

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

April 29, 2003

This is in response to your letter of March 17, 2003.

You explain that a building was sold to a new owner. An overcharge order was issued by the DHCR three months prior to the purchase, and the new owner was not informed of the existence of the overcharge order at the closing. You request an opinion on whether a tenant can enforce the order against the new owner. The order was issued in December 2000 (27 months ago). A current tenant suggested not paying rent until the full amount of the refund due is recovered.

The relevant information is contained in RSC Sections 2526.1(f)(2)(i), 2520.13, and 2526.1(e).

For overcharge complaints filed or collected on or after April 1, 1984- except in certain limited instances, explained below- a current owner shall be responsible for all overcharge penalties, including penalties based upon overcharges collected by the prior owner; and there is no statute of limitations for the enforcement of an overcharge order.

In the mentioned limited instances, primarily involving judicial sales, prior owners are solely liable for overcharges actually collected by them. These are explained in RSC 2526.1(f)(2)(i):

...However, in the absence of collusion or any relationship between such owner and any prior owner, where no records sufficient to establish the legal regulated rent were provided at a judicial sale, or such other sale effected in connection with, or to resolve, in whole or in part, a bankruptcy proceeding, mortgage foreclosure action or other judicial proceeding, an owner who purchases upon or subsequent

to such sale shall not be liable for overcharges collected by any owner prior to such sale, and treble damages upon overcharges that he or she collects which result from overcharges collected by any owner prior to such sale. An owner who did not purchase at such sale, but who purchased subsequent to such sale, shall also not be liable for overcharges collected by any prior owner subsequent to such sale to the extent that such overcharges are the result of overcharges collected prior to such sale.

Given the above considerations, and assuming the referenced order applies to a rent stabilized tenant, and assuming that it is a final order of the agency, and also assuming that the tenant has not sought to collect the overcharge in the same manner as a judgment in Supreme Court, then the tenant may begin deducting the overcharge from the rent billed by the current owner. This is notwithstanding the fact that such deduction would commence approximately twenty-seven months after the issuance of the order and notwithstanding the fact that no such deduction was made during the tenure of the prior owner .

The amount of the offset against the rent due to the present owner that the tenant may take must be at a rate that is not in excess of 20% of the amount of the overcharge award for any one month's rent. If 20% of the overcharge award is at least equal to one month's rent, the tenant will not be required to pay any rent until the entire amount of the overcharge award has been offset.

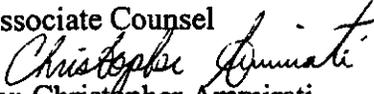
Under rent control, the DHCR's role in deciding rent overcharge complaints is basically limited to determinations of maximum rent, with matters such as the recovery of an overcharge award or most questions of arrears being in the domain of the courts.

We trust that we have fully responded to 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


By: Christopher Ammirati
Rent Examiner

cc: Deputy Commissioner Roldan
(COL-1475)