

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
Jamaica, NY 11433

January 27, 2009

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

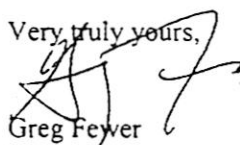
In your letter, you seek clarification as to whether an owner can collect the entire unpaid portion of retroactive monies awarded by an MCI order issued by the DHCR and not appealed, once a tenant vacates; whether an owner can bill all unpaid retroactive monies as a lump sum once a tenant vacates; whether an owner has the right to deduct all unpaid retroactive monies from the vacating tenant's security deposit refund; and whether an owner has the further right to pursue collection if additional retroactive monies are owed after the application of the entire security deposit. You cite Administrative Review Docket Number CD410049RO (Matter of Koepfel & Koepfel) for the proposition that an owner has the right to deduct any unpaid retroactive monies owed from an approved and unchallenged MCI order from the refund of the vacating tenant's security deposit.

If a rent stabilized tenant moves from a building on or after the effective date of an MCI order, the owner is entitled to charge the tenant the full increase for the period the tenant was in the apartment. The owner can bill all unpaid retroactive monies as a lump sum once the tenant vacates. Disputes over security deposits after a tenant vacates are not within the purview of this agency. The Koepfel case does not reflect current agency policy.

We trust we have answered your inquiry.

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 an opportunity to be heard.

Very truly yours,


Greg Fewer
Director
Policy Unit

GF:MM:lp
cc: Deputy Commissioner Torres
OL #2487