Individual Apartment Improvements
Case Law, Statutes, DHCR policy
June 2016

The following document,
Individual Apartment Improvements, Case Law, Statutes, DHCR policy

was compiled by Michele McGuinness, tenant attorney of the law firm Collins, Dobkin & Miller, and posted with her permission.

Please Note this document was compiled in 2016 and does not reflect changes from the 2019 Housing Stability & Tenant Protection Act (HSTPA) or include any changes from court cases or DHCR policy since 2016. Those challenging IAI increases should not rely only on this document; they should obtain a legal advice from a tenant attorney.

One early list of HSTPA changes was by Supreme Court Justice Gerald Lebovits, "New York's Housing Stability & Tenant Protection Act of 2019: What Lawyers Must Know" You may download a copy at http://www.tenant.net/phpBB3/download/file.php?id=179

According to Justice Lebovitz, the **old law** (before 2019) provided for IAI's:

> Individual Apartment Improvements (IAIs): permanent monthly rent increases equal to 1/40th of the cost of apartment improvements in buildings with 35 or fewer apartments and 1/60th in buildings with 36 or more apartments; DHCR approval was not necessary; tenant consent required only if the apartment was occupied.

And the **new law** (2019) provided:

- Increase revised to 1/168th (≤35 units) and 1/180th (>35 units).
- IAIs now temporary will be removed 30 years from date increase became effective.
- DHCR must notify owners and occupants that IAI increase will expire.
- Only 3 IAIs over 15 years permitted, for total aggregate cost of $15,000.
- The most a landlord may increase the rent with IAIs is $89 for buildings with fewer than 35 units and $83 for buildings with more than 35 units.
- DHCR to promulgate guidelines and create a centralized IAI documentation electronic database.
- For IAIs in occupied units, tenant must give informed consent on a DHCR form. The form must be in one of the six primary languages (other than English), as determined by the U.S. Census Bureau.
- To charge for IAIs, landlord must remove from apartment all hazardous ("B") or immediately hazardous ("C") violations.
- Clean-up bill clarifies that 15-year period and $15,000 cap on 3 IAIs start with first IAI after 6/14/19.
- Costs must be "reasonable and verifiable modification or increase in dwelling space, furniture, furnishings or equipment."
- Increase in rent is aggregate over 15 years.
- Work performed by an independent contractor who is licensed; no relationship with landlord.
- Photographs to be taken before and after work is done; photos/records must be kept permanently.
- Effective 6/14/19.

Individual Apartment Improvements
Case Law, Statutes, DHCR policy
June 2016

JURSIDICTION
The lawfulness of such IAIs may be adjudicated by DHCR in the context of an overcharge complaint, but courts have concurrent jurisdiction over these matters. See, Rockaway One Ca, LLC v. Wiggins, 35 AD3d 36, 822 N.Y.S.2d 103 (2"d Dep't 2006).

I. REGULATIONS INVOLVING INDIVIDUAL APARTMENT IMPROVEMENTS

§ 2522.4.(a)(1) permits an owner to increase the legal rent when there has been a "substantial increase, other than an increase for which an adjustment may be claimed pursuant to paragraph (2) of this subdivision [referring to "major capital improvement increases"], of dwelling space or an increase in the services, or installation of new equipment or improvements, or new furniture or furnishings, provided in or to the tenant's housing accommodation, on written tenant consent to the rent increase. In the case of vacant housing accommodations, tenant consent shall not be required."

RSC § 2522.4(a)(4) provides that the "increase in the monthly stabilization rent for the affected housing accommodations when authorized pursuant to paragraph (i) of the subdivision shall be 1/40th of the total cost, including installation but excluding finance charges." This provision has been amended by the Rent Act of 201 1, effective September 24, 2011: in buildings that contain more than 35 apartments, the owner can collect a permanent rent increase equal to 1/60th of the cost of the IAI. in buildings with 35 apartments or less, the owner can still collect a rent increase equal to 1/40th of the cost of the IAI.

