevel floor at the entrance of the living room and bedroom, creating a trip hazard; evidence of defective light fixture in the bathroom and dining area and a defective outlet in the living room; adequate hot/cold water supply in the kitchen; no defects on the kitchen cabinets; no defects to the single stainless steel sink/faucet (inspector could not ascertain if double enamel sink was previously provided); stove/oven provided, but the stove appeared smaller than the space provided; no defects to the refrigerator and the inspector could not ascertain the size of the refrigerator because the previous size was unknown, the refrigerator appeared to stick out blocking the way; adequate hot/cold water supply in the bathroom; no evidence of broken vanity; toilet working properly; work done on the floor around the bathtub needed to be done in a workmanlike manner, there was evidence of mismatched tiles; no defects to the bathroom sink/faucet; and no evidence of defective windows in the apartments, the bedroom windowsill repaired in a workmanlike manner, however, there was evidence of a missing fire escape gate. The inspector also reported that at the time of inspection, the tenant asserted that the tenant vacated on November 12, 2016 and moved in in April of 2020.

The Administrator requested additional information from the owner on March 19, 2021 and again on April 21, 2021, requesting that the owner provide a copy of the owner's notification to the tenant of the availability of the restored apartment, and that the notice should be dated and proof of mailing to the tenant to the tenant's current address; the date the tenant resumed occupancy; and if the tenant surrendered the apartment, a letter from the tenant relinquishing their rights to the subject apartment.

On June 11, 2021, the owner responded to the Rent Administrator's request for information and claimed that all services "have long been restored to the unit" and that several inspection reports were issued as early as 2019.

The record reveals that further requests were sent to the owner on June 15, 2021 and July 27, 2021, again requesting the owner to provide the Agency with a copy of the owner's notification of the availability of the restored apartment, the notice dated and proof of mailing to the tenant's current address should be provided; and the date the tenant resumed occupancy. Attached was a copy of the tenant's response received on June 4, 2021, wherein the tenant claimed to have returned to the apartment in April of 2020.

In the owner's August 16, 2021 response, the owner by counsel, claimed that the tenant resumed occupancy "at some point after August 24, 2019, but the owner is not aware of the exact date." The owner attached a copy of a letter purported to have been from the owner to the tenant dated April 24, 2019, wherein the owner advised the tenant that the fire damage in the apartment was

repaired and ready to be moved back in. The letter was addressed to the tenant at the subject premises, and the owner did not provide evidence that the letter was mailed to the tenant as advised by the Rent Administrator in the Request for Additional Information.

The Agency also requested from the tenant clarification regarding the move in date based on the tenant's claim that the tenant returned to occupancy in April of 2020 as opposed to April 2019 as reported by the owner. In the tenant's response to the information being requested, the tenant asserted that although the owner repaired conditions, perhaps to comply with DHCR Stipulation of Settlement and to avoid further penalty under Docket Nos. GN11003HL, GT110011NC, and GT110012NC, such repairs were not performed in a "proper fashion". The tenant further claimed that she could not safely reside in the apartment because there were defects that created a fall risk (trip hazard) to the tenant. The tenant further asserted that they moved back into the apartment in April of 2020 due to safety concerns arising from the Covid-19 pandemic, and that the flooring condition had not been repaired, and in fact deteriorated. The tenant also submitted a response dated September 20, 2021, wherein the tenant, by counsel, asserted that the tenant and the tenant's counsel did not receive the letter the owner purported to have provided to the tenant notifying of the habitability of the subject premises, and that the tenant has communicated their dissatisfaction with the repairs and requests the owner to fix the same repeatedly.

On September 30, 2021 and October 28, 2021, the Rent Administrator again requested that the owner provide proof of mailing for the purported letter mailed to the tenant regarding the habitability of the subject premises mailed to the tenant's current address, as well as attached the tenant's response dated September 20, 2021. The owner did not provide the requested proof of mailing, or a letter addressed to the tenant at their current address.

The Rent Administrator on December 29, 2021, granted the owner's application to restore rent under Docket No. HR110138OR, effective May 1, 2019. The Rent Administrator, however, directed the owner to restore the service issues reported during the inspection on March 8, 2021 within thirty (30) days of the issuance of the order, including the apartment entry door, paint/plaster apartment wide, leaks/stains, floors apartment wide, electric outlet, windows, and stove/oven. The Rent Administrator advised the tenant to file a Form RA-81 with the Agency if the owner failed to correct the conditions as directed. The Commissioner notes that the tenant has not filed a fresh services application, Form RA-81, with this Agency as advised.

