

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 letter request for an opinion letter.

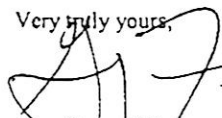
Your letter concerns the 2.2% rent increase allowed for buildings subject to Real Property Tax Law Section 421-a, as provided in Rent Stabilization Code (RSC) Section 2522.5(e)(2) and DHCR Fact Sheet 92-2.

In your letter, you state your client's landlord believes that the Code allows an additional 2.2% increase during each of years three through ten. Your view is that the 2.2% increase, which you both agree can be imposed in the second year, is merely carried over, without further increase, until the tenth year. You further state that in each of three telephone calls to the DHCR you were told that your view is correct. As the landlord's attorney still disagrees, you are asking for a written opinion.

The answer is that your client's landlord is correct. RSC Section 2522.5(e)(2) allows "an annual or other periodic rent increase." This means an additional 2.2% increase each year for the second to tenth year. The Fact Sheet states: "Each annual rent increase is equal to 2.2% of the initial rent of the unit's first tenant." This means that each year during the nine year period, an owner can charge an additional 2.2% rent increase. Thus, the Fact Sheet further states: "The total maximum increase thus permitted is 19.8 percent above the unit's initial monthly rent." (Emphasis added.) That is, the 19.8% is not how much would be collected after nine years if there had been only a single 2.2% increase, but rather the size of the total maximum monthly increase over the initial rent. Indeed, the Fact Sheet states that the 19.8% increase "may continue to be charged in each year following the expiration of the tax benefit period." Clearly, the 19.8% is referring to a monthly increase.

I believe that the reason your view seemed to have been confirmed in three conversations with this agency can be explained as follows. In your letter, you state that under the owner's theory "there would be nine compounded 2.2% increases." (Emphasis added.) If you would have asked an agency spokesperson whether or not the 2.2% increase could be "compounded," the spokesperson would have interpreted your question to have been whether the size of each annual 2.2% increase could be compounded, e.g., by being 2.2% of the then-current rent, rather than being held constant as 2.2% of the initial rent. That is, since each annual 2.2% increase must be for the same dollar amount, we consider that the 2.2% increase has not been compounded.

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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