DHCR'S Policy Statement 90-10 (superseded by DHCR Operational Bulletin 2016-1) with respect to the consideration of the cost of IAIs provides that the costs "must be supported by adequate documentation which should include at least one of the following:

1. Cancelled checks contemporaneous with the completion of the work;
2. Invoice receipts marked paid in full contemporaneous with the completion of the work;
3. Signed contract agreement; 4. Contractor's affidavit indicating that the installation was completed and paid in full."

Policy Statement further provides:

Whenever it is found that a claimed cost warrants further inquiry, the processor may request that the owner provide additional documentation.

If it is found that there is an equity interest or an identity of interest between the contractor and the building owner, then additional proof of cost and payment, specifically related to the installation, may be requested. Where proof is not adequately substantiated, the difference between the claimed cost and the substantiated cost will be disallowed.

DHCR Operational Bulletin 2016-1: Operational Bulletin supersedes DHCR's Policy Statement 90-10 regarding the criteria which will be used when assessing an owner's substantiation for IAI expenditures which is submitted to DHCR in an overcharge proceeding and other investigations.

A. Acceptable forms of proof:

Claimed individual apartment improvements are required to be supported by adequate and specific documentation, which should include:

1. Cancelled check(s) (front and back) contemporaneous with the completion of the work or proof of electronic payment;
2. Invoice receipt marked paid in full contemporaneous with the completion of the work;
3. Signed contract agreement; and
4. Contractor's affidavit indicating that the installation was completed and paid in full.

This documentation requirement calls for a higher standard of proof than that found in Policy Statement 90-10 which provided that only one of the above forms of proof was necessary unless DHCR requested additional proof. However, actual processing has shown that more than one type of proof is the norm rather than the exception. Therefore, an owner should submit as many of the four listed forms of proof as the owner is able to provide with the initial submission/answer. DHCR's consideration may not be limited to these four items as its review of IAIs is fact intensive and an individualized process regardless of whether it is part of an administrative proceeding or the subject of an independent investigation.

B. Lump Sum Costs

When challenged about an IAI, such as in an overcharge proceeding, an owner must submit evidence of the cost incurred for that particular item. Therefore, where an owner is seeking a rent increase for more than one item of work, a lump sum bill may not suffice. DHCR has discretion to accept a lump sum bill under certain circumstances where, for example, DHCR concludes that:

1. The evidence submitted establishes that all of the work claimed to have been done as a coordinated project and was satisfactorily completed; and
2. Each item of work was either an "improvement" or an ordinary repair and maintenance that was done in connection with, and as a necessary component, of an allowable IAI.

Even such coordinated projects are best supported by itemized proof and the absence of such itemization, may result in additional scrutiny or denial. When proof is not adequate in DHCR's view, such IAI increase may be denied in its entirety or the difference between the claimed cost and the substantiated cost will be disallowed depending on the result of DHCR's review of the documentation

II. WHAT QUALIFIES AS AN INDIVIDUAL APARTMENT IMPROVEMENT (CASE LAW)

A. General principles

Work may not be "merely repairs or decorating." Birdoff v. DHCR, 204 A.D.2d 630, 612 N.Y.S.2d 418 (2nd Dept. 1994).

Work must be "more than normal maintenance and repair." Linden v. DHCR, 217A.D.2d 407, 629 N.Y.S.2d 32 (1st Dep't 1995).

Courts must distinguish "ordinary repairs from enhanced services." Sheridan Properties, LLC v. Liefshitz, 17 Misc.3d 1137(A), 851 N.Y.S.2d 74 (Civ. Ct. BX Co. 2007).

