

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

September 9, 2003

Dear

This is in response to your letter of August 8. You inquired about the permissibility of an owner charging a pet registration fee (on an annual basis, payable in a single payment) of \$50.00 (you have two dogs, and the fee is \$25.00 per dog or cat).

The Rent Stabilization Law and the Rent Stabilization Code (RSC) limit the amount of rent which may be charged the tenant of a rent stabilized apartment. RSC Sec. 2520.6(c) defines "rent" as any "[c]onsideration, charge, fee or other thing of value, including any bonus, benefit or gratuity demanded or received for, or in connection with, the use or occupation of housing accommodations or the transfer of a lease for such housing accommodations. . . ." Under this definition, the imposition of a charge for pet registration under the circumstances you describe would constitute an increase in "rent." Pursuant to RSC Sec. 2522.1, the legal regulated rent may be increased only on grounds specified in the RSC, and there is no provision permitting a rent increase for pet registration. Accordingly, such charge appears to be impermissible, at least where your right to have a given pet, under the standards to be discussed, is not at issue.

The right to own a pet is determined largely by lease provisions but is also subject to N.Y.C. Admin. Code Sec. 27-2009.1, commonly called the "Pet Law," which reads, in pertinent part, as follows:

- b. Where a tenant in a multiple dwelling openly and notoriously for a period of three months or more following taking possession of a unit, harbors or has harbored a household pet or pets, the harboring of which is not prohibited by the multiple dwelling law, the housing maintenance or the health codes of the city of New York or any other applicable law, and the owner or his or her agent has knowledge of this fact, and such owner fails within this three month period to commence a summary proceeding or action to enforce a lease provision prohibiting the keeping of such household pets, such lease provision [prohibiting pets] shall be deemed waived.
- c. It shall be unlawful for an owner or his or her agent, by express terms or otherwise, to restrict a tenant's rights as provided in this section. Any such restriction shall be unenforceable and deemed void as against public policy.
- d. The waiver provision of this section shall not apply where the harboring of a household pet causes damage to the subject premise, creates a nuisance or interferes substantially with the health, safety or welfare of other tenants or occupants of the same or adjacent building or structure.

Issues arising under the Pet Law are not decided by this agency. If a Pet Law issue is not settled between the parties, it may be a matter for a court of competent jurisdiction.

In responding to your request for an opinion, we have understood the situation to be either that your lease does not prohibit you from having your two dogs (you mentioned that they were "on the lease") and/or that you have had these two dogs for a substantial period of time, longer than the three-month Pet Law objection period. In accordance with our general practice, we offer no comment on situations not presented, such as those involving a replacement or new pet, where there may not have been established a right to have such pet under lease and Pet Law standards, and on whether a prospective agreed-upon charge

(essentially a separate agreement from rent regulatory matters) could be made in that situation, in return for the owner waiving objections to the pet.

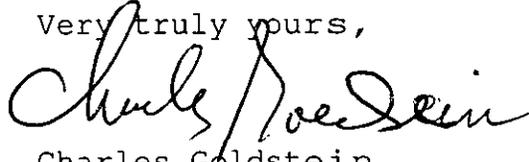
With respect to other, non-monetary aspects of your development's recently amended pet policy, as shown in the attachments to your letter, we note, first, that the owner's position is not clear from your letter. Apparently your dogs, since they were present on June 30, 2003, were "grandfathered in" and thus exempt, pursuant to paragraph (a) of the policy, from the scope of paragraph (b), the paragraph which contains essentially all of the new requirements. You state that someone in the management office said "this was a typo" and that you were subject to the new requirements. If that is the management's position, the difference between it and the document you attached is much more than a "typo;" it would be a complete reworking of that document. In any event, matters of nuisance (we note parenthetically the exclusion for nuisance in paragraph d of the Pet Law, quoted above), and of the reasonableness of house rules designed to combat nuisance (as well as whether failure to obey such rules is, in a given situation, itself a form of nuisance) are not within the purview of DHCR. As with Pet Law matters discussed above, if a question is not resolved between the parties, it may be a matter for a court of competent jurisdiction.

With respect to some concerns you express in your letter about the situation which could arise if the owner continues to take the position that you must pay the pet registration fee, please note that it is not within the scope of this opinion letter process to advise a tenant how to proceed when the tenant believes a violation of the rent laws or regulations has occurred. DHCR has no authority to prevent any owner from bringing an action in court against a tenant. It is up to the tenant to assess the situation and the risks involved. We will simply note the following: 1) if a tenant pays an amount which he or she believes constitutes an overcharge, the tenant may file an overcharge complaint, Form RA-89 (available at the Web site listed at the bottom of the first page of this letter, as well as from DHCR's Public Information staff, which can be reached by telephone at 718-739-6400), and 2) pursuant to RSC Sec. 2520.13, "[a]n agreement by the tenant to waive any provision of the RSL [Rent Stabilization Law] or this Code is void"

We trust that we have fully answered your inquiry.

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

Very truly yours,

A handwritten signature in cursive script that reads "Charles Goldstein". The signature is written in black ink and is positioned above the printed name and title.

Charles Goldstein
Associate Counsel

CG:ES

cc: Deputy Commissioner Roldan
(COL-1552)