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 in part.

The Commissioner notes that there is no evidence that the owner provided the Agency with the date the tenant resumed occupancy as requested, rather, the owner claimed that it might have been sometime after August 24, 2019 as the owner was not sure of the actual date. Remarkably, the Commissioner finds that this date contradicts the owner's initial claim in their rent restoration application that the tenant returned April 1, 2019. The Commissioner further finds that the record is devoid of any evidence that the owner provided the Agency with proof of mailing said letter to the tenant as requested by the Administrator.

Thus, in this case, the owner failed to submit any rebuttal response to contradict the tenant's claim that the tenant returned in April of 2020, the owner failed to provide proof of mailing the notice to the tenant advising the tenant that the apartment had been restored and ready for the tenant to reoccupy, and the owner failed to object to the tenant's claims in this appeal that the subject tenant resumed occupancy in April of 2020. Accordingly, the Commissioner finds that the effective date of May 1, 2019, as set in the underlying order under Docket No. HR110138OR, is unsubstantiated, thereby warranting a modification.

Based on the foregoing, the Commissioner finds that the tenant's PAR is granted in part, thereby modifying the Rent Administrator's order under Docket No. HR110138OR to reflect an effective date of April 1, 2020, being the first day of the month the tenant claims to have returned to the subject apartment and which the owner fails to dispute. 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.

As for the tenant's claims regarding the services found not maintained at the time of the Agency inspections, the Commissioner notes that such claims should be raised in a fresh reduction of services application with this Agency (Form RA-81 & Form RA-84). The subject underlying rent reduction proceeding was related to the $1.00 orders issued under Docket Nos. EW110175S and FO110030S. Such orders establishing the legal regulated rent at $1.00 per month was for the purpose of maintaining the landlord/tenant relationship between the parties until such time as the apartment is restored to habitability and the subject tenant restored to occupancy or refused an offer to reoccupy the subject apartment. In this case, the record reveals that the tenant reoccupied the subject premises in April of 2020. The Commissioner therefore finds that the Rent Administrator properly restored the rent as it relates to the $1.00 orders, Docket Nos. EW110175S and FO110030S, and directed to the owner to repair the conditions found not maintained at the time of the Agency inspection on March 8, 2021 within thirty (30) days of the issuance of the order, and for the tenant to file a new services application if the facts warranted.

Accordingly, the Commissioner advises the tenant to file a fresh service reduction application(s) (Form RA-81 and/ Form RA-84) with this Agency, should the facts warrant. The tenant may also file a Tenant's Statement of Complaint(s) – Harassment (Form 60-H) 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, and that the Rent Administrator's order, Docket Number HR110138OR, is hereby modified to reflect an effective date of April 1, 2020 in accordance with this Order and Opinion, and the Rent Administrator's order, Docket Number HR110138OR, is herein so otherwise affirmed.

ISSUED:

FEB 23 2024

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

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IN THE MATTER OF THE ADMINISTRATIVE APPEAL OF

ADMINISTRATIVE REVIEW DOCKET NO.: LV110008RT

[redacted]

PETITIONER

RENT ADMINISTRATOR'S DOCKET NO.: KU110072OR

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ORDER AND OPINION DENYING PETITION FOR ADMINISTRATIVE REVIEW

On October 12, 2023, the above-named Petitioner-tenant timely filed a Petition for Administrative Review ("PAR") against an order the Rent Administrator issued on September 8, 2023 (the "Order"), concerning the housing accommodation known as 183-11 Hillside Ave., [redacted] Jamaica, NY 11432 (the "Premises"), wherein the Rent Administrator granted the owner's application for rent restoration.

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.

The tenant requests a reversal of the Rent Administrator's order and contends, in substance, that (1) ceiling leaks still occur due to the roof not having been repaired; (2) ceiling problems in the bedrooms and hallway have not been restored; and (3) the tenant should not "be obligated" to provide access for inspection and repairs until the building roof is repaired. The owner was provided an opportunity to respond by service of the PAR on October 25, 2023.

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.

