

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

-----X
IN THE MATTER OF THE ADMINISTRATIVE
APPEALS OF

STEVEN SANDERS, JOHN MARSH,
STUYVESANT TOWN –
PETER COOPER VILLAGE TENANTS’
ASSOCIATION, AND
METROPOLITAN TOWER LIFE INSURANCE
COMPANY,

ADMINISTRATIVE REVIEW
DOCKET NOS. TI410005RT
TI410009RT
TI410010RT
TI410011RT
TI410013RO
TI410014RO
TI410015RO
TI410016RO

DISTRICT RENT
ADMINISTRATOR’S
DOCKET NOS. TD410007AD
TD410010AD
TD410015AD
TD410017AD

PETITIONERS

-----X
ORDER AND OPINION GRANTING OWNER’S PETITIONS FOR
ADMINISTRATIVE REVIEW IN PART AND
DENYING TENANTS’ PETITIONS FOR ADMINISTRATIVE REVIEW

The above-referenced tenants have filed petitions for administrative review, by legal counsel, of an order issued on August 15, 2005 by a Rent Administrator concerning various housing accommodations in the premises known as 5 Peter Cooper Road, and 601 East 20th Street, and all of the other housing accommodations in the complex known as “Peter Cooper Village,” New York, New York. The above-named owner (Metropolitan Tower Life Insurance Company) has filed petitions for administrative review, by legal counsel, of an order issued on August 15, 2005 by a Rent Administrator concerning the aforementioned housing accommodations.

The Commissioner notes that the aforementioned petitions involve common issues of law and fact. The Commissioner is accordingly of the opinion that these petitions should be consolidated for disposition.

The Commissioner has reviewed all of the evidence in the record and has carefully considered that portion of the record relevant to the issues raised by the petitions.

In March 2005, various tenants of the subject premises filed with the rent agency an

application for a rent reduction based upon a diminution of building-wide services. In support of the application, the tenants attached a letter dated March 15, 2005. In the letter, the tenants' legal counsel alleged, among other things, that the subject premises, "Peter Cooper Village," contained twenty-one buildings, consisting of 2,480 apartments, and that the tenants had notified the owner of a service reduction based upon the implementation of an electronic card key access system to obtain lobby access, which would replace the existing use of metal keys. The tenants alleged that the electronic card key access system would result in a reduction of services based upon the following: There would be a limit on the number of additional card keys issued to each tenant; that there would be conditions imposed on the issuance and renewal of keys, e.g., photographing the tenant; that the intercom system often malfunctions, "rendering a back-up system ineffectual"; that there would be a tracking system which records the tenants' arrival, which would threaten the tenants' security; that there would be a failure to accommodate observant Jews who cannot use the electronic card key access system on the Sabbath or on certain Jewish holidays; that there would be a risk of identity theft because the tenants would receive a card key with their photograph affixed; that there would be an inadequate number of employees to remedy malfunctions for twenty-one buildings, and that there would be restrictions on guests and invitees and the creation of conditions for the issuance of card keys.

Subsequently, in response to an order to show cause filed in the Supreme Court of the State of New York, New York County, by various tenants who sought to enjoin the subject owner from implementing the electronic card key access system, the court (Acosta, J.) held, in an order dated April 19, 2005 under Index No. 104220/05, that there was a prior order of the New York State Supreme Court, New York County (Solomon, J.), dated June 29, 2004, which was in response to an earlier and related order to show cause filed by the same tenants; that this prior order held that it lacked jurisdiction to review the tenants' claims that the proposed security system constituted a diminution of services, violated the rent laws, and would be an unauthorized modification of a stabilized lease because the tenants had not exhausted their administrative remedies before the rent agency; that the prior court order also held that the tenants had not set forth "a cognizable cause of action" with respect to their claims that the electronic access system would be an illegal hardship, a breach of privacy, and a breach of the warranty of habitability; that several of the tenants' claims were dismissed as they were barred by principles of *res judicata* based upon the prior court order; that the rent agency had jurisdiction to determine the tenants' claims arising out of the rent laws and regulations, and that the subject tenants had until April 29, 2005 within which to submit to the rent agency a supplement to their service reduction complaints. The court order dated April 19, 2005 further held that on an interim basis, until the rent agency issued an order, the owner may issue to the tenants card keys which do not contain a photograph and a name; that the owner may assign a number to the card keys to identify the apartment associated with the card key; that the subject tenants will receive a card key upon the presentation of the metal key and the showing of a form of identification; that the laundry room may be converted to a card key system upon notice to the tenants; that the laundry room will have a metal key access or card key access for at least two weeks from the court order, but that the laundry room may not be accessed solely by a card key until all tenants have had an opportunity to obtain card keys.

