



New York State  
Division of Housing and Community Renewal  
**Office of Rent Administration**

*Amended Policy Statement 89-2 (April 26, 2013)*  
*(Replaces Amended Policy Statement 89-2 issued on April 12, 2012)*

***Application of the Treble Damage Penalty***

This policy statement is being issued to clarify DHCR's position on the application of treble damages upon the finding of a rent overcharge pursuant to the Rent Stabilization Law (RSL).

Section 26-516a of the Rent Stabilization Law, as amended by the Omnibus Housing Act of 1983, provides that any owner who is found to have collected an overcharge "...shall be liable to the tenant for a penalty equal to three times the amount of the overcharge. If the owner establishes by a preponderance of the evidence that the overcharge was not willful, the...(DHCR)... shall establish the penalty as the amount of the overcharge plus interest."

Section 26-516a(2)(i) of the RSL limits the imposition of treble damages to no more than two years before the filing of the complaint.

The RSL assesses treble damages where the overcharge is "willful". The statute, in fact, creates a presumption of willfulness subject to rebuttal by the owner showing non-willfulness of the overcharge by a preponderance of the evidence. In the absence of such affirmative proof by the owner or after the submission of inadequate proof, DHCR staff shall assess treble damages where a determination of overcharge is made. When an owner receives notice that an overcharge has been determined and treble damages are about to be imposed, he or she will be notified to submit evidence within twenty-one (21) days to prove that the overcharge was not willful.

The owner must prove by a preponderance of the evidence (examples are listed below) that the overcharge was not a willful act. This simply means that where an owner submits no evidence or where the evidence is equally balanced, the overcharge is deemed to be willful. The owner can submit such evidence after receiving notice of a tenant's filing of an overcharge complaint prior to the final order being issued.

DHCR has determined that the burden of proof in establishing lack of willfulness shall be deemed to have been met and therefore, the treble damage penalty is not applicable where it is apparent or where it is demonstrated that an overcharge occurred under certain specified circumstances. Such circumstances include the following examples:

- 1) Purchase of a building at a judicial or bankruptcy sale, where no records to establish the legal regulated rent were available.
- 2) Where an owner adjusts the rent on his or her own within the time afforded to furnish DHCR with an initial response when initially served with the overcharge complaint initiated by the tenant, and submits proof to the DHCR that he or she has tendered, in good faith to the tenant, a full refund by check or cash of all excess rent collected, plus interest as provided by CPLR Section 5004. Refunds tendered after the initial period in which to respond will be reviewed in conjunction with other evidence to determine the issue of willfulness.

*This document is being reissued for informational purposes only.*

*The original document which contains signatures of authorization is on file at DHCR's Office of Rent Administration.*

- 3) Where the overcharge is caused by the hyper-technical nature in computing the rent and the owner has not been previously put on notice of the technical error by the DHCR.

However, the burden of proof in establishing a lack of willfulness and no related treble damages cited in example (2) above, will not be met, if the overcharge case was initiated by DHCR and had been preceded by an investigation by DHCR or another government agency, during which the owner, having been given notice, failed to take corrective action and issue a refund.

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for Rent Administration