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.: DO210017RO
GLS 8630 LLC,	RENT ADMINISTRATOR'S DOCKET NO.: CW210006OD
PETITIONER	

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ORDER AND OPINION DENYING PETITION FOR ADMINISTRATIVE REVIEW

On March 25, 2015, the above-named owner filed a timely petition for administrative review (PAR) of an order issued on February 20, 2015 by a Rent Administrator concerning the various housing accommodations at the building located at 8630 23rd Avenue, Brooklyn, New York. This order granted the owner's application for a modification of services.

The Commissioner has reviewed the entire record including that portion of the record that is relevant to the issues raised by the owner's appeal.

The Rent Administrator's order specifically granted permission for the owner's proposed replacement of the subject building's traditional intercom system with a telephone-based intercom system (ie. a Mircom Telephone Entry System). The order noted that the replacement system was installed during the period January 15, 2013 to April 4, 2013 pursuant to a pending Major Capital Improvement (MCI) application. [Note: An MCI rent increase based on costs associated with this replacement, among other building-wide improvements, was granted by the Rent Administrator's order referenced under Docket Number CP210068OM, issued on April 24, 2015]. The order further set forth a number of provisos, consistent with the owner's obligations under the rent laws, namely:

1) The intercom service must be supplied to every apartment in the building.
2) Tenants must continue to have choice of the telecommunications company that provides service in the area.
3) Each apartment must have touch-tone service. DHCR requires that all apartments have a landline phone in order to maintain intercom service to the apartment. If a tenant in occupancy refuses to install a landline telephone in the apartment after receiving the rent decrease ordered herein, no rent reduction shall be granted based upon a lack of intercom service.

4) In order to offset the cost to the tenants to maintain a landline phone, the legal rent of all rent regulated tenants is permanently reduced by $15.00, the approximate cost of basic telephone service. Such reduction takes effect on the first of the month following the completion of the installation. Accordingly, the owner must refund/credit the $15.00 per apartment per month reduction to each rent regulated apartment.
5) As many tenants rely on cell phones and no longer have permanently installed telephones in their apartments, such tenants are to be compensated by the owner if any new costs are incurred to install such landline phone in the tenant's apartment. Tenants should provide a copy of their phone bill to the owner to verify such costs.
6) This installation must also comply with all other local rules and regulations for the jurisdiction within which the property is located. Violations may be issued by local agencies for non-compliant installations.

In its PAR, the owner disputes the rent reduction imposed by the order. The owner states that at the time the new intercom was being installed, the tenants were given a choice of either having the new telephone-based system or the traditional push-button-based system, ie. one which would essentially be the same as the old intercom system but would require re-wiring inside the individual apartment from the new panel box. The owner states that all tenants individually indicated, in writing, that they were only interested in having the upgraded system via their phone line. The owner contends that the aforementioned consent of the tenants to have the system upgraded to a phone intercom system should not justify a rent reduction.

One tenant filed an answer to the PAR indicating that she wishes to have a phone-based system in lieu of the old intercom system.

After careful consideration, the Commissioner is of the opinion that the PAR should be denied.

Section 2522.4(e) of the Rent Stabilization Code provides that an owner may file an application to modify or substitute required services, at no change in the legal rent, on forms prescribed by the DHCR on the grounds that:

(1) the owner and tenant, by mutual voluntary written agreement, consent to a modification or substitution of the required services provided in the housing accommodation; or

(2) such modification or substitution is required for the operation of the building in accordance with the specific requirements of law; or

(3) such modification or substitution is not inconsistent with the Rent Stabilization Law or Rent Stabilization Code.

Here, in determining to grant the application for a modification of services the Rent Administrator specifically relied on ground number (3) of Section 2522.4(e), finding that the owner's proposed modification was not inconsistent with the Rent Stabilization Law or Code so long as it is in compliance with the six provisos listed above, which included the imposition of a permanent $15 per month per apartment rent reduction and the requirement that the new phone-based intercom system be installed in every apartment. The owner's PAR does not establish error in this regard.

The Commissioner finds that the Rent Administrator's failure to rely upon ground number (1) of Section 2522.4(e) was not in error for the simple reason that the owner's application for a modification of services neither alleged nor substantiated the existence of mutual owner/tenant consent for the proposed intercom replacement.

The Commissioner cannot consider the owner's claim regarding tenant consent to the intercom replacement system or the submitted nineteen tenant-signed forms that are included with the PAR (all of which are noticeably undated) because such claims and evidence were not provided in the proceeding below and are being provided for the first time on appeal. The scope of review on appeal is limited to facts or evidence before the Rent Administrator as raised in the PAR. [RSC Section 2529.6]

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

ORDERED, that the petition for administrative review be, and the same hereby is, denied; that the Rent Administrator's order be, and the same hereby is, affirmed.

ISSUED:

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WOODY PASCAL
Deputy Commissioner

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

Right to Court Appeal

In order to appeal this Order to the New York Supreme Court, within sixty (60) days of the date this Order is issued, you must serve papers to commence a proceeding under Article 78 of the Civil Practice Law and Rules. No additional time can or will be given.

In preparing your papers, please cite the Administrative Review Docket Number which appears on the first page of the attached Order.

Court appeals from the Commissioner's orders should be served at Counsel's Office, Room 707, 25 Beaver Street, New York, New York 10004. In addition, the Attorney General must be served at 120 Broadway, 24th Floor, New York, New York 10271.

Since Article 78 proceedings take place in the Supreme Court, you may require the professional help of an attorney.

There is no other method of appeal.