

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 20, 2009

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

In your letter, you state that apartment #E1, 107 Van Buren Street, Brooklyn, New York 11211 was always registered as owner occupied; that the super, who occupied it, has moved out; that you will rent it to a tenant for over \$2,000.00 per month; and that you will register it as a deregulated apartment. You ask that if this tenant moves out and a new tenant rents the apartment for \$1,800.00, will the apartment remain deregulated or will the apartment become regulated as a rent stabilized apartment?

At the outset, please be advised that our rent registration records for 107 Van Buren Street indicate apartment #17 was registered in 1984 as owner occupied. In order for the superintendent occupied apartment to have qualified as a temporarily exempt apartment, the superintendent would have had to occupy if rent free. If any rent was paid, the apartment would have rent stabilized status and a rent stabilized rent. The following information assumes rent was not paid.

In general, if any apartment is vacant or temporarily exempt for four or more years, the rent for the incoming tenant can be freely negotiated.


Thus, if the first tenant to occupy an apartment after a temporary exemption, and reserved in a lease or rental agreement, is charged or pays \$2,000.00 per month, such apartment would qualify for permanent deregulation. The owner must file an exit registration with the DHCR and must provide the tenant with a copy.

In answer to your question, where an apartment becomes deregulated on the basis of high rent, it remains permanently deregulated, notwithstanding the subsequent occupancy by a tenant whose monthly rent falls below \$2,000.00. For additional information on this issue, you may wish to refer to DHCR Fact Sheet No. 36.

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.

Sincerely,

A handwritten signature in black ink, appearing to read "B. Falbo", with a long horizontal flourish extending to the right.

Bruce Falbo
Bureau Chief
Rent Information Bureau

BF/lc

Log #COL-2525