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

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IN THE MATTER OF THE ADMINISTRATIVE APPEAL OF

ADMINISTRATIVE REVIEW DOCKET NO.: BS410026RO

RENT ADMINISTRATOR'S DOCKET NO.: BP410095S

Washington Jefferson Hotel LLC,

PETITIONER

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TENANT: Carlos Aciar

ORDER AND OPINION DENYING PETITION FOR ADMINISTRATIVE REVIEW

On July 24, 2013, the above-named owner, by its counsel, filed a timely petition for administrative review (PAR) of an order issued on July 9, 2013 by a Rent Administrator concerning the housing accommodation known as Apartment 567 at 318 West 51st Street, New York, New York. This order granted the tenant's application for a rent reduction based on the finding that the owner had unilaterally discontinued the service of a gas stove.

The Commissioner has reviewed the entire record including that portion of the record relevant to the issues raised by the PAR.

In the order, the Rent Administrator set forth the following salient findings in this matter:

> On April 17, 2001 the parties entered into an agreement wherein the tenant would temporarily relocate while his room was being renovated. *The agreement was specific regarding the cooking appliance in the room.* There is no indication that the owner complied with the specifics of the agreement. Nor is there any evidence that the owner filed an application to modify/discontinue services with this agency pursuant to Section 2522.4(d) of the NYC Rent Stabilization Code. The owner's attorney's argument that the [tenant's services] complaint is de minimis due to the passage of time is without merit.

With respect to the italicized language, the record included a copy of the parties' temporary relocation agreement. Paragraph 4 of this agreement provides as follows:

> 4. Tenant claims that he had gas service and a stove for his room #567 when he moved into the building in 1986. Tenant claims that he paid more rent for gas service and stove than other rooms in the hotel which did not have gas service. Tenant states that owner took out his gas service to room #567 approximately 2 months ago claiming that gas service to his room is illegal. Landlord and tenant shall attempt to obtain proof from

the city or elsewhere which proves that gas service to room #567 is either legal or illegal. If it is determined that gas service is illegal, landlord shall provide tenant with electric burners and also grant tenant a permanent rent reduction of $10 per week off of the legal rent of $118.30/week for the discontinuance of his gas service/stove (thus tenant's legal rent would then be changed to $108.30/week). If it is determined that gas service is legal to room #567, landlord shall restore gas service and a working stove to room #567 within 90 days of the signing of this agreement. If it is determined that gas service is illegal for room #567, landlord shall provide and install a working and standard size electrical stove and range with 2 or four burners within 30 days of notice from tenant, and tenant would then not be granted a $10/wk. rent reduction.

In the PAR, the owner seeks to have the order modified so as to not obligate the owner to restore gas service to the subject apartment and instead to allow the owner to either (a) install an electric stove top or (b) give the tenant a $10 per week rent reduction in accordance with the terms of the parties' April 17, 2001 agreement. The owner raises several points or arguments in support of its request: First, the owner is incapable of supplying a gas stove because all gas piping building-wide (with the exception of heat supply to the basement) has been removed for more than a decade. Second, the owner has taken steps to address the first point as it filed an application with the DHCR to permit the termination of gas/stove service to the subject apartment. Third, the imposition of the rent reduction was incorrect as a matter of law as the tenant effectively waived the right to have a stove in his apartment by having refrained from filing a services-related complaint with the DHCR for more than 12 years. In this respect, the DHCR's Fact Sheet No. 37 specifies that the passage of more than four years without complaint is presumptive evidence of a de minimis reduction in service. Fourth, the Rent Administrator specifically found that the April 17, 2001 temporary relocation agreement was enforceable and thus the greatest consequence to be imposed for the loss of the stove should be that of the $10 weekly rent abatement. The owner points out that due to the terms of the various Rent Guideline Board Orders that have been in effect since 2001, the tenant has not had any rent increase for the past 12 years, and that the owner is fully prepared to honor its contractual obligation to reduce the tenant's weekly rent by $10.

The Commissioner is of the opinion that that portion of the owner's PAR challenging the Rent Administrator's decision to impose a rent reduction should be denied, and that the balance of the issues presented on appeal are moot.