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 the rent "should be restored upon an owner's application, where there is a finding that a tenant failed to provide reasonable access and such access was necessary to make the repair."

Moreover, Section 2523.4(d)(2) of the Regulations states as follows: "If... an owner has attempted, but been unable to obtain access to the subject housing accommodation to correct the service or equipment deficiency, the owner should set forth such facts in the response. Upon receipt thereof, in order to facilitate the resolution of the complaint, the division may direct an inspector to accompany the owner or the owner's agent to the housing accommodation to determine whether such access is being provided. In order for the division to coordinate the inspection, the owner should indicate that access has been denied in the response submitted to the DHCR and should include copies of two letters to the tenant attempting to arrange for access. Each of the letters must have been mailed at least eight days prior to the date proposed for access, and must have been mailed by certified mail, return receipt requested."

The Commissioner notes that in the initial proceeding wherein the subject rent reduction was ordered, Docket No. ZL110004RP, the Rent Administrator, on November 30, 2012, granted the tenant a rent reduction based on a finding that at the time of an Agency inspection on October 19, 2022, there was evidence of: 1) Bedroom #1: large area on the ceiling, above the bed, that is patched and water stained. The area required proper plaster, sanding and the entire ceiling painted; 2) Bedroom #2: various areas of the ceiling have patches with stains and cracking paint. The ceiling requires proper plaster, sanding and paint. Closet ceiling has rough patches that requires proper plaster, sanding and painting. The wall on the left side of the window is water damaged and has peeling paint and plaster. The wall tested WET with the moisture meter; 3) Hallway: hallway ceiling is water stained and has a rough patch above apartment entry door. Area requires proper plaster, sanding and painting.

On December 19, 2012, the owner filed a PAR against the November 30, 2012 order, Docket No. ZL110004RP. On June 14, 2013, under Docket No. Docket No. AX110012RO, the PAR was denied.[1]

The records indicate that the owner commenced the rent restoration proceeding herein on September 26, 2022, where the owner alleged that the bedroom 2 and the hallway "have been

[1] The Commissioner noted therein Docket No. AX110012RO that NYC Department of Housing Preservation and Development (HPD) violations were issued, numbers 8630830, 8873031, 9087535, and 9087455. The Commissioner notes herein this instant PAR proceeding that such violations have been "closed" on HPD's database.

replastered and painted."[2] The tenant was served with the owner's rent restoration application on October 5, 2022.

On October 22, 2022, the tenant sent a letter to DHCR, claiming, in substance, that the Premises had leaks "no matter how many times" access for plastering and painting was allowed due to the roof issues, and that they would not allow access again, but only after they receive "valid certifications for the HPD and Court-Ordered roof-repair violations, which remain outstanding."

On January 25, 2023, an Agency inspection of the subject premises was conducted. At the time of the Agency inspection on January 25, 2023, the inspector reported that bedroom 2 ceiling and wall by the window had cracked, bubbling, and stained plaster (the moisture meter read dry), and the hallway ceiling had stains and defective paint.

In the additional correspondence dated January 31, 2023, the tenant noted that valid certifications were not provided regarding the entire roof and building exterior, and that the violations need to be corrected before the issues in the apartment are repaired. The owner was provided with copies of the correspondence from the tenant on February 15, 2023 and March 23, 2023.

On April 3, 2023, the owner provided a response, claiming that all roof repairs and exterior work were completed, attaching a letter from the contractor and a copy of HPD's violation report dated March 28, 2023, purportedly showing no violations relating to the "water leaks from the roof." The owner also provided a letter dated January 15, 2023, from Delta Contracting Group Inc, attesting that this company conducted "all the required exterior repairs including the roof" at the subject building. A copy of the response was served on the tenant on April 19, 2023.

On May 5, 2023, the tenant replied, asserting that the owner's statement about roof repairs was not true. On May 18, 2023, the owner was served with a copy of the tenant's reply.

In correspondence dated May 31, 2023, the owner claimed that HPD violation #8630820 issued on October 2, 2010 had been corrected and removed from the HPD database. The owner also provided copies of certified mail addressed to the tenant, including letters requesting access that were sent to the tenant via Certified Mail dated March 1, 2023 and March 15, 2023.

