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Operational Bulletin 2009-1
(Replaces Operational Bulletin 2002-1)

Procedures Pursuant to the Rent Stabilization Code for the Filing of an Owner's Application to Refuse to Renew Leases on the Grounds of Demolition Implementing Emergency Tenant Protection Regulations New York City Rent Stabilization Code New York City Rent and Eviction Regulations

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I. INTRODUCTION

This Operational Bulletin replaces Operational Bulletin 2002-1, issued September 19th, 2002, and is issued pursuant to Sections 2504.4(f) and 2507.11 of the Emergency Tenant Protection Regulations ("TPR"), Sections 2524.5(a)(2) and 2527.11 of the Rent Stabilization Code ("RSC"), and Sections 2204.8(c) and 2209.8 of the New York City Rent and Eviction Regulations ("CRER").

TPR Section 2504.4(f) and RSC Section 2524.5(a)(2) provide that an owner shall not be required to offer renewal leases to tenants and may maintain an action or proceeding to recover possession in a court of competent jurisdiction after the expiration of the existing lease term, where DHCR has granted such owner's application to demolish all of the apartments located in the subject building. Below are the eligibility, notice, order, relocation and other requirements relating to the demolition application process.

II. ELIGIBILITY & APPLICATION

The term, "owner", is specifically defined in TPR Section 2500.2(g) and RSC Section 2520.6(i). A demolition proceeding must be instituted by the filing of an application in the name of the owner as defined in such sections.

An owner may file, either personally or by mail, an Owner's Application for Order Granting Approval to Refuse Renewal of Lease and/or to Proceed for Eviction (Form RA-54). At the time the owner files the application, a sufficient number of copies of the application for each tenant to receive a copy must also be submitted.

An owner must state in the application that recovery of possession of the housing accommodations is being sought for the purpose of demolishing them. **No demolition application will be accepted by DHCR unless the owner has submitted proof to the DHCR of financial ability to complete such undertaking, and plans for the undertaking have been approved by**

the appropriate governmental agency. Evidence of financial ability to complete the project may include a Letter of Intent or a Commitment Letter from a financial institution, or such other evidence as DHCR may deem appropriate under the circumstances.

As promptly as practicable after the application has been filed, the DHCR will serve each tenant with a copy thereof and afford the tenant twenty days to answer. The word, "tenant", as used throughout this Bulletin, means all persons named on the lease, treated as a single entity, or in the case of a housing accommodation subject to CRER Section 2204.8(c), any person entitled to the possession or to the use or occupancy of the housing accommodation, treated as a single entity. The DHCR will also mail a copy of this Operational Bulletin to each tenant, advising that tenant of the owner's obligations concerning Termination Notice requirements pursuant to TPR Section 2504.3(c)(3) or RSC Section 2524.2(c)(3), the owner's obligation pursuant to TPR Section 2504.4(f)(2) or RSC Section 2524.5(c) to pay certain moving expenses and relocation benefits, and the owner's other obligations, the tenants' rights and procedural advisements contained herein.

III. NOTICE PROVISIONS

Once an application has been filed, an owner may refuse to renew tenants' leases until a determination of the owner's application has been made. Tenants may remain in occupancy during such period, and the owner may not increase the rents. Should the application be denied or withdrawn, the owner must again offer prospective renewal leases to the tenants, as directed in the DHCR's order of denial or withdrawal.

Pursuant to TPR Section 2504.3(c)(3), after filing a demolition application, an owner must serve each tenant with a Termination Notice at least 90 and not more than 120 days prior to the expiration of the lease term ("window period"). In New York City, pursuant to RSC Section 2524.2(c)(3), after filing a demolition application, an owner must serve each tenant with a Termination Notice at least 90 and not more than 150 days prior to the expiration of the tenant's lease term, or in the case of a hotel permanent tenant without a lease, at least 90 and not more than 150 days prior to the commencement of a court proceeding. Provided each tenant whose "window period" occurs prior to the issuance of the order is served with a timely Termination Notice, the order granting the application may be issued. See exceptions below.

The Termination Notice may be served either personally or by regular or certified mail. A contemporaneous affidavit providing dispositive facts by the person making the service or mailing a receipt indicating proof of certified mailing shall constitute sufficient proof of service. When service is by registered or certified mail, the stamped post office receipt shall constitute sufficient proof of service. Once such proof of service has been submitted to the DHCR, the burden of proving non-receipt shall be on the tenant.

The Termination Notice shall state:

(1) that the owner will not renew the tenant's lease because the owner has filed an application for permission to recover possession of all housing accommodations in the building for the purpose of demolishing them, for which plans and financing have been obtained, as stated in the application;

(2) that while the application is pending, the tenant may remain in occupancy;

(3) that the tenant shall not be required to vacate until the DHCR issues a final order approving the application and setting forth the time for vacating, stipends and other relocation conditions; and

(4) that the tenant must be offered a prospective renewal lease if the application is withdrawn or denied.