Landlord must "prove that it installed new equipment and/or completed work which constituted improvements and it did not amount to normal maintenance, ordinary repair and decorating." Lirakis v. 180 Seventh Ave. Associates, LLC, 12 Misc.3d 1173 (A), 820 N.Y.S.2d 843 (Civ. Ct. N.Y. Co. 2006), aff'd, 15 Misc.3d 128 (A),

836 N.Y.S.2d 500 (App. Term 1st Dep't 2007).

Landlord must prove actual cost, but not that cost prove cost was reasonable. Shafir v. DHCR, 2011 NYSlipOp 30840 (Sup. Ct. NY. Co. 2011)

B. Particular types of work allowed/disallowed

1. Court decisions

"Extensive renovations performed throughout the apartment, including a gut renovation of the kitchen and bathroom, related plumbing work, and the sheetrocking of walls and new floors" constitutes "improvements." 206 West 104th Street LLC v. Cohen, 41 Misc.3d 134(A), 981 N.Y.S.2d 639 (App. Term 1st Dep't 2013).

"Painting, plastering and floor maintenance, did not in any event constitute improvements." Graham Court Owners Corp. v. DHCR, 71 A.D.3d 515, 899 N.Y.S.2d 7 (1st Dep't 2010).

"Invoices for painting, plastering and floor polishing, among other things, were correctly disallowed because they were for ordinary maintenance and repair, rather than for improvements." Matter of 425 3rd Ave. Realty Co. v DHCR, 29 A.D.3d 332, 816 N.Y.S.2d 411 (1st Dep't 2006).

"Plastering, replacing window glass, refinishing a floor and painting had been correctly disallowed because they were not for improvements, but rather for repairs or normal maintenance." Yorkroad Assoc. v. DHCR, 19 A.D.3d 217, 797 N.Y.S.60 (1st Dep't 2005).

"Painting, plastering and demolition were largely routine and not a permissible cost for purposes of the 1/40th rent increase allowable under the RSC" when not done in conjunction with plumbing and rewiring. Matter of 201 E. 81st St. Assoc. v DHCR, 288 A.D.2d 89, 733 N.Y.S.2d 23 (1st Dep't 2001).

"Cost of floor scraping and sealing performed in the tenant's apartment, which work was allegedly undertaken in connection with the laying of kitchen tiles" is disallowed. Matter of BN Really Assoc. v DHCR, 254 A.D.2d 7, 677 N.Y.S.2d 791 (1st Dep't 1998).

"Painting, skim coating, partial floor replacement and partial rewiring" are "disallowed work." Matter of Mayfair York Co. v DHCR, 240 A.D.2d 158 (1st Dep't I997).

"Scraping, sanding, painting and plastering did not rise to the level of vacancy improvements and were routine maintenance required to be performed in all apartments regulated by the Rent Stabilization Code," 300 West 49th Street Associates v. DHCR, 212 A.D.2d 250, 629 N.Y.S.2d 194 (1st Dep't 1995)

Repairs funded with insurance proceeds not allowed as basis for IAI. Nagobich v. DHCR, 200 A.D.2d 388, 606 N.Y.S.2d 190 (1st Dep't 1994)

"Removing rotten beams, and painting" constitutes repairs. Ernest and Maryanne Jeremias Family Partnership, LP v. Morris, 39 Misc.3d 1206(A) (Civ. Ct. Kings Co. 2013).

"Refinishing of the hardwood floors and the removal of the prior tenant's belongings must be disallowed as ordinary maintenance." 212 W. 22 Realty, LLC v. Fogarty, l Misc.3d 905(A), 781 N.Y.S.2d 629 (Civ. Ct. N.Y. Co. 2003).

2. DHCR opinions

Disallowed: sheetrock all walls and remove old wall in kitchen; paint and plaster complete apartment; install new door frames; install new electric wiring where needed. Matter of Haigler, DHCR Admin. Rev. Dckt No. ZJ-210009-RT, April 19, 2013.

Installation of ceramic tiles on the floors or walls of a bathroom is considered ordinary maintenance or repair unless it was done in connection with a renovation. Matter of 1070 Madison Avenue, DHCR Admin. Rev. Dckt. Nos. HA410055-RO & H410079-RT, February 25, 1994.

