

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

This is in response to your correspondence, which has been forwarded to me for a reply.

In your letter, you refer to Senior Attorney John D. Lance, Esq.'s December 1, 2004 opinion letter #1739 in which he explained that when a superintendent's employment is terminated,

"the temporary exemption of the apartment from stabilization on that ground [pursuant to RSC Sec. 2520.11(m)] ends, and, assuming no other grounds for exemption, the apartment reverts to stabilization. The tenant (the former superintendent) has a basic entitlement to a stabilized lease, but not to a particular initial rental amount. That rental amount is governed by RSC Sec. 2526.1(a)(3)(iii)," which states that, if the apartment "is vacant or temporarily exempt from regulation pursuant to section 2520.11...on the base date..., the legal regulated rent shall be the rent agreed to by the owner and the first rent stabilized tenant taking occupancy after such vacancy or temporary exemption, and reserved in a lease or rental agreement..."

You ask us to formulate a rule for when an owner and a tenant do not agree on a legal regulated rent and to explain how the legal regulated rent should be determined.

Please note that Mr. Lance adds that "...[r]ental of a rent stabilized apartment under such circumstances occurs only where both parties agree to the rent requested." Should a potential tenant not agree, ultimate rental of the apartment to such tenant is not required, and, therefore,

may not occur. For a further explanation of determining the "first rent" under these circumstances, please refer to the attached redacted opinion letter # 1078.

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-2534)

encl: