

George E. Pataki
Governor



Judith A. Calogero
Commissioner

New York State Division of Housing and Community Renewal
Office of Rent Administration
Gertz Plaza
92-31 Union Hall Street
Jamaica, NY 11433

December 31, 2002

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51
52

I am responding to your letter of November 7, in which you inquire as to whether a domestic partner of the tenant named on the lease of a rent stabilized apartment has the right to be added to that lease as a tenant, under the same terms.

Pursuant to Section 2522.5(g) of the Rent Stabilization Code (RSC), a tenant can have his or her spouse, whether husband or wife, added to the lease or any renewal thereof as an additional tenant, where the spouse resides in the housing accommodation as his or her primary residence. Where that is done, a new tenancy is not created, and the owner is not entitled to charge a vacancy increase.

However, it is this agency's position that the relationship you describe, even if it were formalized by the issuance of a Certificate of Domestic Partnership, does not fall within such provision of the RSC. An owner who chooses to add the name of domestic partner to a lease would be entitled to a statutory rent increase equivalent to that obtainable when the names of any non-spouse, including other immediate family members, are added.

The amount of such increase is set forth in RSC Section 2522.8(a), and may, in fact, exceed the 16% increase that you describe in your letter as being sought by the owner.

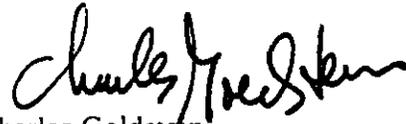
Nevertheless, and this should be noted very carefully, a tenant's domestic partner may have "succession" rights as a family member, should the named tenant permanently vacate the housing accommodation. The criteria for qualification for succession are set forth in RSC Sections 2520.6(o)(2) and 2523.5(b). A Certificate of Domestic Partnership would certainly be viewed as substantial evidence of the nature of the relationship. The vacancy increase is not available in a succession situation.

As Section 235-f of the Real Property Law precludes an owner from restricting occupancy to a tenant or even such tenant's "immediate family" member, your client may re-consider the advisability of requesting the addition to the lease.

I trust that we have fully answered your inquiry.

Please be advised that this letter is not a substitute for a formal agency order issued upon prior notice to all parties and with all parties having been afforded an opportunity to be heard.

Very truly yours,



Charles Goldstein
Associate Counsel

CG:lp

cc: Deputy Commissioner Roldan
(COL-1416)