The subject tenants filed a supplement to the service complaints, dated April 28, 2005. In the supplement, the subject tenants, by counsel, alleged, among other things, that in November 2003, the subject owner announced plans to change access to the subject premises from using a metal key to

using a computerized card key, which would contain a photograph of the tenant entitled to that card key; that between March 30, 2005 and April 14, 2005, without permission from the rent agency, the owner removed all of the metal lock cylinders from the front and rear building door locks of each of the twenty-one buildings within the subject premises, and substituted the computerized card key system; that under the prior system of gaining access by a metal key, there was no restriction on the number of keys a tenant could obtain from management, and management did not inquire who would be utilizing the metal keys; that under the new system, tenants would be required to produce a photo ID, and would have to be photographed, in order to obtain a computerized card key; that although a tenant's card key would not expire, the card key of "occupants" would expire at the same time the lease of the relevant apartment expired, and the occupant's card key would have to be renewed with the approval of the lessee and management; that the use of a card key in place of a metal key constitutes a modification or substitution of a required service; that pursuant to Section 2522.4 (e) of the Rent Stabilization Code, an owner may file an application with the rent agency to modify or substitute required services, on forms prescribed by the rent agency; that such modification or substitution of required services shall not take place prior to the approval of the owner's application filed with the rent agency; that the owner violated the rent laws and regulations because it failed to file an application with the rent agency seeking permission to implement the computerized card key system; that pursuant to Section 2523.5 of the Rent Stabilization Code, a renewal lease must be offered based upon the same terms and conditions as an expiring lease; that the existing leases do not require that a tenant be photographed as a condition of obtaining a key to the building; that the existing leases do not require that a tenant obtain a photo ID card for occupants or employees, or disclose the identity of visitors; that the existing leases do not require that "a tenant participate in a system that will track in a computerized record the dates and times that the tenant enters his or her apartment and the identity, time, and date of entry of every visitor"; that the implementation of the computerized card key system would constitute a diminution in essential services; that in case of a power failure, there would be insufficient security personnel in the lobby of each building; that the owner's reason for implementing the electronic card key access system was not for security purposes, and that the owner's real reason for implementing the new security system was to enable it to "track" down illegal sublets and tenants not using their apartments for primary residency.

In an answer dated May 19, 2005, the subject owner, by counsel, alleged, among other things, that the owner decided to implement an electronic card key access system to enhance the subject premises' security based upon the recommendations of the subject premises' Director of Security, who was a former FBI agent, two independent security consultants, New York City's Police Department (NYPD) 13th Precinct Community Affairs group, and the NYPD Crime Prevention Office; that individual apartments still utilize metal key locks; that under the new system, the metal key locks at all building entrances and laundry rooms have been replaced with an "electronic proximity card-security system"; that to obtain a card key, an individual has to show a right to have access to the subject premises, and show valid identification such as a driver's license or passport, and be photographed; that tenants are asked to verify information already contained in the tenant's lease file; that the tenants are not required to provide any new personal information, and they are not required to provide their Social Security number; that there is no charge for the initial card key issued to each tenant, and each tenant can obtain up to four additional cards at no charge for employees and recurring invitees; that there will be a fee of \$8.00 for each additional or replacement card key, which was the same cost for metal keys; that photographs are placed on the card key "for identification purposes and are necessary to allow security to immediately verify that a person possessing a card

key is the authorized holder"; that personal information "such as a date of birth, social security number, bank or credit card account numbers, or mother's maiden name will not be contained on card keys"; that tenants and legal occupants have the option of not having their names noted on the card key; that the tenants' allegation that a tenant's photograph on the card key would increase the possibility of identity theft was without basis because the card key does not contain any personal information; that the metal keys were problematic "because over the years keys were distributed by tenants without accountability, thus enabling unauthorized and potentially dangerous individuals to gain access to the buildings"; that the card keys "can be programmed to work only during specified hours, can be deactivated when a person is no longer authorized to enter a building and are very difficult to duplicate"; that if a tenant does not want to obtain a card key for an invitee, such invitee can gain access to the building by being buzzed in by the intercom system or a tenant can register an invitee on the "Tenant and Occupant Information Form" which would inform security to provide access to the listed person upon the presentation of proper identification; that security personnel will assist those tenants who are Sabbath observers, who are mostly tenants who cannot use the electronic system during the Jewish Sabbath and during several Jewish holidays, to obtain access to the building; that if a card key is lost or stolen it can be replaced at any time by the tenant going to the subject premises' security office; that as the card key is only used to gain entry to the building, the card key does not monitor when a tenant is leaving the premises; that information concerning when a tenant enters or exits a building has always been available, even to strangers, based upon visual observation; that the new system has a 72-hour battery back-up system in case of a power failure; that pursuant to Section 2523.4 (e) of the Rent Stabilization Code, a change in a door-locking device does not constitute a diminution of services because such a change is *de minimis* in nature where security or access is not otherwise compromised; that the keycard system improves security, and since "access is not compromised, implementation of the card key system is a proper, *de minimis* change in condition"; that as the card key system increased security, and the change in the door-locking device in the subject premises was *de minimis*, it was not necessary for the subject owner to seek permission from the rent agency before installing the electronic card key access system; that placing the tenant's photograph on the card key does not constitute a reduction in services because requiring a photograph is a "necessary security measure and a critical component of the new system"; that the new security system does not violate the tenants' leases because the leases do not require the use of metal-key-operated locks, and they do not preclude the owner "from requiring photographs and imposing other reasonable security measures"; that the leases require the tenants "to observe the rules adopted by owner and gives owner control over all common areas," and that based upon the principles of *res judicata* and collateral estoppel, the court has held that no lease provisions were violated by the implementation of the electronic card key system.