On June 22, 2023 the owner's response dated May 31, 2023 was served on the tenant. On July 10, 2023, the tenant responded, reiterating that the roof is the cause of the conditions inside the Premises and that the owner's submission is false, and that they would allow access "only after [the tenant] receive[s] valid certifications stating that the roof and building exterior has been repaired." The tenant also indicated that the owner placed access notices for repairs on the door, and claimed "harassment" actions by the owner.

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[2] The owner previously applied for a rent restoration, which was denied on July 15, 2022 under Docket No. KN110043OR; the Rent Administrator found that an inspection conducted on May 4, 2022 revealed that the Bedroom #1 services were restored, however, the Bedroom #2 and hallway services were not restored.

The Rent Administrator requested a "No Access" inspection and on July 11, 2023, the owner's representative from management, contractors and DHCR inspector appeared for the "No Access" inspection. The record shows that the tenant, as acknowledged, failed to provide access for the repair persons to correct the conditions during the Agency inspection on July 11, 2023, as scheduled. [3]

Subsequently, the Order was issued on September 8, 2023, granting the owner's rent restoration application. The Rent Administrator noted that there were no HPD violations for exterior/roof area and no violations retrieved for HPD #8630820, and that the tenant was obligated to provide access for repairs once external repairs are completed, and that the owner submitted evidence that repairs were completed, but that the tenant failed to provide access to effectuate repairs on July 11, 2023. The Rent Administrator also advised the tenant that they may file a harassment complaint if the tenant feels that they are being harassed by the owners or their employees (DHCR form RA-60H).

The Petitioner-tenant then filed the instant PAR, seeking a reversal of the Administrator's order.

On November 16, 2023, the owner provided the answer to the PAR, claiming that there was roof damage as a result of water tank replacement and façade and brick pointing work in the roof area that had been repaired. The owner also provided a letter from Delta Contracting Group Inc., dated November 1, 2023, asserting that they provided the required roof repairs. The owner repeated the request for access for the tenant's apartment to complete the repairs.

The tenant's response received on January 2, 2024, indicated, in substance, that (1) the documents submitted by the owner "do not constitute evidence that the roof was repaired" and do not "justify the occurrences of ceiling leaks" in the tenant's apartment; and (2) the ceiling leaks have not been addressed and affect the tenant's quality of life.

After a review of the underlying matter, the Commissioner finds that on appeal, the Petitioner-tenant has not presented any allegations of errors of fact or law against the Rent Administrator's determination that warrant the modification or reversal of the Rent Administrator's order granting the rent restoration.

Based on the foregoing, the Commissioner finds that the Rent Administrator, in accordance with Section 2523.4 of the Regulations and DHCR Policy Statement 90-2, properly relied on the evidence contained in the record and on the Agency's "No Access" inspection conducted on July 11, 2023, and correctly granted the owner a rent restoration. The Rent Administrator's determination was neither arbitrary nor capricious, and was supported by a rational basis in the record. A review of the record reveals that the tenant failed to provide

[3] The record reveals that the tenant was provided with a "Notice of Inspection – For Access" on June 27, 2023, advising the tenant that the tenant and owner were directed to be present at the apartment on July 11, 2023 between 10:00A.M. and 10:30A.M. so as to provide access for the purposes of attending to repairs and/or restoration of services, and that the failure of the tenant to keep the appointment would result in a determination based solely on the evidence presently in the record.

access at the time of the "No Access" inspection, although provided with notice that access was required to be provided for the purpose of attending to repairs and/or restoration of services.[4]

The Commissioner finds that the tenant's claims are without merit in this case.[5] 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 and/or a complaint of harassment with this Agency, 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:

FEB 23 2024

Woody Pascal
Deputy Commissioner

[4] The Rent Administrator properly noted that the owner provided evidence that exterior repairs were completed, and as such, access to the subject apartment was necessary in this case.

[5] The Commissioner notes that the HPD violations noted in PAR Docket No. AX110012RO were subsequently closed; HPD violations #8630820, #8873031, #9087535, & #9087455. The tenant may contact HPD in regard to any complaint concerning HPD, if the facts warrant.

