

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

May 12, 2009

Your correspondence has been forwarded to me for a response. In your letter, you state that you are a rent stabilized tenant in a building which was converted to cooperative ownership many years ago. In 2004, you began requesting a parking space in the building's garage. However, whenever a spot becomes available, the building manager, Ari Schertz of Aris Properties, gives it to an owner. Mr. Schertz explained that his attorney advised that it is the legal practice to provide coop owners priority over rent stabilized tenants. Although two spaces became available last November, and only one owner requested one, you still were not offered a parking space.

Attached to your letter are portions, apparently, of the house rules which indicate that "[t]he managing agent shall provide to non-purchasing tenants all services and facilities required by law on a non-discriminatory basis." You also state that the house rules indicate that owners must carpet their apartments, but management is aware that owners do not have carpeting, and this interferes with the tenants' quiet enjoyment of their apartments. You ask DHCR for advice regarding these issues.

Section Sec. 352-eeee(3) of the General Business Law ("GBL") (which is not administered by the DHCR), dealing with conversions to co-op or condo ownership in New York City, states, in pertinent part:

All dwelling units occupied by non-purchasing tenants shall be managed by the same managing agent who manages all other dwelling units in the building... Such managing agent shall provide to non-purchasing tenants all services and facilities required by law on a non-discriminatory basis. (Emphasis added.)

Inquiries concerning this law should be directed to the New York State Attorney General's office.

In addition to the provisions of GBL Sec. 352-eeee(3), Rent Stabilization Code ("RSC") Secs. 2520.6(r) and 2523.4 require an owner to provide and maintain all services provided or required to be provided on the applicable base date, and any additional services actually provided or required to be provided thereafter by applicable law. These services are called required services and include, ancillary services, such as garage facilities.

Please note that a definitive answer to your inquiry can not be given inasmuch as opinion letters are designed to provide guidance regarding hypothetical legal issues. The issue that you raise is intensively fact-specific and is better resolved through an adjudicatory proceeding, whether in the courts or before this agency. We, therefore, suggest that you follow the procedure to file the enclosed *Application For A Rent Reduction Based Upon Decreased Building-Wide Service(s)*. If this agency were to find, based upon the evidence submitted, that the owner is not maintaining required services, DHCR could issue a rent reduction, which could bar the owner from collecting any further increases in rent, until full services are restored.

You also comment that management is aware that owners do not have carpeting, which interferes with the tenant's quiet enjoyment of their apartment. Please be advised that the requirement that a tenant carpet his or her apartment usually comes from a lease entered into between an owner and a tenant. New York City apartments are typically rented under an initial lease, which requires the tenant to carpet 80% of the floor area in the apartment. Such a provision is typical in the initial lease of a rent-stabilized apartment as well. If such provision exists, a tenant who does not carpet 80% of the floor area in the apartment is in violation of that provision.

A tenant who is in violation of a substantial "condition" of his or her lease can be evicted from the apartment. Rent Stabilization Code Sec. 2524.3(b) provides that a rent stabilized tenant may be evicted on nuisance grounds. The determination of whether such conduct constitutes a nuisance is a matter for a court of competent jurisdiction. Generally, DHCR does not have jurisdiction over noise complaints or the requirement that a tenant install carpeting in his or her apartment. In fact, DHCR's policy on noise is that it is a de minimis condition, not rising to the level of entitling a tenant to a rent reduction for a decrease in services. However, if an owner is causing the noise or allowing it to be caused in an attempt to vacate an apartment by harassing a tenant, this agency would have jurisdiction if the tenant were to file a complaint.

The NYC Department of Environmental Protection and the NYC Police Department have joint responsibility for responding to noise complaints and enforcing the City's laws relating to unreasonable noise. We suggest that you contact the City of NY @ 311 if you have additional questions concerning this matter.

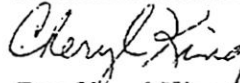
Also enclosed for your convenience are Fact Sheets #s 3-*Required and Essential Services* and 14-*Rent Reductions For Decreased Services*.

We trust that we have responded as fully as possible to your inquiry under the circumstances.

Please be advised that this opinion letter is not a substitute for a formal agency order issued upon prior notice to all parties and with all parties having been afforded an opportunity to be heard.

Very truly yours,

Michael B. Rosenblatt
Assistant Commissioner/
Rent Administration


By: Cheryl King
Senior Attorney

MBR:CK

cc: Deputy Commissioner Torres
(col-2497)

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