



NEW YORK STATE  
DIVISION OF HOUSING AND COMMUNITY RENEWAL  
OFFICE OF RENT ADMINISTRATION  
GERTZ PLAZA / 92-31 UNION HALL ST.  
JAMAICA, NY 11433

GEORGE E. PATAKI, GOVERNOR

August 12, 1997

This is in response to your letter dated May 28, and your follow-up letter dated July 16, in which you inquire whether scenarios involving the installation of a terrace would qualify an owner for a "first rent." Please note that future requests for opinions should be addressed to Assistant Commissioner Darryl J. Seavey.

You asked whether the construction of a terrace of about 60-70 square feet, cantilevered by virtue of cement and steel construction, with a door from the apartment to the terrace and with a railing around the terrace, would warrant the resulting apartment being considered a new apartment sufficient to justify a first rent. In addition, you wish to know if the apartment would qualify for a first rent if the aforementioned installation also included a glass enclosure, with heating, lighting and electrical outlets.

DHCR has ruled that where an owner significantly alters the outer dimensions of a vacant apartment, the owner is entitled to collect a "first rent" from the first tenant to occupy the apartment after the alteration. The first rent, at a rate negotiated between the owner and tenant, is then subject to increases determined by the Rent Stabilization Law and Code. First rents are permitted where, because of the extent of the alteration, the subject apartment has been so modified that it did not in fact exist on the base date of rent stabilization.

Whether an increase in the size of the apartment caused by the addition of one room (which results in an alteration of the apartment's outer dimensions) constitutes a significant alteration would depend on the size of the added room, as well as the permanence of the alteration.

An owner is not required to apply to DHCR for permission to charge a first rent. However, if a tenant files a complaint of rent overcharge with DHCR challenging the first rent, the owner would be required to establish entitlement thereto, and should therefore retain all relevant documentation. An initial registration for the new apartment should be filed within 90 days of renting.

Under the first scenario which you described, involving only the addition of a terrace, the apartment would appear not to qualify for a "first rent," due primarily to the fact that the proposed terrace in this case lacks a full enclosure, limiting it to seasonal usage.

However, based upon the extent of the alterations involved in your second proposal, which include the installation of a totally glass enclosed terrace that is also equipped with heating, lighting and electrical outlets, and the apparent permanence of such alterations, it appears that such terrace could reasonably be considered to be an additional room. These alterations would therefore appear to entitle the owner to charge a "first rent," as the resulting apartment would in effect not have existed on the base date.

For additional guidance on this issue, you may wish to refer to our Opinion Letter of November 15, 1996, which we sent to your firm, in which we opined that the addition to a rent stabilized apartment of an enclosed greenhouse, with features similar to the proposed glass enclosed terrace, would justify a first rent.

I trust that I 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, such parties having been afforded an opportunity to be heard.

Very truly yours,

  
Charles Goldstein  
Associate Counsel

CG:BH  
Attachment

cc: Darryl J. Seavey  
Assistant Commissioner  
(COL-371)