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.: EV410008RO

175 West 95th Owner, LLC :

RENT ADMINISTRATOR'S
: DOCKET NO.: EO410379S

PETITIONER

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ORDER AND OPINION DENYING PETITION FOR ADMINISTRATIVE REVIEW

On October 5, 2016, the above-named petitioner-owner filed a petition for administrative review (PAR) against an order issued on September 1, 2016 by the Rent Administrator concerning the housing accommodations known as 175 West 95th Street, Apartment 27D, New York, NY, wherein the Administrator granted the tenant a rent reduction and directed the restoration of service.

The Commissioner has reviewed all of the evidence in the record and has carefully considered the portion of the record relevant to the issues raised by the petition.

The owner requests a reversal of the Rent Administrator's order, and contends that the Administrator's finding was in error[1]; that the building was previously a Mitchell-Lama building, operated as a Limited Profit Housing Company pursuant to Article II of the Private Housing Finance Law ("PHFL"), and that on the base date, there was no intercom service provided at the building or to the subject apartment announcing the arrival of guests or deliveries; that on the base date, the building had a concierge service, whereby the lobby attendant notified residents of guests and

[1] In finding that: 1) an intercom service was a required service; 2) the intercom phone wires were not working; and 3) the doorman/concierge was unable to connect to the apartment.

deliveries; that an upgrade of the tenant's Verizon telephone service occasioned a disconnection of the concierge service to the subject apartment; that a base date service in buildings previously regulated by the PHFL, pursuant to Section 2520.6(r)(4)(vii) is the date that such regulation ends, and that for the subject building, the base date for required services is November 1, 2004, when the Article II Housing Company was voluntarily dissolved pursuant to Section 35(2) of the PHFL; that the Rent Administrator erred in finding that the intercom was a required service; and that various cases[2] held that tenants are not entitled to a rent reduction based on an alleged decrease in service where such service was not provided on the base date.

The owner argues further that in the Matter of Seelig, DHCR Admin. Rev. Docket No.: UA420002RT, the Matter of Bueno, DHCR Admin. Rev. Docket No.: RC430007RT, the Matter of Gosen, DHCR Admin. Rev. Docket No.: MK430004RT, the agency had held that a change in the method by which a service is being provided does not warrant a rent reduction as long as the service in question is still being provided; that moreover, in the Matter of Tramutola DHCR Admin. Rev. Docket No.: UE410036RT, the DHCR held that the tenant was not entitled to a rent reduction where the owner changed the method by which tenants communicated with the lobby attendant from an intercom telephone, which was found as an adequate substitute for the intercom system which previously existed; and that in the instant case, the tenant was still notified of guests and deliveries by the concierge only with a minor change in the method used.

The tenant, through counsel, opposed the owner's petition. Foremost, the tenant contended that the owner was raising a base date argument (that there was no intercom on the base date) for the first time in the instant PAR proceeding; that on the other hand the tenant stated that there was previously a concierge who called the tenants on his handset telephone; that the tenant's Verizon upgrade did not affect the service provided by the owner as the upgrade was performed on November 13, 2010, and the owner had provided the tenants the service, through a separate phone which was connected to the Verizon phone, which the tenant herein was also provided with and utilized for approximately 5 years, i.e., until September of 2015; that the tenant's connection was truncated by the cutting of wires in the basement by the owner; that in the absence of the above service, the option described by the owner requires the tenant to incur expenses which the owner

[2] Matter of Gross, DHCR Admin. Rev. Docket No.: IA110012RP (7/27/94); Matter of University Towers Associates, DHCR Admin. Rev. Docket No.: CI230068B.

should not shift to the tenant; that in the Black Book of the Offering Plan concerning the subject premises, the owner had an undertaking to provide every residential unit with an intercom system link; and that the owner's argument that the concierge service is still being provided, and that the tenant has access to same is irrelevant herein as it is not the tenant's contention that concierge service was removed, but that the owner truncated the intercom service to the subject apartment, which could simply be rectified in the basement of the subject premises by reconnection of same.

After careful consideration of the entire evidence of record, the Commissioner is of the opinion that the petition should be denied.

