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New York State Division of Housing and Community Renewal
Office of Rent Administration
Gertz Plaza
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Jamaica, NY 11433

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This is in response to your letter, which has been forwarded to me for a reply.

In your correspondence, you enumerate the problems that you have had with Alex Carvellas, the owner and managing agent of 426 Audubon Avenue, NY, NY, and his wife, Maria Cruz. You explain that you have lived in your rent-controlled apartment since May 1966. You ask whether we can assist you with the following ongoing problems, and we respond accordingly:

A. Incorrect Amounts For Fuel Increases

You complain that when Mr. Carvellas makes errors on the fuel increase paperwork, he blames DHCR. You also mention that DHCR counselors use to review the documents with you, but you were told that they no longer do so. You state that filling out a Fuel Challenge is not the answer because it takes too long to get an answer, and the owner always denies any errors. You assert that you do not believe that the owner makes these errors because the forms are difficult to fill out or because of high oil prices.

Answer A: To obtain a fuel cost adjustment as of January 1 of a given year, the owner must complete, certify and serve upon each eligible tenant, within sixty (60) days after DHCR releases the fuel consumption and price change standards, the *Owner's Report, Certification and Notice of Fuel Cost Adjustment Eligibility*. Owners must also file with DHCR a master copy of this report, together with accompanying schedules, where applicable, and a schedule of monthly rent increases for all the rent-controlled tenants who were served with copies of the fuel cost adjustment report. If a tenant believes that the owner's request for the fuel cost rent increase is inaccurate or unjustified, we advise the tenant to contact the owner to resolve the matter. If the matter cannot be resolved, then the proper procedure is for the tenant to file the *Tenant's Challenge to Owner's Report and Certification of Fuel Cost Adjustment and Eligibility* within thirty-three (33) days of receipt of the owner's report. If DHCR finds that an owner filed a report with a false certification, DHCR could issue an Order finding that the owner filed a false

certification and penalize the owner by preventing the owner from collecting any fuel cost adjustments for two years after the date of such order. DHCR could also order a refund of any fuel cost increase obtained and collected within two years before the Order. There may be additional penalties prescribed by law. Accordingly, if you believe that the fuel cost adjustments are incorrect, then we suggest that you follow the procedures as outlined above. If the issue cannot be resolved after consulting with the owner, then you should file the *Tenant's Challenge* for a determination on the matter. Upon receiving your challenge, DHCR would decide the matter as expeditiously as possible.

B. Damage To My Personal Property

You mention that water leaks from the upstairs' apartment have damaged your personal property. You state that in 2003, a Housing Court Judge told the owner that you could sue him if your personal property was damaged, and he could sue the tenants who caused the problem. You state that Mr. Carvellas has no problem charging a tenant who he feels has damaged his property, but he continues to insist that the tenants be responsible for their own property.

Answer B: Please be advised that DHCR does not have jurisdiction over complaints involving damages to personal property. A person aggrieved may seek legal advice and/or file an action in a court of competent jurisdiction.

C. Scheduling Repairs For My Apartment

You complain that when you need repairs done, Mr. Carvellas and his wife, Maria Cruz, will send a note with the access date and time for the repair. You state that you have asked him not to do this. When you select the date and time, Maria Cruz will change it, although she is not the owner or the managing agent for the building. You state that you asked the other tenants, and they said that they do not have the same problem. You complain that Ms. Cruz does not have the right to treat you differently from the other tenants. You said that Mr. Carvellas sent a note to you in 2002 in which he expressed his personal dislike for you.

Answer C: Pursuant to NYC Administrative Code Article 1, Sec. 27-2008, an owner, or his or her agent or employee has the right of access to a tenant's dwelling unit or other space under his or her control to make repairs or improvements required by law, or to inspect the apartment to determine compliance with the law, providing the right of entry is exercised at a reasonable time and in a reasonable manner. In addition, Sec 25-101 of the Rules of the City of New York provides that as follows:

Owner's Right of Access. (a) Owner to give notice.

Where an owner seeks access to an apartment, suite of rooms or to a room, under the provisions of Sec. 27-2008 in order to make inspection therein for the purpose of determining whether such places are in compliance with the provisions of the multiple dwelling law of the administrative code, he shall notify the tenants that he will seek access to the apartment, suite of rooms, or rooms, not less than twenty-four hours in advance of such time. Where an owner, contractor or agent of the owner seeks access to make improvements required by law or to make

repairs, notice shall be given to the tenant not less than one week in advance of the time when the improvements or repairs are to be started. However, where repairs are urgently needed in emergencies to prevent damage to property or to prevent injury to persons, such repairs of leaking gas piping or appliances, leaking water piping, stopped-up or defective drains or leaking roofs, broken and dangerous ceiling conditions, no advance notice shall be required from the owner, agent, contractor or workman.

