STATE OF NEW YORK
DIVISION OF HOUSING AND COMMUNITY RENEWAL
OFFICE OF RENT ADMINISTRATION
GERTZ PLAZA
92-31 UNION HALL STREET
JAMAICA, NEW YORK 11433

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IN THE MATTER OF THE ADMINISTRATIVE APPEAL OF

E&M Bronx Associates, LLC,

PETITIONER

ADMINISTRATIVE REVIEW
DOCKET NO.: CV610003RO

RENT ADMINISTRATOR'S
DOCKET NO.: CP610001B

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ORDER AND OPINION DENYING PETITION FOR ADMINISTRATIVE REVIEW

On October 1, 2014, the above-named owner, by its counsel, filed a timely petition for administrative review (PAR) of an order issued on August 28, 2014 by a Rent Administrator concerning the various housing accommodations at the premises 825 Morrison Avenue, Bronx, New York. This order directed a reduction in rent for sixty-six tenant complainants based on a determination of a decrease in building-wide services.

The Commissioner has carefully reviewed the entire record including that portion of the record that is relevant to the issues raised by the owner's appeal.

The Rent Administrator found that the owner failed to file an application for a modification of services before installing a new touch screen intercom system which is connected to each tenant's telephone line (landline) or personal cellular phone; and that the current intercom/bell/buzzer does not work for all tenants, to wit: the name and phone number of the tenant of "Apt. 18" is not in the system, and the tenant of Apt. 1J does not want his phone number in the system. The Rent Administrator also found that the sidewalk concrete slab near the building entry is "raised / uneven – hazardous."

In the PAR, the owner-petitioner contends that the following tenants listed in the order are cooperative shareholders and thus should not be participating in this proceeding: Apartments 3B - Carroll, 3J - Jimenez, 7H - Sanders, 12E - Cruz, 13F - Williams, 16J - Jackson, 16K - Ampofo, 17M - Simmons, 19F - Smalls, and 19K - Taylor.

The petitioner further contends that the Rent Administrator's determination that the intercom system was not being maintained was in error on the following grounds: First, a modification application was not required in this case because there was no modification of services; instead, the only change resulting from the new intercom system, installed on September 28, 2012, was the ability of the tenants to use a cell phone to operate the intercom

system, in addition to their landlines. In support, the owner presents a statement from its contractor, F&O Security Services, dated September 18, 2014 [Exh. B to the PAR] which sets forth that the old intercom system was a telephone-based (landline) entry system, and that the new system remains the same but now allows the tenants to utilize cell phones. Second, the added feature (ie. cell-phone use) was neither raised nor objected to by tenants and as such the Rent Administrator's challenge to the existing intercom system wrongfully exceeded the allegations of the complaint. 15 tenants later signed a "Tenants Statement of Consent" relative to a subsequent rent restoration application [filed by the owner on October 14, 2014 under Docket Number CV610109OR]. Third, there is no "Apt. 18" as all apartments at the building are designated by numerals and letters[1]; and, if the tenant of Apt. 1J wishes to not have his cell phone number entered into the system, this would not be a problem as the intercom may be accessed by this tenant's landline number, as was done with the previous system. The owner notes that the DHCR's own precedent supports the principle, applicable here, that when a building-wide service is defective as relates to a small number of units, the Rent Administrator has discretion to reduce the rent only for the affected units.

The petitioner further contends that the Rent Administrator's finding of a hazardous concrete slabs was also in error because it too went beyond the allegations of the services complaint.

A number of tenants filed answers to the PAR. Some indicated that the new intercom system is working properly while others indicated otherwise.

The Commissioner is of the opinion that the PAR should be denied.

Pursuant to RSC Section 2523.4, the Rent Administrator is authorized to direct a restoration of services and order a rent reduction, upon application by a tenant, where it is found that an owner has failed to maintain required or essential services that were provided on or after the applicable base date.

The information in the DHCR's apartment registration records for the subject building discloses that those tenants listed in the order for Apartments 3B, 3J, 7H, 16J, 17M and 19F were last registered as rent stabilized units for the years 2007 and/or 2008; and, that those tenants listed in the order for Apartments 12E, 13F, 16K and 19K were last registered as "NYC Coop/Condo" in 2011, however such units were previously registered as rent stabilized and/or temporarily exempt. In view of this information, and in the absence of additional evidence in the form of an order from the DHCR or the courts, the Commissioner finds that the owner has failed to establish that the Rent Administrator erred by listing all tenants of the aforementioned units in the order. Since the issue of jurisdiction is beyond the scope of the services complaint and may only be resolved based on a review of all facts unique to each individual case, the Commissioner's finding herein should not be taken to be an official adjudication for as to any of the individuals in question.

