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George E. Pataki
Governor



Joseph B. Lynch
Commissioner

New York State Division of Housing and Community Renewal
Office of Rent Administration
Gertz Plaza
92-31 Union Hall Street
Jamaica, NY 11433

January 25, 2001

Your letter of July 26, 2000 addressed to the Division at 25 Beaver Street in Manhattan, has been referred to the undersigned for reply. Please note for the future that requests for opinion letters on rent regulatory matters should be addressed to Charles Goldstein, Esq., Associate Counsel, at the above address.

You state that your client wishes to install an electronic locking mechanism for the entrance to a building he owns and wants to know if there is any method by which he can recoup his expenditures, and especially the expenditures for keys, which would cost the owner \$28.00 each. You then pose a number of specific questions about the situation.

Before turning to your specific questions, we note that installation of electronic building door locks raises two issues: whether a rent increase may be granted, and whether a change in building access may constitute a failure to maintain required or essential services. Please see copies of two previous opinion letters, attached, for guidance on the latter issue. As noted in those letters, building door access is a required service for rent stabilized apartments and an essential service for rent controlled tenants.

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Your specific questions will now be addressed in turn.

Question 1: Is the new locking mechanism considered a building-wide major capital improvement (MCI) for which the landlord is entitled to a 1/40th increase based upon the cost of procuring and installing the mechanism?

Answer: First, it is noted that MCI increases are 1/84th increases, not 1/40th. Second, it does not appear that the installation would qualify as an MCI under Rent Stabilization Code (RSC) Sec. 2522.4(a)(2)(i) because it is not a capital improvement "for the operation, preservation, and maintenance of the structure."

There are two RSC provisions allowing for rent increases which could potentially be applicable. The electronic door lock installation could possibly qualify as concurrent necessary work under RSC Sec. 2522.4(a)(2)(ii), if there were a qualifying MCI, such as building front door replacement, performed concurrently. Also, an increase based on 75 percent tenant consent, under RSC Sec. 2522.4(a)(2)(iv), might be possible.

If the owner intends to use either of these provisions, it is recommended that the owner apply for a prior advisory opinion on the matter from the Owner Multiple Application Bureau in order that the owner may know, before work is performed, what items will be compensable. The relevant form is attached.

Question 2: Can each of the keys initially distributed to the tenants be considered a part of that building-wide MCI?

Answer: As stated in the previous answer, the locking system itself would probably not qualify as an MCI. With regard to the two rent increase provisions just mentioned, the question of whether the cost of the keys (not including additional or replacement keys, discussed below) would be included would most appropriately be addressed in a prior opinion. Under the 75 percent tenant consent provision, such cost might be included, if the tenants consented to a rent increase covering that cost.

Question 3: Can the cost of the initial keys be considered part of an individual apartment improvement increase?

Answer: No, because provision of the keys would be a required or essential service, as discussed in the attached opinion letters, and because the installation would not be within an individual apartment or apartments.

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Question 4: Can the landlord charge a deposit in the amount of \$28.00 (the landlord's cost) for the first key, as additional rent, or in exchange for the new key?

Answer: No, as discussed in the attached letters.

It may be advisable for the owner (whether or not any prior opinion or rent increase application discussed above is pursued) to apply for modification of services. The relevant forms for both rent stabilized and rent controlled tenants are attached; the same forms are used for applications for both a decrease in services, with an expected decrease in rent, and modification of services, with no change in the lawful rent. The use of this application process would avoid the risk that, if the owner proceeds without prior approval from DHCR, and a tenant successfully argues, upon filing a complaint, that the installation and operation of the electronic door locking system constituted a diminution of required or essential services, the owner may face not only a rent reduction, but a rent freeze as well. As noted in RSC Sec. 2522.4(e), no modification shall take place before DHCR approval, unless required to conform to law.

✓ Question 5: Can he charge a fee or deposit for providing additional keys, as additional rent or in exchange for the key?

Answer: This question would be addressed most appropriately in a modification-of-services proceeding. As noted in the attached opinion letters, the salient issue is what the practice has been on or since the services base date, pursuant to RSC Sec. 2520.6(r). Typically, a basic number of keys to be provided without charge would be one for each tenant and occupant of reasonable age, and a charge could be made for truly extra keys beyond that.

✓ Question 6: Can he charge a fee for replacing lost keys, as additional rent or in exchange for the key?

Answer: This question would also be addressed most appropriately in a modification-of-services proceeding. If the practice has been to replace a lost key for a tenant (other than one who requires replacement keys with unreasonable frequency) without charge, such practice would have to be continued.

✓ Question 7: Is there any other method that the landlord can recoup some or all of his expenditures for keys?

Answer: No.

We trust that we have fully answered your inquiry.

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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.

Very truly yours,

Charles Goldstein
Associate Counsel

Erik Strangeways
by: Erik Strangeways
Senior Attorney

CG:ES

Encl.

cc: Deputy Commissioner Roldan
(COL-969)