(b) *Notices to be in writing.* Where an owner is required to give notice in advance of seeking access to an apartment, suite of rooms or to a room, as required by subdivision (a) of this section, such notice shall be in writing and shall contain a statement of the nature of the improvement or repairs to be made.

(c) *Authorization to be in writing.* Where an authorized agent or employee of an owner seeks access to an apartment, suite of rooms, or rooms, the authorization of the owner shall be in writing and the agent or employee shall exhibit such authorization to the tenant when access is requested.

(d) *Hours when access to be permitted.* Except in emergencies, access to an apartment, suite of rooms, or rooms, shall be limited, to the hours between nine antemeridian and five post-meridian. Access shall not be required on Saturdays, Sundays or legal holidays except in emergencies.

Therefore, the law requires the owner to provide a tenant with appropriate notice of access for repairs. Please be advised that your unfair treatment claim is not within the jurisdiction of DHCR, but in an appropriate agency or court of competent jurisdiction. However, if you feel that the owner and/or his agent is engaging in a course of harassing conduct intended to force you out of your apartment, then you should most definitely file a *Tenant's Statement of Complaint(s) - Harassment* with this agency.

D. Overcharges and Rent Reduction

You state that when there are rent overcharges and a rent reduction order, Mr. Carvellas does not refund the rent money, but writes and tells you that he will give you a credit. You write to him and tell him that you do not want a credit. You take it out of the rent.

Answer D: Generally, rent-controlled tenants must pursue the issue of rent overcharge through a court of competent jurisdiction within two years of the overcharge's occurrence. In this regard, the court's decision would dictate the recovery method of the rent overcharge. Alternatively, a tenant may file with DHCR a *Tenant's Complaint of Rent and/or Other Specific*

Overcharges in Rent Controlled Apartment." The resulting order, *Order Of Disposition Of Tenant's Complaint of Alleged Violation (Rent Controlled Units Only)* establishes the maximum collectible rent and the maximum base rent for the housing accommodations. These Orders state as follows:

...If the owner has collected more than the legal rent, the tenant(s) have the right to sue for damages. Damages may include up to three times the amount of overcharge, plus costs and attorney's fees, as fixed by the court. The New York City Rent Control Law does not give DHCR the authority to issue an order in overcharge cases that can be entered as a judgment. Therefore, you may have to proceed in court to collect any overcharge.

Therefore, an award of overcharge would include the recovery method of the overcharge.

With regard to rent reduction orders concerning rent controlled tenants, the effective date of any rent reduction based upon an individual apartment or building-wide service decrease becomes effective the first day of the month following the issuance of the DHCR's order determining the existence of reduced services. Thus, a tenant is not owed a refund for previous months.

E1. Maria Cruz, Mr. Carvellas' wife. You complain that Maria Cruz pretends "that the rent money order was not received even though it was sent by certified mail and the green card was signed and returned to you."

Answer E1: We are unsure of whether you are complaining that Ms. Cruz does not credit your account in a reasonable manner or that she does not provide you with a receipt.

Please be advised that, pursuant to the NYC Rent and Eviction Regulations Sec. 2205.1(a), it is unlawful "for any person to demand or receive any rent for any housing accommodations in excess of the applicable maximum rent established..." Therefore, if the owner has received your money order and not credited your account, then it is illegal for the owner to request rent that has already been paid.

Additionally, requirements for the provision of rent receipts for rent controlled apartments are contained in Real Property Law (RPL) Sec. 235-e (applicable to all residential premises in New York State, not only regulated units); New York City Administrative Code Sec. 27-2105 and Rent and Eviction Regulations Sec. 2200.14. Taken together, these statutes and regulations require the provision of rent receipts (for rental payments made by means other than by personal check), which contain the date, the amount, the identity of the premises and the period for which paid, and the signature and title of the person receiving the rent. If a tenant requests a receipt for the payment of rent paid by check, RPL Sec. 235-e requires the owner to provide a receipt with the above information. In addition, for a New York City building, the Housing Maintenance Code (HMC), which includes Administrative Code Sec. 27-2105, requires that the rent receipt contain the name and New York City address of the managing agent for the

building, with some further provisions. The HMC also requires that the receipt be printed on the owner's or managing agent's letterhead.