Interested parties should be aware that DHCR cannot order the eviction of any tenant. Warrants of eviction must be obtained from courts of competent jurisdiction. Additionally, it should be noted that tenants who elect to vacate prior to the dates provided in the order, will, if stipends are applicable, be eligible to receive an enhanced stipend.

IV. ADMINISTRATIVE ORDERS

Unless the owner has submitted proof of its financial ability to complete the undertaking to the DHCR, and plans for the undertaking have been approved by the appropriate agency, the owner's application will not be accepted, but instead, will be rejected without being docketed.

DHCR may, at the discretion of the Administrator, and upon 30 days written notice to the owner, dismiss an application because of the owner's failure to proceed in a timely fashion. Upon the issuance of an order denying the application, or if the application is withdrawn by the owner, prospective renewal leases must be offered to all affected tenants as directed in the order of denial or withdrawal.

An order granting the application shall also be conditioned upon the compliance by the owner with such terms as shall be set by the Administrator relating to stipends and moving expenses, and the compliance by the owner with service of Termination Notices.

In the event that the owner does not serve each tenant whose "window period" occurred prior to the issuance of the Administrator's order with a Termination Notice, but can establish before the Administrator that such failure was not the result of a willful attempt to evade this obligation, and if the owner can establish that he or she has otherwise substantially complied with the obligation to serve every such tenant, the DHCR shall not be required to terminate the proceeding and may issue the order. Nevertheless, any such tenant who is not served with the Termination Notice will be entitled to remain in occupancy at no increase in rent pursuant to a one-year "deemed lease," commencing on the date following the expiration date of the prior lease. Thereafter, during the pendency of the proceeding, no additional renewal rights vest pursuant to this "deemed lease." The Administrator's Order shall provide that, alternatively, the owner may, at its option, elect to pay a stipend based on an additional period up to one year for any tenant remaining in occupancy who was not served timely with a Notice of Termination, and who leaves on or before the vacate date indicated in the final order.

In no event may any tenant be required to move out of an apartment before the expiration date of that tenant's lease, or the vacate date indicated when the owner's application is approved, whichever is later. Where the DHCR determines that an owner's failure to timely serve a Notice of Termination occurred, but was not willful, and where such owner does not pay an additional one-year stipend, the affected tenant may remain in occupancy for the "deemed" one-year lease term, if later than such periods.

V. STIPENDS AND OTHER RELOCATION CONDITIONS

For housing accommodations subject to the TPR or RSC, the word, "tenant", shall mean all persons named on the lease, treated as a single entity. For housing accommodations subject to CRER Section 2204.8(c), such word shall mean all persons entitled to the possession or to the use or occupancy of any housing accommodation, treated as a single entity.

Any order granting an owner's application shall require the owner to pay all reasonable moving expenses. The tenant shall also be afforded a reasonable period of time within which to vacate the apartment. If the tenant vacates the apartment on or before the date provided in the DHCR final order which authorizes the owner to refuse to renew the tenant's lease and obtain possession of the apartment, such tenant shall be entitled to receive all stipend benefits pursuant to subparagraphs (1) or (2) or (3) below. If the tenant does not vacate the apartment on or before the date upon which a final order authorizes the owner to obtain possession of the apartment, the stipend shall be reduced. The reduction of the stipend shall be one-sixth of the total stipend for each month the tenant remains in occupancy after the vacate date indicated in the final order.

The order granting the owner's application shall also provide that, at the owner's option, the owner may:

(1) Relocate the tenant to a suitable housing accommodation at the same or lower regulated rent in a closely proximate area, or in a new residential building if constructed on the site, in which case suitable interim housing shall be provided to the tenant at no additional cost; plus, in addition to reasonable moving expenses, payment of a $5000 stipend shall be made to the tenant, provided he or she vacates on or before the vacate date set forth in the DHCR Order; or

(2) Where an owner provides relocation of the tenant to a suitable housing accommodation at a rent in excess of that for the subject housing accommodation, in addition to the tenant's reasonable moving expenses, the owner may be required to pay the tenant a stipend equal to the difference in rent, at the commencement of the occupancy by the tenant of a new housing accommodation, between the subject housing accommodation and the housing accommodation to which the tenant is relocated, multiplied by 72 months (6 years), provided the tenant vacates on or before the vacate date set forth in the DHCR order; or