Scraping and coating floors with polyurethane disallowed. Matter of Fans Assocs. DHCR Admin. Rev. Dckt No. CA1 1072-RO, March 3, 1995.

Removing wall paper and redecorating is disallowed. Id.

Repair of pipes, lights and stove disallowed. Matter of Residential Management, Dl-ICR Admin. Rev. Dckt Nos. I 161004-RP & l-IC610014—RO, January 11, 1995.

3. DHCR Operational Bulletin 2016-1: (Items that Qualify for IAI)

The RSC provides generally that apartment improvements, new equipment, or new services are considered improvements eligible for an IAI rent increase.

The list provided below is intended to provide examples of qualifying IAIs; this list is not intended to be exclusive and is not determinative in all cases. Please note that items not listed below may also qualify. Items that may qualify as an IAI:

1. Complete bathroom modernization or renovation, including fixtures installed as part of such project, and all painting and plastering if part of such modernization or renovation;
2. Complete kitchen modernization or renovation, including fixtures and appliances installed as part of such project;
3. New air conditioner purchased and installed by the owner, including wiring and outlet for the air conditioner where none previously existed;
4. New washing machine;
5. New parquet flooring where none previously existed;
6. New subflooring;
7. New flooring, including linoleum and vinyl tiles, when a new subflooring is installed;
8. New carpeting;
9. New built-in clothing closets;
10. New furniture;
11. New lighting fixtures where none previously existed;
12. New storm door;
13. New storm windows;
14. New windows if not part of a building-wide installation;
15. New full length screens where none previously existed;
16. Balcony enclosure;
17. Security alarm;
18. New dropped and/or soundproof ceilings
19. Painting and plastering if part of a major renovation; and
20. Installation of sheetrock if done throughout the apartment Other Costs:

The costs associated with the removal or demolition of the item(s) being replaced may be included in the amount eligible for the rent increase when the

removal or demolition is necessary and is performed contemporaneously with the completion of the work.

4. DHCR Operational Bulletin 2016-1 (Items That Do Not Qualify as an IAI)

1. Any removal or demolition work performed by the owner or an employee of the owner during the course of assigned duties does not constitute an expenditure that can be included in the calculation of the rent adjustment for an IAI;
2. Used equipment, furnishings or items replaced through normal maintenance or repair;
3. Installations or modifications made while a tenant is in occupancy without such tenant's written consent; and
4. Items that constitute ordinary repairs and maintenance unless such work was done in connection with (and is a necessary component of) an allowable IAI. If done alone, the following items constitute repairs and/or maintenance only, and do not qualify as IAIs unless included above in "Items that Qualify for IAI":
    a. Installing sheetrock in less than the full apartment;
    b. Plastering, painting or new flooring;
    c. Scraping, shellacking or coating floors with polyurethane;
    d. Replacing light fixtures, outlets or switches;
    e. New ceilings (see #18 above).

Also excluded from calculating an IAI rent increase are charges connected with financing the installation, improvements paid for out of insurance proceeds, and labor charges for work done by the owner, or an owner's employee(s), during the course of assigned duties.

C. Comparison of apartment condition before prior to renovations

"Record contains no testimony or photographic evidence documenting the condition of the premises prior to the undertaking of any work. Since the record provides no basis for comparison and distinguishing repairs from improvements." PWV Acquisition LLC v. Toscano, 10 Misc.3d 126(A), 862 N.Y.S.2d 81l (App. Term 1st Dep't 2005).

Court finds work was "routine maintenance" where "everything that was installed in the apartment was a replacement of existing fixtures or services" and there was "no testimony or other evidence as to the condition of the Apartment prior to respondent's occupancy such that the court could distinguish mere repairs from genuine improvements." Sheridan Properties, L.L. C. v. Leifshitz, 17 Misc.3d 1137(A), 851 N.Y.S.2d 74 (Civ.Ct. Bx Co. 2007).

