

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.: YA110026RO

HUDSON HOUSE LLC,

DRO DOCKET NO.:
WF110019R

PETITIONER

TENANT: ROWENA
FITZ-HENLEY

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ORDER AND OPINION DENYING PETITION FOR ADMINISTRATIVE REVIEW

On January 14, 2010, the above-named petitioner-owner filed a Petition for Administrative Review (PAR) against an order issued on December 11, 2009, by a Rent Administrator concerning the housing accommodations known as Apartment 7G at 166-33 89th Street, Jamaica, New York, wherein the Rent Administrator found that the owner had collected rent overcharges from the above-named tenant and directed the owner to refund \$919.28, including interest, to the tenant on account of said overcharges.

In the appealed order, the Rent Administrator determined that what the owner described as an "on time discounted rent" was also a preferential rent, that the provisions of the tenant's April 14, 2006 - April 30, 2008 vacancy lease were contrary to the Rent Stabilization Code insofar as they provided for an increase in the tenant's preferential rent in the middle of that lease's term.

In its PAR, the owner, in substance, asserts that the Rent Administrator erred in finding the on time discounted rent was also a preferential rent. The owner also claims that on March

15, 2007, the Rent Administrator had issued an order (under Docket No. UJ110108R) which directly conflicts with the determination in the appealed order.

The Commissioner is of the opinion that this PAR should be denied and that the appealed order should be affirmed.

A "preferential rent" is a rent which an owner agrees to charge that is lower than the legal regulated rent the owner could otherwise lawfully collect. The lease provision in question was applicable for the entire lease term and the right to pay a reduced rent was, in essence, controlled by the tenant. Accordingly, the Commissioner finds that the Rent Administrator correctly classified the on time discounted rent in the instant lease as a preferential rent. A lease may not lawfully provide for an escalation in the preferential rent before the expiration of the lease term under which it is paid.

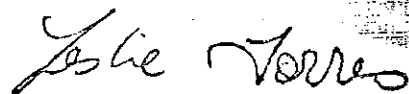
The Commissioner finds that insofar as the order and determination issued by the Rent Administrator on March 15, 2007 under Docket No. UJ110108R may conflict with the terms of the instant order and opinion, the order of March 15, 2007 is in error.

Accordingly, the Commissioner finds that the owner has asserted no grounds upon which the appealed order might be modified or revoked.

THEREFORE, pursuant to all of the applicable statutes and regulations, it is

ORDERED, that the owner's petition be, and the same hereby is, denied and that the appealed order be, and the same hereby is, affirmed.

ISSUED: MAR 01 2010



LESLIE TORRES
Deputy Commissioner