(3) Pay the tenant a stipend which shall be the difference between the tenant's current rent and an amount to be calculated using the demolition stipend chart, per room[1] per month, multiplied by the actual number of rooms in the tenant's housing accommodation, but no less than three rooms. This difference is to be multiplied by 72 months (6 years). Such amount is as follows:

For housing accommodations subject to the TPR

- Nassau County $493
- Westchester County $396
- Rockland County $334

[1] As registered

For New York City housing accommodations subject to the RSC or CRER Section 2204.8(c):

$526[2]

For housing accommodations subject to the TPR, please consult the following Demolition Stipend Chart for sample calculations of stipends:

$493 NASSAU

Number of Rooms	Maximum Monthly Allowance	Monthly Allowance By Current Rent, If Rent Equals				Total Stipend By Current Monthly Rent For Tenancies Based On A 6 Year Length of Tenure			
	$	**$500**	**$1,000**	**$1,500**	**$2,000**	**$500**	**$1,000**	**$1,500**	**$2,000**
3	1,479	979	479	0	0	70,488	34,488	0	0
4	1,972	1,472	972	472	0	105,984	69,984	33,984	0
5	2,465	1,965	1,465	965	465	141,480	105,480	69,480	33,480
6	2,958	2,458	1,958	1,458	958	176,976	140,976	104,976	68,976
7	3,451	2,951	2,451	1,951	1,451	212,472	176,472	140,472	104,472
8	3,944	3,444	2,944	2,444	1,944	247,968	211,968	175,968	139,968
9	4,437	3,937	3,437	2,937	2,437	283,464	247,464	211,464	175,464
10	4,930	4,430	3,930	3,430	2,930	318,960	282,960	246,960	210,960

$396 WESTCHESTER

Number of Rooms	Maximum Monthly Allowance	Monthly Allowance By Current Rent, If Rent Equals				Total Stipend By Current Monthly Rent For Tenancies Based On A 6 Year Length of Tenure			
	$	**$500**	**$1,000**	**$1,500**	**$2,000**	**$500**	**$1,000**	**$1,500**	**$2,000**
3	1,188	688	188	0	0	49,536	13,536	0	0
4	1,584	1,084	584	84	0	78,048	42,048	6,048	0
5	1,980	1,480	980	480	0	106,560	70,560	34,560	0
6	2,376	1,876	1,376	876	376	135,072	99,072	63,072	27,072
7	2,772	2,272	1,772	1,272	772	163,584	127,584	91,584	55,584
8	3,168	2,668	2,168	1,668	1,168	192,096	156,096	120,096	84,096
9	3,564	3,064	2,564	2,064	1,564	220,608	184,608	148,608	112,608
10	3,960	3,460	2,960	2,460	1,960	249,120	213,120	177,120	141,120

[2] The 2005 New York City Housing Vacancy Survey calculated the mean asking rent level at $491 per month. Since the actual enumeration for the Survey occurred between January and May of 2005, the rent level was increased by 2.75% (one year lease renewal guideline for 2005-2006) and by 4.25% (one year lease renewal guideline for 2006-2007) to a total of $526.

$334 ROCKLAND

Number of Rooms	Maximum Monthly Allowance	Monthly Allowance By Current Rent, If Rent Equals				Total Stipend By Current Monthly Rent For Tenancies Based On A 6 Year Length of Tenure			
	$	**$500**	**$1,000**	**$1,500**	**$2,000**	**$500**	**$1,000**	**$1,500**	**$2,000**
3	1,002	502	2	0	0	36,144	144	0	0
4	1,336	836	336	0	0	60,192	24,192	0	0
5	1,670	1,170	670	170	0	84,240	48,240	12,240	0
6	2,004	1,504	1,004	504	4	108,288	72,288	36,288	288
7	2,338	1,838	1,338	838	338	132,336	96,336	60,336	24,336
8	2,672	2,172	1,672	1,172	672	156,384	120,384	84,384	48,384
9	3,006	2,506	2,006	1,506	1,006	180,432	144,432	108,432	72,432
10	3,340	2,840	2,340	1,840	1,340	204,480	168,480	132,480	96,480

These values are based on owners' responses to the 2008 Property Maintenance and Operations Cost Surveys conducted for each county, and are the calculated mean rents, per room, of units entering vacancy leases in 2007. As in New York City, the stipend compensates for a reasonably expected alternative rent multiplied by the typical length of tenure (72 months).

