

George E. Pataki  
Governor



Joseph B. Lynch  
Commissioner

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

January 26, 2001

This is in response to your letter of October 12. You inquire if a rent stabilized tenant of a newly renovated apartment files a complaint of a decrease in services during his or her initial (vacancy) lease period, and DHCR finds that required services have not been maintained, to what level, if any, would the initial rent be reduced if no guidelines adjustments were included in the rent charged in the vacancy lease.

Rent Stabilization Code (RSC) Sec. 2523.4(a)(2), adopted December 20, 2000, provides that where an owner has begun collecting a major capital improvement (MCI) or individual apartment improvement (IAI) rent increase prior to the issuance of a rent reduction order finding a failure to maintain required services, such owner will be permitted to continue collecting the IAI or MCI increase, regardless of the effective date of such rent reduction order.

RSC Sec. 2523.4(a), amended December 20, 2000, provides, in pertinent part, that a tenant may apply for a reduction of the legal regulated rent to the level in effect prior to the most recent guidelines adjustment upon a finding by DHCR that the owner has failed to maintain required services. Such an order reducing the rent shall further bar the owner from applying for or collecting any further increases ("rent freeze"). For vacancy

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leases entered into after June 15, 1997, RSC Sec. 2522.8, adopted December 20, 2000, provides that owners may charge a statutory vacancy increase in lieu of any allowance authorized by the New York City Rent Guidelines Board ("RGB") for the one or two year renewal component of a guidelines increase, in addition to increases based on factors such as the number of years since the legal regulated rent for the subject apartment was last increased by a permanent vacancy allowance, as well as whether the previous legal regulated rent was less than \$300, or \$300 (or above) but less than \$500. While the RGB may authorize a vacancy allowance, it must be noted that the RGB has not authorized any such increases, or has promulgated vacancy allowances of zero percent, in orders issued since June 15, 1997. The first such RGB Order was #29, effective on October 1, 1997.

Therefore, it is our opinion that for vacancy leases entered into on or after October 1, 1997, where the tenant subsequently files a complaint of a reduction in services during the vacancy lease period, and DHCR finds that there is a failure by the owner to maintain required services, such a finding would result in a rent freeze, and not a reduction in rent.

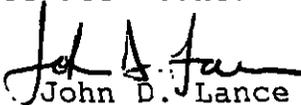
However, if the RGB were to authorize a future vacancy allowance increase which an owner includes in a vacancy lease, in addition to the statutory vacancy increase [as authorized pursuant to recently adopted RSC Sec. 2522.8(a)], then the aforementioned "rent freeze" would be accompanied by a reduction in rent equivalent to such vacancy allowance increase.

We trust that we have fully responded 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,

Charles Goldstein  
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By:   
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CG:JDL

cc: Deputy Commissioner Roldan  
(COL-994)