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This is in response to your letter request to Charles Goldstein for an opinion letter. Mr. Goldstein retired from this agency over five years ago.

In your letter, you state that the subject building was constructed less than seven years ago, the first tenants taking occupancy in 2003. The owner desires to renovate several rent stabilized apartments which are now vacant, and you ask whether these renovations would qualify for a 1/40<sup>th</sup> rent increase. You state that "[t]he improvements which will be performed are not presently part of the services provided to the tenants," and that "the items referenced below are not merely being replaced but, rather, constitute new and enhanced services."

Given the large number of issues raised, I will respond to your questions in turn.

1) The owner intends to replace the present parquet flooring with "new oak wood floors, as well as install subflooring which had not previously been installed in the subject apartments." You believe this should qualify as an installation of new equipment pursuant to Section 2522.4(a)(1) of the Rent Stabilization Code, citing Commissioner's order number LK610034RO, in which the Commissioner found that new flooring throughout an apartment qualifies for a rent increase.

The proposed new flooring would not qualify for a rent increase. Replacing parquet flooring by oak flooring, even with subflooring, does not constitute an improvement which is "not presently part of the services provided to the tenants." You haven't stated the composition of the existing parquet flooring, but presumably it is also made of oak or some other hardwood. Given that the building is less than seven years old, the proposed improvement is merely the replacement of one relatively new floor by another.

2) The owner further intends to "modernize the closet space in each of the subject apartments." In describing the existing closets, you enclose the word 'closets' within quotation marks, implying that they are somehow not really closets, stating that they "are essentially nothing more than excess storage space equipped with a hanger bar." If the existing closets have normal doors, whether hinged or sliding, as opposed to freestanding cabinets, not attached to any apartment wall, they are actual closets and the use of quotation marks is misleading. You state that "[t]he owner intends to convert said closet space into custom built closets adorned with shelving, drawers, etc.," but you do not state what, if anything, the conversion would include

other than the addition of shelves and drawers. In particular, if the conversion would include the replacement of existing closet doors, you haven't explained why such a replacement is necessary after less than seven years.

In short, I don't feel I have enough information to fully answer your question. However, if the existing closets are movable cabinets, the new built-in closets would qualify for a rent increase. Also, if the improvement consisted solely of adding shelves and drawers to existing closets (without either shelves or drawers), a rent increase would be warranted as "new furniture or furnishings." However, if the improvement included the replacement of existing closet doors, such replacement should not qualify for a rent increase.

- 3) Additionally, the owner wishes to replace the current "standard bathtubs" by "either new whirlpool Jacuzzi/tubs or steam showers."

You haven't specified what you mean by "standard bathtub," e.g., whether the tub includes a shower or not. Nor have you stated whether the Jacuzzi would include a shower. If the existing tub includes a shower and the Jacuzzi does not, many tenants would probably prefer the existing bathtub. Accordingly, if such is the case, the question should be answered in the context of a formal proceeding, with opportunity for the new tenant to be heard. However, if either the existing bathtub has no shower, or the Jacuzzi does have a shower, the Jacuzzi would qualify for a rent increase.

I do not know what a "steam shower" is. If the bathtub included a shower, then the steam shower could be a mere replacement within the useful life of the existing bathtub. If the steam shower does not include a tub, it may not be considered an improvement by many tenants. I don't have enough information to answer this aspect of your question.

- 4) The owner also wishes to install chandeliers in apartment areas which "are not currently provided with any light," although some of the apartments do "have limited ceiling light" of an unspecified nature.

Assuming this improvement does not involve the replacement of existing chandeliers with new chandeliers, it would qualify for a rent increase.

- 5) You also ask whether Venetian blinds would qualify for a rent increase, citing a Commissioner's order and a previous opinion letter each stating that they would.

The blinds would qualify for a rent increase. However, as noted in the 2005 opinion letter that you cited, because the blinds will be the cause of a permanent rent increase, they will be a required service which the owner will be required to maintain or replace (no rent increase unless replaced by a new item after the expiration of the useful of the replaced item). This proviso applies to all items which receive a rent increase. I mention it specifically regarding blinds because the re-cording and re-taping of blinds are included in the schedule of *de minimis* conditions for individual apartments. As noted in the introductory paragraphs to that schedule, "there may be circumstances where a condition, although included on the schedule, will nevertheless be found to constitute a decrease in a required service." The receipt of a permanent rent increase is one of those circumstances. Please note further that upon receiving a permanent rent increase for an improvement, the owner should ensure that the next apartment registration

indicates that the rent now contains a rent increase in a stated amount for each such improvement.

6) Finally, you request that you be informed of the useful life of each of the improvements, per Section 2522.4(a)(11) of the Code.

The opinion letter process is to answer questions of a general nature. Determining the useful life of items not on the existing schedule is beyond the scope of that process. As you may know, the promulgation of the schedule required the hiring of an engineering firm as a consultant, whose results were presented to committees of both owners and tenants, in addition to extensive internal review. Furthermore, the Code states that for MCIs not listed on the schedule, "the owner must submit with the application evidence that the useful life of the item or equipment being replaced has expired." Of course, for individual apartments no application is required. However, the Code implies that the burden of proof regarding useful lives of unlisted items is on the owner.

I hope this letter has addressed your concerns. However, please be advised that this opinion letter is not a substitute for a formal agency order issued upon prior notice to all parties, such parties having been afforded the opportunity to be heard.

Very truly yours,



Greg Fewer, Director  
Policy Unit

GF/mga

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