Pursuant to Rent Stabilization Code (RSC) Section 2523.4(a), the Rent Administrator is required to reduce the rent for stabilized tenants if an owner improperly reduces, eliminates or inadequately maintains a required service. The Commissioner finds that under the circumstances of this case, the Rent Administrator properly imposed a rent reduction based on a decrease in services.

The tenant's claim to have had prior use of cooking gas and a stove as part of the apartment services at the time of initial occupancy in 1986 was reasonably credited by the Rent Administrator. Such claim was fully consistent with owner-provided information on record with the rent agency; specifically, the initial (1984) registration for the subject building shows that "cooking fuel" is one of the building-wide services provided to the tenants, and the initial

registration for the subject apartment specifically lists "stove" as an individual apartment service that is included in the rent. There is no issue that the owner unilaterally discontinued the registered services back in 2001, as alleged in the services complaint.

The owner's defense in this case rests upon RSC Section 2523.4(f)(1). This Section provides that the Rent Administrator "... may consider the passage of time during which a disputed service was not provided and during which no complaint was filed by any tenant alleging a failure to maintain such disputed service, as evidencing that such service condition is *de minimis*, and therefore does not constitute a failure to maintain a required service, provided that:

1. For purposes of this subdivision, the passage of four years or more shall be considered presumptive evidence that the condition is *de minimis*, ..."

The Commissioner finds that the passage-of-time defense was correctly rejected by the Rent Administrator in this case. Section 2523.4(f)(1) applies to a disputed service and in this case no "dispute" was raised. The owner acknowledged back in 2001, in writing, that the tenant is entitled to have the gas/stove services restored, or have alternate cooking apparatus operated by electricity in the event gas service is determined to be illegal. Secondly, while the passage of four or more years shall be considered presumptive evidence that the condition is *de minimis*, this presumption is rebuttable. Here, since services in question were duly registered by the owner and were utilized by the tenant for daily food preparation at the time of initial occupancy, it cannot be said that they had a minimal impact on the tenant's use and enjoyment of the premises. Finally, the overall application of the *de minimis* policy is discretionary in nature, and in view of the totality of the evidence the owner has failed to establish abuse on the Rent Administrator's part.

Concerning the petitioner's request for a modification of services, the DHCR's case tracking records show that at or about the time this PAR proceeding was commenced, the owner filed the appropriate application for authorization to eliminate the requirement of gas stove in the subject apartment and to substitute an electric stove consistent with the terms of the temporary relocation agreement. This application was granted by a modification order of the Rent Administrator under Docket Number BS410014OD, issued on January 8, 2014.

Concerning the petitioner's request for a limited / prescribed rent reduction, it is noted that the modification order under BS410014OD addressed this request and clarified the relief by noting, in pertinent part, as follows:

> The owner should have credited / refunded $10 per week commencing May 1, 2013 (the effective date of the rent reduction [imposed by the appealed order]) to the week of July 15, 2013 (the first rent payment week after the rent reduction order was issued). The tenant stated that the owner began accepting $108.30 per week during the week of August 18, 2013. Accordingly, the owner must credit / refund to the tenant $10 x 16 weeks = $160. The sixteen week period is calculated from May 1, 2013 to the week of August 12, 2013.

Furthermore, the DHCR's case records show that the owner applied for and was granted a restoration of rent by an order of the Rent Administrator under Docket Number CM410014OR, issued on July 21, 2014. This order further clarifies that the $10 per week rent reduction is permanent because the tenant has been provided with a single electric burner in lieu of a full sized electric stove.

THEREFORE, in accordance with the applicable provisions of the New York City Rent Stabilization Law and Code, it is

ORDERED, that that portion of the owner's petition for administrative review seeking a reversal of the order reducing rent due to a decrease in services is denied; and that the Rent Administrator's order be, and the same hereby is, affirmed, and it is further

ORDERED, that that portion of the owner's petition seeking a modification of services and a prescribed rent reduction (to conform with the parties' temporary relocation agreement) is rendered moot by the order under Docket Number BS410014OD.

ISSUED: SEP 17 2015

WOODY PASCAL
Deputy Commissioner