For housing accommodations subject to the RSC or CRER Section 2204.8(c), please consult the following Demolition Stipend Chart for sample calculations of stipends:

Number of Rooms	Maximum Monthly Allowance	Monthly Allowance By Current Rent, If Rent Equals				Total Stipend By Current Monthly Rent For Tenancies Based On A 6 Year Length of Tenure			
	$	**$500**	**$1,000**	**$1,500**	**$2,000**	**$500**	**$1,000**	**$1,500**	**$2,000**
3	1,578	1,078	578	78	0	77,616	41,616	5,616	0
4	2,104	1,604	1,104	604	104	115,488	79,488	43,488	7,488
5	2,630	2,130	1,630	1,130	630	153,360	117,360	81,360	45,360
6	3,156	2,656	2,156	1,656	1,156	191,232	155,232	119,232	83,232
7	3,682	3,182	2,682	2,182	1,682	229,104	193,104	157,104	121,104
8	4,208	3,708	3,208	2,708	2,208	266,976	230,976	194,976	158,976
9	4,734	4,234	3,734	3,234	2,734	304,848	268,848	232,848	196,848
10	5,260	4,760	4,260	3,760	3,260	342,720	306,720	270,720	234,720

For orders issued during the period commencing October 1, 2008, and on or after October 1st of each subsequent year, the $526 per month base will be raised by the applicable guidelines increase available for a one year renewal lease. The $526 per month base, plus annual adjustments, shall remain in effect until the release of a new Housing and Vacancy Survey for the City of New York, at which time the base rent, per room, shall be adjusted to reflect the mean asking rent, per room, for all vacant rental units in that next Survey.

The formula for determining the stipend is based on data derived from the 2005 New York City Housing and Vacancy Survey. The stipend compensates for a reasonably expected alternative rent ($526 per room, per month), multiplied by the typical length of tenure (72 months). While the $526 per month rent remains constant for the projected time period, it is deemed to be equivalent to taking the present value of such rent with projected guidelines increases over time.

Applicable To All Housing Accommodations

Wherever a stipend would result in any tenant losing a subsidy or other governmental benefit which is income dependent, at the tenant's option, the tenant may elect to waive the stipend and have the owner at its own expense, relocate the tenant to a suitable housing accommodation at the same or lower regulated rent in a closely proximate area.

In the event that the tenant dies prior to the issuance by the DHCR of a final order granting the owner's application, the owner shall not be required to pay such stipend to the estate of the deceased tenant.

Where the order of the DHCR granting the owner's demolition application is conditioned upon the owner's compliance with specified terms and conditions, if such terms and conditions have not been complied with, the order may be modified or revoked.

The owner's non-compliance with any term or condition of the Administrator's or Commissioner's order granting the owner's application shall be brought to the attention of the DHCR's Compliance Unit for appropriate action. DHCR shall retain jurisdiction for this purpose until all moving expenses, stipends, and relocation requirements have been met.

VI. COMPARABLE APARTMENTS AND RELOCATION

In the event a comparable apartment is offered by the owner, a tenant may file an objection with the DHCR challenging the suitability of an apartment offered by the owner for relocation, within ten (10) days after the owner identifies the apartment and makes it available for the tenant to inspect and consider the suitability thereof. The apartment will then be inspected by the staff of the DHCR within 30 days, on notice to both sides, so that the DHCR may determine whether the offered apartment is suitable. The DHCR will make such determination as promptly as practicable thereafter. In the event the DHCR determines that the apartment is not suitable, the tenant shall be offered another apartment, and shall have ten (10) days after it is made available by the owner for the tenant's inspection to consider its suitability.

If DHCR determines that the offered apartment is suitable, the tenant shall have fifteen (15) days thereafter within which to accept it. A tenant who refuses to accept relocation to any apartment determined by the DHCR to be suitable shall lose the right to relocation by the owner and to receive payment of moving expenses or any stipend.

"Suitable housing accommodations" as used in this Operational Bulletin shall mean apartments which are similar in size and features to the respective apartments now occupied by the tenants. Such apartments shall be freshly painted before the tenant takes occupancy and shall be provided with substantially the same required services and equipment the tenants received in their prior apartments. The building containing such accommodations shall be free from violations of law recorded by the governmental agency having jurisdiction, which constitute fire hazards or

conditions dangerous or detrimental to life or health, or which affect the maintenance of required services.

The DHCR will consider apartments proposed for relocation which are not presently subject to rent regulation, provided the owner submits a contractual agreement, between the tenant and the owner of such proposed apartment, that places the tenant in a substantially similar housing accommodation at no additional rent for a period of six years, unless the tenant voluntarily requests in writing a shorter lease period.

VII. ADMINISTRATIVE REVIEW

Any party aggrieved by the Administrator's determination may file a Petition for Administrative Review (PAR) in accordance with TPR Part 2510 or RSC Part 2529. The filing of a PAR shall stay such order until the final determination of the PAR by the Commissioner. Upon a showing that there are equitable grounds, the Commissioner may entertain requests for expedited processing of the PAR.

Leslie Torres
Deputy Commissioner
For Rent Administration

February 10, 2009