David A. Paterson
Governor

Deborah VanAmerongen
Commissioner

New York State Division of Housing and Community Renewal
Office of Rent Administration
Gertz Plaza
92-31 Union Hall Street
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January 27, 2009

This is in response to your letter request for an opinion letter.

In your letter, you note that the Rent Stabilization Code provides that increases in a separate charge for an ancillary service, such as owner-operated parking, pursuant to an agreement which is separate from the apartment lease, "shall conform to the applicable rent guidelines rate."

You then quote the special provision in Rent Guidelines Order #40 that, for an apartment whose most recent vacancy lease was executed six or more years prior to the date of the renewal lease under Order #40, the maximum guidelines rent increase would be at least $45.00 for a one year lease or $85.00 for a two year lease.

You ask whether this special provision would be the "applicable rent guidelines rate" for garages whose related apartments meet the six year requirement. You further ask that, if my opinion is that the six year provision should not apply to separate garage leases, I should either cite a source for my opinion or provide a definition of "applicable rent guidelines rate" and address the issue of how an ancillary service such as parking can have a lower renewal rate than housing "despite the legislative intention of Rent Stabilization to cure a housing emergency rather than of providing New York City residents with subsidized parking."

It is the position of this agency that the special guidelines for apartments which have not had recent vacancy allowances do not apply to separate garage agreements. Instead, such separate garage agreements should be governed by the normal guidelines rate under Order #40, i.e., 4.5% and 8.5% (or 4% and 8% if heat is not included in the rent).

In the first place, it is obvious that the Rent Guidelines Board created its six year rule so that apartments with rents less than $1,000.00, and which had not received vacancy leases within six years, would receive at least $45.00 or $85.00 increases for one or two year leases, respectively. They most definitely did not intend to impose $90.00 or $170.00 minimal increases on tenants with separate garage agreements.

Put another way, there is no reason in law or logic for a tenant with a separate garage agreement to receive a larger rent increase than a tenant whose garage rent is included in his or her apartment lease agreement, all other factors being equal. For example, with an apartment rent of $700.00 and a garage rent of $200.00, if included in the lease agreement, the rent increase would be $45.00 or $85.00; if separate, under your proposal it would create the preposterous result of amounts of $90.00 or $170.00. To avoid such a clearly unfair result cannot be considered "providing New York City residents with subsidized parking."

In Rent Stabilization Law Section 26-511.c(5), the stated purpose of regulating garage rentals is to "insure that the level of fair rent increase established under this law will not be subverted and made ineffective." The unfair discrepancy in the above example would constitute just such a subversion that the law intended to prevent.

You also ask whether, if the cost of heat is included in an apartment's rent, would the guidelines rate for such an apartment also apply to the garage rent in a separate agreement.

As I have implied in my answer above, I believe the garage rent should be increased by the rate applicable to apartments with heat included, i.e., by 4.5% or 8.5%. As above, this would make the rent increases under separate garage agreements the same as those where the garage rent is included in the apartment lease.

Finally, you ask, if my opinion is as stated above, and if this issue is being addressed for the first time, that I give a definition of "applicable rent guidelines rate." I decline to attempt to give a definition that would be applicable in all possible scenarios, i.e., that would cover all possible multiple-tier rent adjustments that the Guidelines Board may promulgate. Instead, I suggest that the phrase should have its simple meaning, i.e., a rate, or percentage, that is of general applicability, rather than an exceptional adjustment which is designed to address a unique situation.

I hope this letter has addressed your concerns.

Very truly yours,

Greg Fewer, Director
Policy Unit

GF/mga

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