

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

November 19, 2004

Your letter of September 17 to Commissioner Calogero has been referred to the undersigned for reply. You request DHCR's "intervention to correct the failure of [your] Condo [Condominium] Board to assign parking spaces to eligible rent stabilized tenants."

You further explain that "condo owners have been offered parking spaces in the order of their application. Rental applicants have been told they will be assigned spaces only after all condo owner applications are filled. The applicant Parking Waiting List notes owner and rental applicants separately. While the owner list is moved ahead, none of the rent stabilized applicants has been offered a space since the condo went into effect."

We note that you have attached several documents to your letter concerning the rights of non-purchasing rent regulated tenants to obtain available parking spaces. Of particular note, you include a copy of a letter from former DHCR Commissioner Richard L. Higgins, dated May 16, 1989, regarding your condominium board and the same issues you now raise regarding parking spaces. General Business Law Sec. 352-eeee(3), regarding a condominium board's obligations to provide required services to rent regulated tenants "on a non-discriminatory basis," continues to control.

Please note that, in addition to the provisions of GBL Sec. 352-eeee(3), under rent stabilization (in New York City) an owner must maintain all services (termed "required services")

required on the base date, and under rent control (in New York City), the landlord must provide and maintain all services (termed "essential services") furnished or required to be furnished on the base date. The practice (which pre-dates condominium conversion) of offering parking spaces on a "first come, first served" basis, would appear to be such a "required" or "essential" service.

You request that we advise you "on what action will be taken by [our] office to correct this situation."

Upon tenant complaint and a request for a rent reduction, and a finding by this agency that the evidence proves that the owner has not maintained required services, DHCR may issue a rent reduction, and for rent stabilized apartments, the owner may be barred from collecting any further increases in rent until full services are restored.

However, before submitting a complaint (enclosed, please find an **Application For A Rent Reduction Based Upon Decreased Building-Wide Services**), the tenant must first notify the owner or agent in writing of the subject service decrease(s). A copy of such writing, and proof of its mailing or delivery to the owner or agent, must be attached to the complaint filed with DHCR. Acceptable forms of proof of mailing or delivery include a certificate of mailing, a certified mail receipt, or a signed receipt from the owner or agent acknowledging personal delivery.

We trust that we have responded fully to 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 and with all parties having been afforded an opportunity to be heard.

Very truly yours,

Michael B. Rosenblatt
Deputy Counsel

By: 
John D. Lance
Senior Attorney

MBR:JDL

Encl.

cc: Deputy Commissioner Roldan
(COL-1738)