[1] The Inspection Report in this matter, discussed *infra*, denoted this Apartment as 18F. The Rent Administrator's order inadvertently mis-referenced this same unit as "Apt. 18."

The tenants' services complaint filed on April 21, 2014 alleged that the "bell/buzzer is broken", without further elaboration. In reviewing the owner's claims, the Commissioner finds that the Rent Administrator did not err in imposing a rent reduction based on the tenants' allegation and under the circumstances discussed below.

. . . The record shows that the inspector reported on July 16, 2014 that a touch screen panel intercom system was found at the vestibule doors of the subject building; that such system works with each individual tenant's landline/home phone or cell phone; that each tenant may have multiple lines added to the intercom directory; and that each tenant answers his/her personal phone when a call is made at the vestibule intercom to communicate with visitors, and may buzz a visitor in by pressing #9. This evidence established that the building's intercom system was in fact changed over at some point from a standard bell/buzzer system to a telephone-based system. Thus the Rent Administrator, in his discretion, was required to evaluate this conversion in relation to applicable law under the circumstances presented.

An owner may not unilaterally reduce or eliminate services that were provided on or after the applicable base date, however Section 2522.4(e) of the Rent Stabilization Code confers the right on an owner to file an application to modify or substitute required services, at no change in the legal regulated rent, on the grounds that such modification or substitution is not inconsistent with the Rent Stabilization Law or Code. This provision further provides that no such modification or substitution of required services shall take place prior to the approval by the DHCR of the owner's application.

Consistent with the above provision, it is the DHCR's standard policy that no intercom system changeover, from a traditional bell/buzzer system to a telephone-based system, may be effected by an owner unless and until such owner files a modification application and same is approved by the Rent Administrator. Division approval of such an application requires that the owner-applicant comply with a number of conditions, including the understanding going forward that all affected apartments shall have a touch-tone landline phone in order to maintain intercom service to the apartment, and that all tenants shall be given a permanent $15 per month rent reduction to offset the basic cost for the maintenance of the landline phone. Hence, in light of this policy, the owner's claim about the recently-installed cellphone-use feature is not a relevant ground to overturn the Rent Administrator's determination. Furthermore, the owner's claim about the tenants' failure to complain about the existing telephone-based system at the time the complaint was filed is also unavailing in view of evidence indicating that the system changeover took place many years prior and without the proper authorization – which itself constitutes a decrease in services.

The owner's submission of the *Tenants Statement of Consent* as proof of certain tenants' satisfaction with the current intercom system constitutes evidence that was not presented in the proceeding below. This evidence may not be considered by the Commissioner on appeal as it is outside of the scope of review. It will be noted that tenants may not knowingly or unknowingly waive rights that are afforded under the Rent Stabilization Law and Code.

The tenants also alleged in the services complaint that there were cracked sidewalks, without further elaboration. The Commissioner finds however that the owner's claim that the tenants did not allege the sidewalk to be raised/uneven – hazardous, thereby depriving the owner of notice of the condition, does not warrant reversal of the order. Although the owner filed an answer averring that none of the conditions set forth in the complaint exist, the DHCR's investigation indicated otherwise. The inspector reported on July 21, 2014 that the concrete slab near the building entry/tree is raised, uneven and is hazardous. The Commissioner finds that the inspector's finding, as relied upon by the Rent Administrator, was within the ambit of the tenants' services complaint regarding "cracked sidewalks", and that the owner was placed on notice of the concrete slab deficiency well prior to the date of inspection.

The DHCR's case records show that the owner's application for a restoration of rent was denied by order of the Rent Administrator issued on February 16, 2016 (Docket Number CV610109OR).

The DHCR's case records further show that the owner filed an application to modify services on November 14, 2016, which matter is presently pending before the DHCR (Docket Number EW610001OD).

THEREFORE, in accordance with the applicable provisions of the New York City Rent Stabilization Law and Code, it is

ORDERED, that the petition for administrative review be, and the same hereby is, denied; and, that the Rent Administrator's order be, and the same hereby is, affirmed.

ISSUED: APR 07 2017

WOODY PASCAL
Deputy Commissioner

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Right to Court Appeal

In order to appeal this Order to the New York Supreme Court, within sixty (60) days of the date this Order is issued, you must serve papers to commence a proceeding under Article 78 of the Civil Practice Law and Rules. No additional time can or will be given.

In preparing your papers, please cite the Administrative Review Docket Number which appears on the first page of the attached Order.

Court appeals from the Commissioner's orders should be served at Counsel's Office, Room 707, 25 Beaver Street, New York, New York 10004. In addition, the Attorney General must be served at 120 Broadway, 24th Floor, New York, New York 10271.

Since Article 78 proceedings take place in the Supreme Court, you may require the professional help of an attorney.

There is no other method of appeal.