



Policy Statement 96-1 (March 6, 1996)

Third Person Certification

***Rebuttable Presumption in Processing of Building-Wide
Services-Based Rent Reduction and Restoration Proceedings,
and Major Capital Improvement Rent Increase Proceedings***

I. Building-Wide Services Reduction-Restoration Proceedings

Except as to complaints of inadequate heat and/or hot water or applications relating to the restoration of rents based upon the restoration of such services, whenever a complaint of building-wide reduction in services, or an owner's application relating to the restoration of rents based upon the restoration of such services is filed, the tenants or owner may submit with the complaint, answer or application, the contemporaneous affidavit of an independent licensed architect or engineer, substantiating the allegations of the complaint, answer or application.

The affidavit shall state that the conditions that are the subject of the complaint, answer or application were investigated by the person signing the affidavit and shall state that the conditions exist (if the affidavit is offered by the tenants) or do not exist (if the affidavit is offered by the owner.) The affidavit shall specify what conditions were investigated and what the findings were with respect to each condition. The affidavit shall state when the investigation was conducted, and must be submitted within a reasonable time after the completion of the investigation.

The affidavit, when served by DHCR on the opposing party, will raise a rebuttable presumption that the conditions that are the subject of the complaint, answer or application exist (if the affidavit is submitted by the tenants), or do not exist (if the affidavit is submitted by the owner.) The presumption raised by the affidavit may be rebutted only on the basis of "persuasive evidence," e.g., a counter affidavit by an independent licensed architect or engineer, or a report of a subsequent inspection conducted, or a subsequent violation imposed, by a governmental agency, or an affirmation signed by 51% of the complaining tenants.

Except for good cause shown, failure to rebut the presumption within 30 days will result in the issuance of an order without any further physical inspection of the premises by DHCR.

*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.*



II. Major Capital Improvements

When during the processing of a Major Capital Improvement (MCI) rent increase application, tenants interpose answers complaining of defective operation of the MCI, such complaints may be resolved in the following manner:

A. Where municipal "sign-offs" (other than a building permit) are required for the approval of the MCI installation, and the tenants' complaints relate to the subject matter of the sign-off, the complaint may be resolved on the basis of the sign-off, and the tenant referred to the approving governmental agency for whatever action such agency may deem appropriate.

B. Where municipal sign-offs are not required, or where the alleged defective operation of the MCI does not relate to the subject matter of the sign-off, the complaint may be resolved by the affidavit of an independent licensed architect or engineer that the condition complained of was investigated and found not to have existed, or if found to have existed, was corrected. The affidavit served by DHCR on the tenants will raise a rebuttable presumption the MCI is properly operative. Tenants can rebut the presumption only on the basis of "persuasive evidence," e.g., a counter affidavit by an independent licensed architect or engineer or an affirmation of 51% of complaining tenants.

Except for good cause shown, failure to rebut the presumption within 30 days will result in the issuance of an order without any further physical inspection of the premises by DHCR.

General Requirements

The architect or engineer must be unrelated to the tenants or owner, there must be no common ownership, directly or indirectly, or other financial interest, between such architect or engineer and the owner or tenants, and the affidavit shall state that there is no such relationship or other financial interest. Also, the affidavit must contain a statement that the architect or engineer did not engage in the performance of any work, other than the investigation, relating to the conditions that are the subject of the affidavit. The affidavit submitted must contain the original signature and professional stamp of the architect or engineer, not a copy. DHCR will conduct follow-up inspections randomly to ensure that the affidavits accurately indicate the conditions of the premises. Any person or party who submits a false statement will be subject to all penalties provided by law. In addition, licensing authorities will also be notified of any impropriety by the licensee.

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Deputy Commissioner