State of New York
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Right to Court Appeal

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JAMAICA, NEW YORK 11433

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IN THE MATTER OF THE ADMINISTRATIVE APPEAL OF

ADMINISTRATIVE REVIEW DOCKET NO.: LX610017RO

OZ REALTY LLC

PETITIONER

RENT ADMINISTRATOR'S DOCKET NO.: LQ610117OR

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ORDER AND OPINION DENYING PETITION FOR ADMINISTRATIVE REVIEW

On December 19, 2023, the above-named Petitioner-owner filed a Petition for Administrative Review ("PAR") against an order the Rent Administrator issued on December 12, 2023 (the "order"), concerning the housing accommodation known as 1920 Osborne Place, Apartment [redacted] Bronx, New York, wherein the Rent Administrator granted the owner's application to restore rent after a review of the New York City Department of Housing Preservation and Development ("HPD") revealed that violation #15657666 for inadequate supply of Hot Water and violation #s 15706930, 15657667, and 15641763 for inadequate supply of heat services to the subject apartment [redacted] have been removed.

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 owner avers that Rent Administrator's order should be modified for clerical error. The Petitioner asserts that the order states the owner's application was filed on July 26, 2023, contrary to the "Docketing Acknowledgment Notice" which indicates a filing date of May 30, 2023, and as such, the rent restoration date should be modified to June 1, 2023.

In answer to the PAR, the tenant argues that the order should be affirmed as the effective date set by the Rent Administrator is correct, given that the tenant was served on July 26, 2023 as shown in the "Notice of Commencement of Proceeding to Restore Rent".

The owner answered, reiterating their earlier assertions and requests that all subsequent correspondences be sent directly to the Petitioner-owner.

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 a 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.

A review of the record indicates that rent was previously reduced by an order issued on February 23, 2023 under Docket No. LM610014HW based on inadequate supply of heat and hot water services to the subject apartment. The record further reveals that on May 30, 2023, the Petitioner-owner applied for the rent to be restored based on restoration of heat and hot water to the apartment. The tenant was served with this owner's application on July 26, 2023. The record shows that the tenant's August 9, 2023 response to the owner's rent restoration application claimed, "there is cold or lukewarm water in the bathrooms".

Prompted by the aforementioned, the Rent Administrator reviewed the HPD records, and it was confirmed that Violation Order Numbers 15657666, 15706930, 15657667, and 15641763 had been removed. As a result, the Administrator granted the owner's rent restoration application under Docket No. LQ610117OR, effective August 1, 2023.[1]

The Commissioner notes the owner's assertion that the Rent Administrator's order states that the owner's application was filed on July 26, 2023. The Commissioner finds that the Administrator's order does not contain such error. Rather, the Commissioner finds that the order states that all parties were served with the owner's application on July 26, 2023, and therefore the effective date for rent restoration as of August 1, 2023 is proper.

The Commissioner notes the Petitioner-owner's contention that the Rent Administrator's order should be modified to change the effective date of rent restoration to June 1, 2023. However, the Commissioner finds that the Rent Administrator's order is in accordance with the Agency's established policy. Pursuant to Policy Statement 90-2, "[w]here DHCR issues an order restoring rent, the retroactive date will be the first of the month following the date of service on the tenant of the owner's application to restore rent." Here, the record shows that the owner's application to restore rent was served on the tenant on July 26, 2023. Therefore, the Commissioner finds that the effective date of the restoration order is correct as the effective date of August 1, 2023 is the first of the month following the date of service on the tenant of the owner's application to restore rent.

Based on the foregoing, the Commissioner finds that the Administrator conducted the proceeding below in accordance with established law, Agency practice, and principles of due process, and

[1] The Rent Administrator advised the tenant to file a new complaint regarding the bathroom water assertion by using DHCR Form HHW-1, if the facts so warrant

that the Rent Administrator properly granted the owner's rent restoration application effective August 1, 2023. Therefore, the Commissioner finds that the Administrator's order is correct as issued and the owner's PAR has not established any basis to modify or revoke the Rent Administrator's determination.

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:

MAR 01 2024

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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IN THE MATTER OF THE ADMINISTRATIVE APPEAL OF

ADMINISTRATIVE REVIEW DOCKET NO.: MM410018RO

108 PARK TERRACE REALTY LLC

PETITIONER

RENT ADMINISTRATOR'S DOCKET NO.: KX410096OR

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ORDER AND OPINION DENYING PETITION FOR ADMINISTRATIVE REVIEW

On January 26, 2024, the above-named Petitioner-owner timely filed a Petition for Administrative Review ("PAR") against an order issued by the Rent Administrator on January 5, 2024 (the "Order"), concerning the housing accommodation known as 108 Park Terrance East, Apartment [redacted], New York, NY, wherein the Rent Administrator denied the owner's application for a rent restoration.