III. PROOF OF IMPROVEMENTS AND COSTS

If the rent level of the apartment is challenged by a tenant, either in an administrative proceeding or in court, the landlord has the burden of documenting, with sufficient specificity, the expenditures made for the improvements.

A. Required forms of documentation

Courts have relied on Policy Statement 90-10 in determining entitlement to IAI increases.

Yorkroad Assoc. v. DHCR, 19 A.D.3d 217, 797 N.Y.S.6O (1st Dep't 2005) (no invoices or proof of payment; requests to issue checks by managing agent were

self-serving documents and insufficient to establish payment)

Gruber v. DHCR, 1 A.D.3d 112, 766 N.Y.S.2d 433 (lSt Dep't 2003) (owner's itemized valuation of the work must be supported by cancelled checks, invoices, a signed contract or a contractor's affidavit as required by DHCR Policy Statement 90-10)

Farran v. DHCR, 179 A.D.2d 757, 579 N.Y.S.2d 132 (2d Dep't 1992) (only evidence was contractor's invoice that "did not identify the apartment where the work was to be done, listed various items that did not constitute renovations, and did not indicate that the contractor had been paid")

Graham Court Owners Corp, v. Green, 11 Misc.3d 131(A), 816 N.Y.S.2d 695 (App. Term 1st Dep't 2006) (trial court properly found that owner failed to submit adequate documentation concerning the nature and scope of the work performed or provide any witness affiliated with the contractor)

PWV Acquisition LLC v. Toscano, 10 Misc.3d 126(A), 862 N.Y.S.2d 811 (App. Term 1st Dep't 2005) (no witness with actual knowledge; retrospective architect's report insufficient)

Clearwater Realty Co. v. Yonac, 8 Misc.3d 115, 800 N.Y.S.2d 268 (App. Term 2nd and 11th Jud. Dist. 2005) (allows increase only for work tied to contemporary cancelled checks and supported by photographs, but not for additional amounts in subsequent checks)

NYC 107 LLC v. DHCR, 2013 NYSlipOp 32017 (Sup. Ct. N.Y. Co. 2013) (upholds DHCR's holding that invoice, though not marked "paid", had contractor's initials next to certain items; and that checks need not bear notation with apartment number on their face).

Laurian Assoc, L.P. v. Lassoff, 25 Misc.3d 1239(A), 906 N.Y.S.2d 773 (Civ. Ct. NY. Co. 2009) (no signed contract; no invoices or purchase orders either marked paid in full or showing the delivery of cabinets, appliances, or flooring, or anything else. No testimony from the purported contractor or subcontractors. No proof of payments.)

St. Nicholas 184 Holding, LLC v. DHCR, 20 Misc.3d 1138(A), 872 N.Y.S.2d 693 (Sup. Ct. N.Y. Co. 2008) (cancelled checks not contemporaneous with the completion of the alleged work; warehouse store's cost estimate of materials does not prove that those particular supplies were installed in the apartment in question)

1097 Holding LLC v. Ballesteros, 19 Misc.3d 1126(A) (Civ. Ct. Bronx Co. 2008) (no invoice marked paid in full contemporaneous with the alleged work, no signed agreement with contractor concerning nature of the work; no contractor's affidavit or testimony; checks not linked to apartment or even building)

Bradbury v. 342 West 30"" Street Corp, 18 Misc.3d 1105 (A), 856 N.Y.S.2d 22 (Sup. Ct. N.Y. Co. 2007) (charges, bills and invoices inter alia, were fabricated for this litigation…the witnesses for the defense were unreliable and untruthful in material ways)

Sheridan Properties, LL. C. v. Liefshitz, 17 Misc.3d 1137(A), 851 N.Y.S.2d 74 (Civ. Ct. Bx Co. 2007) (checks not linked to apartment and not contemporaneous)

