

**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

ADMINISTRATIVE REVIEW
DOCKET NO.: FP430032RO
(FO430053RO)

561 Lenox Avenue LLC,

RENT ADMINISTRATOR'S
DOCKET NO: ER430011OD

PETITIONER

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ORDER AND OPINION DENYING PETITION FOR ADMINISTRATIVE REVIEW

On April 26, 2017, the above-named owner timely re-filed a petition for administrative review (PAR) of an order of the Rent Administrator issued on March 10, 2017 concerning the various housing accommodations at the premises 100 West 139th Street, New York, New York. This order granted an application by the owner for a modification of services by substituting a traditional, hard-wired intercom system with a telephone-based (cell and/or landline) intercom system.

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

The owner's modification application was filed with the DHCR on June 22, 2016 and was unopposed by the 20 rent regulated tenants at the premises. The Rent Administrator's approval of the proposed modification was made subject to certain specified conditions, including the following:

4. In order to offset the cost to the tenants to maintain a landline phone, the legal rent of all rent regulated tenants is permanently reduced by \$15.00, the approximate cost of basic telephone service. Such reduction takes effect on November 1, 2016, the first month following the notice of modification was mailed to the tenants.

In the PAR the petitioner contends, first, that the Rent Administrator wrongly considered the subject change as a reduction in services when in fact all of the tenants are thrilled with the conversion as an improvement over the prior antiquated intercom system which caused multiple issues. The petitioner contends, secondly, that the order is overly punitive for a responsible landlord who is trying to improve the tenant's lives consistent with 21st century technology. The owner states that one half of the affected apartments have legal rents below \$500.00 and as such the percentage of the imposed rent decrease is disproportionately huge (more than 8% in some cases), and furthermore, it will take many years to make up the difference due to the modest Rent

Guideline increases currently in effect, and owing to the fact that the allowable MCI rent increases for the subject improvement are far less than the proposed rent reduction.

None of the tenants filed an answer to the PAR

After careful consideration, the Commissioner is of the opinion that the PAR should be denied.

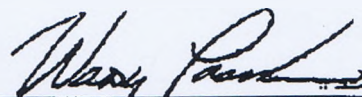
The Rent Stabilization Code (RSC) provides that an owner may not unilaterally eliminate a required service but may file an application to modify or substitute required services, at no change in the legal regulated rent, on the grounds that such modification or substitution is not inconsistent with the Rent Stabilization Law or Code; and, that no modification or substitution of services shall take place prior to DHCR's approval of the application [RSC Section 2522.4(e)].

In keeping with the beneficial advances in digital technology, it has been the DHCR's consistent practice to approve intercom changeovers from a traditional bell/buzzer system to a more agile telephone-based system provided that the applicant complies with certain basic conditions, same being in place not for punitive purposes but rather to ensure that the modification is "not inconsistent with the Rent Stabilization Law or Code." For all such changeovers, the DHCR uniformly requires that all apartments have a touch-tone landline phone in order to maintain intercom service to the apartment, and that all tenants be given a permanent rent reduction to offset the cost for the maintenance of the landline phone.

THEREFORE, based on 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: **MAR 03 2018**



WOODY PASCAL
Deputy Commissioner

Andrew M. Cuomo
Governor



RUTHANNE VISNAUSKAS
Commissioner/CEO

New York State Division of Housing and Community Renewal
Office of Rent Administration
Gertz Plaza
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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 of 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, 25 Beaver Street, Room 707, 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.