The Commissioner having reviewed the PAR, 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 find that the Petitioner's appeal does not have merit and should be denied.

In the PAR, the owner-petitioner requests that the Order be reversed and alleges, in substance, that (1) the stove burners were "subsequently cleaned and found to be fully functional as verified by the tenant", (2) the oven temperature knob is a *de minimis* condition as the stove is functional and the indication number on the knob is slightly worn, (3) the tub has been reglazed and "current blemishes" are *de minimis*, (4) the hallway floor was "subsequently repaired" and the remaining blemish is *de minimis*. The owner noted that the tenant would not allow any photographs. The tenant was offered an opportunity to respond by the service of the PAR on February 2, 2024. In the February 14, 2024 response, the tenant objected, alleging, in substance, that (1) tenant's affirmation of non-compliance was filed with DHCR on February 5, 2024, (2) the stove burner was never repaired and it is still not functioning, (3) the oven temperature knob

is unreadable, (4) the tub still needs reglazing or replacement, and (5) repair work on the hallway floor was not complete. The tenant also disagreed with the *de minimis* characterization made by the owner. On March 11, 2024, the owner claimed that (1) the tenant incorrectly represented that the inspection took place on December 26, 2023, instead of the correct inspection date of September 26, 2023, (2) the inspector could not have observed the apartment repairs that took place in November 2023 since the inspection took place before that, (3) the stove is fully functional, (4) the tub was reglazed on October 19, 2020 and, with proper treatment, should not require "another glazing 3.5 years later", (5) hallway floor was repaired with a remaining blemish *de minimis* as per Fact Sheet #37, item 4.

A review of the Agency's records reveal that on July 2, 2019, the tenant applied for a decrease in the legal regulated rent as a result of a reduction in services. On August 25, 2020, under Docket Number HS410050S, the subject rent decrease was granted, wherein the Rent Administrator determined that a number of the services[1] were not maintained and reduced the rent effective August 1, 2019. The March 10, 2020 inspection found, in pertinent part, that the left stove burner were not self-lighting, the oven thermostat knob numbers were worn and not visible, the bathtub enamel was worn and peeling, and that the two replaced/installed floorboards in the hallway were not stained/shellacked with areas of chipped/split wood flooring filled with wood putty. The Rent Administrator, after a review of all parties' submissions and based on the inspection report, found that the enumerated services were not maintained.

On December 20, 2022, under Docket No. KX410096OR, the owner applied for restoration of rent, claiming that the tenant was unreasonably refusing to permit the owner/agent to restore the services which were the basis for the rent reduction order under Docket No. HS410050S. The tenant was offered an opportunity to respond by service of the owner's application on January 26, 2023. The tenant responded, claiming, in pertinent part, that the bathtub was improperly reglazed, the hallway had a gap in the floorboards, the stove had defective burners and knobs, and the living room was not properly sanded. The tenant also asserted that the owner was refusing to provide various other necessary repairs and provided copies of the purported letters to the owner asking for the repairs.

On September 1, 2023, the owner asserted, in pertinent part, that the owner needed help gaining access to the Premises in order to conduct the repairs. The tenant disputed issues with access in a letter received on September 5, 2023.

On September 7, 2023, the tenant asserted that the owner did not complete repairs and that access for the repairs will be provided. On September 14, 2023, the tenant alleged that the managing agent behaved "aggressively" when showing up to make the necessary repairs. In additional correspondence on September 14, 2023, the tenant stated that he was offered a 30-inch stove instead of a 36-inch stove, and that the owner was not being truthful about the bathtub repairs.

[1] Services that were found not maintained were the following: kitchen sink cabinet, paint/plaster in the kitchen, refrigerator gaskets, floor/covering kitchen, stove burners, oven temperature indicator knob, bathtub enamel, bathroom towel rack and medicine cabinet, gaps in the bathroom, bathroom shower rod, paint/plaster living room, hallway floor, door saddle in the living room, paint/plaster on the hallway wall.

On September 18, 2023, the owner provided the Agency with a copy of the purported letter to the tenant dated September 12, 2023, asserting that there was an agreement between the tenant and the owner to provide access for the necessary repairs from September 18, 2023 through September 22, 2023.