Lirakis v, 180 Seventh Ave. Associates, LLC, 15 Misc.3d 128 (A), 836 N.Y.S.2d 500 (App. Term
1st Dep't 2007) (no invoices, plans or contractor's documents; only one cancelled check not linked to apartment)

Mali Realty Corp v. Rivera, 8/9/95 N.Y.LJ. 24, col. 4 (Civ. Ct. Kings Co.) (no

"invoices, cancelled checks, bills or other documents"; testimony was "suspect" and "not credible")

DHCR Operational Bulletin 2016-1:
Operational Bulletin supersedes DHCR's Policy Statement 90-10 regarding the criteria which will be used when assessing an owner's substantiation for IAI expenditures which is submitted to DHCR in an overcharge proceeding and other investigations.

A. Acceptable forms of proof:

Claimed individual apartment improvements are required to be supported by adequate and specific documentation, which should include:

1. Cancelled check(s) (front and back) contemporaneous with the completion of the work or proof of electronic payment;
2. Invoice receipt marked paid in full contemporaneous with the completion of the work;
3. Signed contract agreement; and
4. Contractor's affidavit indicating that the installation was completed and paid in full.

This documentation requirement calls for a higher standard of proof than that found in Policy Statement 90-10 which provided that only one of the above forms of proof was necessary unless DHCR requested additional proof. However, actual processing has shown that more than one type of proof is the norm rather than the exception. Therefore, an owner should submit as many of the four listed forms of proof as the owner is able to provide with the initial submission/answer. DHCR's consideration may not be limited to these four items as its review of IAIs is fact intensive and an individualized process regardless of whether it is part of an administrative proceeding or the subject of an independent investigation.

B. Itemization

Birdoff v. DHCR, 204 A.D.2d 630, 612 N.Y.S.2d 418 (2nd Dept. 1994) held that owners must "submit documentation proving each specific improvement. The documentation must be sufficiently specific to enable the DHCR to verify, by cost breakdown, whether some of the work claimed is merely repairs or decorating, for which an increase is not authorized."

However, in Jemrock Realty, 13 N.Y.3d 924 (2010), the Court of Appeals held that there is no inflexible rule either that a landlord is always required, or that it is never required, to submit an item–by-item breakdown, showing an allocation between improvements and repairs... The question is one to be resolved by the fact finder in the same manner as other issues, based on the persuasive force of the evidence submitted by the parties.

The Appellate Division, on remand, allowed the owner full credit for the cost of IAIs and found the unit deregulated because in that case, "evidence established, and it is not disputed, that landlord's expenditures for "improvements" vis-a-vis repairs were at least equal to $30,000, the amount necessary to bring the legal rent above the luxury decontrol threshold [$2,000.00]." 899 N.Y.S.2d 161, at 164 (1st Dep't 2010).

After Jemrock, some courts have still required itemized breakdown supporting improvements.

In Matter of Acevedo v. DHCR, 67 A.D.3d 785 (2nd Dep't 2009), which was decided before Court of Appeals decision in Jemrock, but after the decision by the Appellate Division, cited Jemrock but denied any rent increase claimed by owner.

In Acevedo, although the owner submitted "an abundance of receipts, various invoices, and the copies of the fronts of checks," the court held that they were "facially insufficient to establish that the claimed gut renovation of the subject apartment was in fact done, or that she had incurred the claimed expenses." Id. at 786. Therefore, "under these circumstances, [the owner] was required to submit a breakdown of the claimed expenses to allow the DHCR to distinguish between repairs and renovation." Id.

In London Leasing Ltd. Partnership v, DHCR, 98 A.D.3d 668, 950 N.Y.S.2d 145 (2nd Dep't 2012), the court, citing Jemrock in an MCI case, held that "the Rent Administrator's request for a cost breakdown was not arbitrary and capricious and had a rational basis in the record, given the high total cost of the upgrade and the lack of any information in the contract establishing how the total cost was derived."