NYC Rent and Eviction Regulations Sec. 2200.14 titled *Receipt for rent paid* provides as follows:

No payment of rent need be made unless the landlord tenders a receipt for the amount to be paid when so requested by a tenant. The landlord shall issue to every tenant either a rent bill or rent receipt at the time of each rental payment. The receipt may be imprinted on the tenant's check or money order tendered in payment for rent. All statements on such bill or receipt shall be legible, and there shall be printed in ink or stamped thereon, where the premises are a multiple dwelling:

- (1) the name and address of the licensed real estate broker or firm in charge of the dwelling, stating that he or the firm is so licensed, or the name and address of the managing agent as recorded in the registration on file with Office of Code Enforcement;
- (2) at the owner's option, a telephone listing at which he or someone acting in his behalf may be reached by the tenant for repairs and service; and
- (3) at the owner's option, a statement, if rent is paid by check or money order, that such payment is received subject to collection.

E2. You indicate that Ms. Cruz sent you a letter and told you that the super told her that you have a washing machine in your apartment, and that you must add \$13.84 to the monthly rent. You inquired how the Super could tell Ms. Cruz that you have a washing machine if the Super told you that he could not inspect your apartment.

Answer E2: We are unsure of how the owner or manager learned of the washing machine installation. However, pursuant to DHCR's Operational Bulletin ("Op Bull") 2005-1 - *Surcharges for Tenant-Installed Washing Machines, Dryers and Dishwashers*, where a prior installation of a washing machine by the tenant comes to the attention of the owner and the owner consents to the continued use, the monthly surcharge can only be collected prospectively. According to the Op Bull, the permissible surcharge for a housing accommodation in an electrical exclusion building in New York City is \$13.62 and \$14.92 in an electrical inclusion building. However, the permissible monthly surcharge is subject to annual update effective October 1 of each year.

E3. You also complain that Ms. Cruz threatened to sue you for harassment if you sued her husband for damage to your personal property.

Answer E3: Real Property Law (RPL) Sec. 223-b, titled *Retaliation by landlord against tenant*, prohibits an owner from commencing an action to recover possession of an apartment if a tenant files a complaint with a governmental agency of an owner's alleged violation concerning the dwelling, enforces any rights under the lease or participates in a tenants' organization. A court of competent jurisdiction determines this issue. However, as mentioned above, you may seek relief from a court of competent jurisdiction for damages to your personal property.

E4. You stated that after you installed an air conditioner in August 2005, you complained that other tenants were throwing objects onto your air conditioner. Ms. Cruz wrote you a letter and insisted that you remove the air conditioner and pay a \$5.00 surcharge before the inspector had the chance to look at the air conditioner and DHCR make a decision. You said that you did not pay until DHCR made a decision. You asked an attorney to write a letter to Ms. Cruz to ask her to stop communicating with you, and she ignored the request. You state that since Ms. Cruz is not the owner or agent, she does not give you the increases, and you do not pay the monthly rent to her, that you should not have to interact with her.

Answer E4: Please be advised that when a tenant purchases and installs an air conditioner which protrudes beyond the window line, the owner may collect a \$5.00 per month surcharge for each unit installed in an electrical exclusion building. Before collecting this charge from a rent controlled tenant, the owner must apply to DHCR for permission to collect the surcharge by filing the *Owner's Application for a Rent Increase Based on Increased Services, New Furnishing/Equipment/Painting; and Tenant's Statement of Consent, Owner's Application for Air Conditioner Charges or For an Increase in Maximum Rent for Painting*. (DHCR form RN-79b, Part B). Therefore, the owner may not collect the surcharge until DHCR issues an order authorizing the surcharge. If an owner requests a surcharge prior to the issuance of a DHCR Order, then the owner may be violating NYC Rent and Eviction Regulations Sec. 2205.1(a).

Regarding your complaint that you should not have to interact with Ms. Cruz, please be advised that DHCR does not have jurisdiction over an owner's selection of a building manager or assistant.

Again, if you believe that the owner has engaged in a course of action intended to force you out of your apartment, or to cause you to give up rights granted by the Rent Regulatory Laws, then you should file a harassment complaint with DHCR for a determination on the matter. For purposes of harassment, an owner includes an owner's agent or manager.

For your information, we enclose the following: Fact Sheets #s 13 - Fuel Cost Adjustment, 14 - Rent Reductions for Decreased Services, 17 - Harassment, 22 -Maximum Base Rent Program (MBR), 23 - Fuel Cost Adjustment, Questions and Answers for Owners, and 27 - Air Conditioners; Tenant's Statement of Complaint (s) - Harassment; Operational Bulletin (Op. Bull.) 84-4 - Permissible Charges for the Use and/or Initial Installation of an Air Conditioner; and Op Bull. 2005-1 Surcharge for Tenant-Installed Washing Machine.

We trust that we have responded as fully as possible to your inquiry under the circumstances.

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,

Gregory C. Fewer
Director
Policy Unit



By: Cheryl King
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GCF:CK

CC: Deputy Commissioner Torres
(col-2376)