On September 20, 2023, the tenant provided copies of the alleged correspondence and texts between the owner and the tenant regarding the repairs.

The Rent Administrator requested an inspection of the Premises and a "No Access" inspection was conducted on September 12, 2023[2] with a follow-up inspection on September 26, 2023. At the time of the follow-up inspection on September 26, 2023, the inspector found that the front left stove burner did not self-light, the numbers on the oven thermostat knob were not visible, the tub enamel was chipping, and there was evidence of worn wood on the hallway floor and wood putty being inadequately placed.[3]

Based upon the Agency inspection conducted on September 12, 2023 and a follow-up inspection conducted on September 26, 2023, the Rent Administrator denied the owner's application to restore rent, finding that the conditions cited in the order reducing rent had been partially corrected, with the stove burners, thermostat knob, the tub enamel and hallway floor as not restored.[4] Further, the Rent Administrator advised that the tenant may file a new complaint for other conditions that were mentioned as in need of repair but not subject to this proceeding, and that the tenant may file a harassment proceeding if they feel the owners or their employees are harassing them.

Pursuant to Section 2523.4 of the Rent Stabilization Code ("RSC" or "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 the required services cited in the rent reduction order have been restored. Section 2527.5(b) grants the Administrator the authority to conduct an inspection at any stage of a DHCR proceeding, and New York Courts have consistently held that the DHCR has broad discretion to decide if an inspection is necessary. Pursuant to DHCR Policy Statement 90-2, the Rent Administrator may rely on an Agency inspection when making a determination. Moreover, Sections 2520.6 and 2522.4 of the Code require an owner to provide and maintain all required services unless and until an owner files an application to decrease or modify such services, and an order permitting such decrease or modification has been issued.

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[2] On September 12, 2023, the tenant, owner/representative, and contractors with materials were present and ready to make repairs.

[3] The inspector reported that that the other conditions found not maintained under Docket No. HS410050S including the kitchen sink cabinet, paint/plaster kitchen, refrigerator gaskets, floor covering kitchen, bathroom medicine cabinet and towel rack and shower rod and floor, and living room paint/plaster, living room door saddle and hallway paint/plaster, were restored.

[4] The Rent Administrator found that the following services were restored: kitchen sink cabinet, paint/plaster kitchen, refrigerator caskets, floor/covering kitchen, bathroom towel rack, bathroom medicine cabinet, no gaps bathroom, bathroom shower rod, paint/plaster living room, door saddle living room, paint/plaster hallway walls.

Based on the foregoing, the Commissioner finds that the Petitioner-owner has not presented any allegations of errors of law or fact to warrant reversal of the Rent Administrator's order. The Rent Administrator properly denied the owner's rent restoration application based on the inspection report by the Agency's impartial inspector which indicated that the above-mentioned conditions regarding the stove, oven, tub enamel and hallway floor were found not corrected at the time of inspection on September 26, 2023. The Commissioner further finds that 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 inspections was reasonable. See the 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].

Regarding the Petitioner-owner's *de minimis* contentions, the Commissioner finds that the Petitioner's PAR in this instance should be denied. The owner's *de minimis* contentions are outside of the scope of the instant rent restoration proceeding as the underlying rent reduction order, Docket No. HS410050S, was not appealed, and therefore, the Rent Administrator's findings therein, including those services found not maintained, is binding on all parties, and may not now be herein attacked. Moreover, pursuant to DHCR Policy Statement 90-2, if a rent reduction order enumerated a number of conditions that required correction, all enumerated conditions must be corrected before the rent is restored. Policy Statement 90-2 further provides that when the condition underlying the rent reduction order has not been corrected in a workmanlike manner, the rent shall not be restored until all such work has been completed. In this case, the conditions found not restored at the time of the Agency inspections mirrored those conditions originally found not maintained under the rent reduction order (the stove burner is not self-lighting; the numbers on the oven thermostat knob are not visible/worn-out; the tub enamel is chipping; and worn wood on hallway floor with evidence of wood putty being inadequately placed on the hallway/foyer floor).

In light of the above, the Commissioner finds that the Petitioner-owner has not presented any allegations of errors of law or fact to warrant reversal of the Rent Administrator's order.

The owner is advised to file a fresh "Owner's Application to Restore Rent," 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:

MAR 22 2024

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.