On March 28, 2016, the tenant commenced the proceeding before the Rent Administrator by filing a complaint alleging decreased intercom service. The owner was served with a copy of the tenant's complaint on April 13, 2016. Substantively, the tenant claimed that the intercom telephone that the tenant was supplied with became defunct on September 20, 2015; and that the owner's office scheduled an appointment with a communications company, City Wide Communications, to resolve the issue, upon which the communications company determined that the wires to the tenant's intercom had been cut.

To the tenant's complaint, the owner, by its attorneys, arguing essentially that there had been no decrease in service made similar arguments as in its PAR herein, underscoring the fact that the concierge service provided at the inception of the tenant's tenancy still exists. Further, the owner's attorney argues that although the concierge no longer communicate with the tenant via the intercom phone in the tenant's apartment, rather, he communicates with the tenant's via his landline when announcing guests or deliveries, which is a mere change of method, and does not amount to a decrease in service. The owner attached a description of the concierge service provided at the building based on the offering plan, which states thus:

> Communication Facilities and Intercom System
>
> Each Residential Unit *will be equipped* with an intercom telephone system which will enable the occupants to communicate directly with the concierge over a standard touch tone telephone. The system will not have any video capabilities.

At the outset, the Commissioner notes that although the tenant's complaint alleged decreased intercom service, and the owner's response was that the owner only sought to change the method of delivering concierge service to the subject apartment, it is safe to state that as garnered from the record, the issue herein concerned alleged decreased (concierge service) to the subject apartment by the removal of the previous manner of delivery, i.e., owner-provided intercom, to be substituted with the tenant's personal phone.

Concisely, based on the foregoing, the Commissioner notes that the owner's argument herein lacks merit. It is the DHCR policy, backed by statutory law that a change or modification in the manner or method of delivery of services requires the filing for permission to do so, and the DHCR's granting of such permission before an owner could modify, change or eliminate service(s), pursuant to Sections 2522.4(d) and (e) of the Rent Stabilization Code[3]. The Commissioner notes that contrary to the owner's stance, the use of the tenants' private phone in the face of the specification in the offering plan, which had formed the standard of service accorded the tenant, *inter alia*. Thus, any change or modification requires the Agency's permission. In the instant case, it is clear that the offering plan specified that the apartments would be equipped with an intercom system to communicate with the concierge. Inasmuch as this provision is not made, the Commissioner finds that the Rent Administrator properly granted the tenant a rent reduction and properly directed the restoration of service(s).

Furthermore, regarding the cases cited by the owner, the Commissioner notes that they are distinguished from the instant case. For instance, the Matter of Tramutola and the Matter of Bueno concerned cases of replacement of old intercom systems with new systems, requiring a change or a modification in the method of delivery, not a change of method of delivering an existing intercom service as in the instant case. With respect to the Matter of Seelig and the Matter of Gosen the Commissioner finds the fact pattern for those cases[4] to be inapplicable herein.

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[3] Rent Stabilization Code (RSC) requires the landlord to maintain required services included in the maximum rent of rent stabilized apartments unless and until the owner files an application to the DHCR to decrease or modify said required services and an order permitting such decrease or modification has been issued. The implementation of these sections must not be inconsistent with the Rent Stabilization Law and Code.

[4] Wherein, respectively, the DHCR found the proffered changes to be adequate substitute for the old method of delivering specific services: 1) the door to door collection of garbage vis-à-vis tenants' deposit of garbage in the garbage room; and 2) the door to door mail delivery vis-à-vis usage of mailboxes in the lobby.

Based on the foregoing, the Commissioner finds that the Rent Administrator's order was correct as issued.

The Commissioner notes that the owner filed a rent restoration application under Docket No.: **FM410033OR** which was granted on April 21, 2017.

THEREFORE, in accordance with the applicable sections of the Rent Stabilization Law and Code, it is

ORDERED, that this petition be, and the same hereby is, denied, and that the Rent Administrator's order be, and the same hereby is, affirmed.

ISSUED:

JUN 28 2018

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
Web Site: www.nyshcr.org

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.