In Merber v. 37 West 72nd Street, Inc, 29 Misc.3d 415, 906 N.Y.S.2d 860 (N.Y. Sup. Co. N.Y. Co. 2010), the court declined to follow Jemrock since the underlying decision was rendered after trial, not on summary judgment, and in Jemrock there was no dispute that the work was actually done.

See also, Matter of Extell, 516 East 13th Street LLC, Admin Rev. Dkt. #VD410049RO, Sept. 2007 (where inspection showed that claimed plumbing work in bathroom and kitchen were not done, lack of breakdown precludes acceptance of owner's claimed costs, and DHCR uses estimates of tenant's expert).

DHCR Operational Bulletin 2016-1: re: Lump Sum Costs
When challenged about an IAI, such as in an overcharge proceeding, an owner must submit evidence of the cost incurred for that particular item. Therefore, where an owner is seeking a rent increase for more than one item of work, a lump sum bill may not suffice. DHCR has discretion to accept a lump sum bill under certain circumstances where, for example, DHCR concludes that:

3. The evidence submitted establishes that all of the work claimed to have been done as a coordinated project and was satisfactorily completed; and
4. Each item of work was either an "improvement" or an ordinary repair and maintenance that was done in connection with, and as a necessary component, of an allowable IAI.

Even such coordinated projects are best supported by itemized proof and the absence of such itemization, may result in additional scrutiny or denial. When proof is not adequate in DHCR's view, such IAI increase may be denied in its entirety or the difference between the claimed cost and the substantiated cost will be disallowed depending on the result of DHCR's review of the documentation

IV. REBUTTAL TESTIMONY:

201 East 81st Street Associates v. DHCR, 288 A.D.2d 89, 733 N.Y.S.2d 23 (1st Dep't 2001) (although landlord submitted documents pursuant to 90-10, rent overcharge was found where tenant, electrician, plumber, architect, and carpenter testified that many claimed improvements were not performed, and where contractor admitted costs were inflated)

Rosenzweig v. 305 Riverside Corp, 35 Misc.3d 1241(A), 954 N.Y.S.2d 761 (Sup. Ct. N.Y. Co. 2012)(expert's "eight page affidavit provides sufficient detail based upon personal observations, personal research and critical examination of the quantity and quality of 305 Riverside's own proof")

Bradbury v. 342 West 30th Street Corp, 18 Misc.3d 1105 (A), 856 N.Y.S.2d 22 (Sup. Ct. N.Y. Co. 2007) (court "accepts the expert's [architect] opinion that

the demolition job should have cost about $6,500, not $23,000 or $25,000, and the kitchen floor tile job, the subject of a forged affidavit, possibly as much as $2,500.”)

Landlord has Burden of Proof

985 Fifth Ave. v State Div. of Hous. & Cmty. Renewal, 171 AD2d 572, 574-575 [1st Dept 1991](the burden is upon the owner to justify the increase sought by presenting documentary support therefore, and it must submit all relevant invoices, bills, cancelled checks and/or other material to the Administrator”)

Charles Birdoff & Co. v NY State Div. of Hous. & Community Renewal, 204 AD2d 630, 630 [2nd Dept 1994](the burden is on the owner to establish entitlement to such an increase).

Ernest & Maryanna Jeremias Family Partnership, LP v Matas, 39 Misc 3d 1206[A], 1206A [Civ Ct, New York County 2013](It is petitioner's burden to prove that each of the improvements that entitled landlord to the IAI were actually made, and that the improvements were beyond ordinary repairs. See In the Matter of Charles Birdoff & Co. v. NY State Division of Housing and Community Renewal, 204 AD2d 630, 612 N.Y.S.2d 418 (A.D. 2nd Dept. 1994); 985 Fifth Avenue Inc. v. NY State Division of Housing and Community Renewal, 171 AD2d 572, 567 N.Y.S.2d 657 (A.D. 1st Dept 1991).)