In the order herein under review, the Administrator denied the tenants' application for a rent reduction based upon a diminution of services and granted the owner permission to modify services. The Administrator's order herein under review consisted of seventeen pages. The Administrator's findings contained in the order herein under review are incorporated and made a part of the record in this proceeding as if they were fully stated in this order and opinion.

A summary of the Administrator's findings is as follows: The substitution of an electronic card key for a metal key was not a modification in services which is proscribed by the rent laws and regulations; that the owner is not going to limit the number of card keys a tenant may obtain; that "the owner is required to provide security at the premises and requiring the identity and identification

of an individual who will be issued a key allowing entrance to a building is prudent and does not violate either the literal requirements nor the spirit of the Rent Stabilization Law or Code; that as to guests (e.g., family members and friends) who have keys to the building entrance, the new electronic card key system provides more security than when guests gained access by a metal key because if a guest becomes problematic that guest's card key can be revoked by canceling the card, but under the former system the guest may not have returned the metal key to the tenant; that guests can be issued permanent and unrestricted card keys; that an invitee is an individual who is an employee or an independent contractor of the tenant, and the policy of obtaining a card key for an invitee should be different from the policy of obtaining a card key for a guest; that as to invitees; "the tenant or legal occupant would need to identify when the invitee would require access and whether there was a limited period of time such access was required"; that this is necessary "so the keycard can be programmed properly and, as appropriate, contain an expiration date"; that based upon security needs, the owner may require the tenants to periodically review the lists of persons in possession of card keys for each tenant, as this would allow the owner to cancel card keys that are no longer needed; that the tenants' allegation that the card key system would create a hardship for Jewish Sabbath observers was without merit because the owner had stated that Jewish Sabbath observers will be assisted by security personnel in obtaining access to their building; that an electronic card key system which stores information about a tenant's use of his card key does not violate the rent laws and regulations because this system merely automates information which could have been recorded by a doorman or other building employee, and that the "accumulation of such information by employees has in fact been done in other circumstances involving rent stabilized buildings and has been admitted in evidence in administrative and court proceedings; that the 72-hour back-up system in case of a power failure is adequate, especially in view of the fact that "even the worst of the recent Northeastern blackouts lasted significantly less time than the 72 hours the back up power system would be available"; that requiring tenants to produce photo identification does not violate the rent laws and regulations, and it does not constitute a change in the terms and conditions of the lease, as the evidence shows that there will be no recording of driver's license numbers and passport numbers, etc., and because if an owner did not "verify the identity of those to whom it issued keys it would be a breach of security service owed to the tenants"; that the tenants' allegation that as the owner has the tenant's social security number (for the lawful purpose of complying with the law concerning security deposits) and will now have a database containing the tenant's photograph, that this would increase the possibility that one of the building's employees could engage in identity theft or stalk a tenant is speculative; that speculation that a building employee could have such criminal intent was not a basis within which to find the electronic card key system violates the rent laws and regulations or changes the terms and conditions of their leases; that to minimize such risks as expressed by the tenants, in implementing the electronic card key access system, the owner may not request or retain the social security number of more than one tenant or legal occupant for each apartment unless the security deposit is maintained in some form of a joint account, and card keys will be issued to all other persons "involved with the unit without requiring their social security number"; that, in addition, as the owner stated that the card keys will not contain the tenant's personal data, including their names, the owner was directed to ensure that the card key also does not contain the tenant's social security number and any financial data; that "no information gathered by the owner may be transferred to any other person or organization not directly related to the management of this property"; that the owner's submissions describe the new system as containing a "CCTV system capable of verifying the identity of a person entering the premises using a keycard, with the photograph of that individual maintained in the system data base"; that although the electronic card

key system is not a facial recognition system, security personnel "can determine in real time if the person who entered the building was the keycard holder and, if not, dispatch mobile units to investigate"; that the new security system "is a clear improvement in security and that as the inconvenience to the tenants to take a few moments to have their photographs taken, is limited possibly to a single occasion, it can not be said that the proposed action is a decrease in service, nor does it violate the spirit or intent of the Rent Stabilization Law and Code"; that the fact that the new security system may assist the owner in identifying illegal sub-tenants and non-primary residents does not make this change unlawful; that the subject premises consisted of not only residential buildings, but the extensive grounds surrounding the premises, and that "having an easily recognizable identification card for the complex, which contains a photograph and which clearly identifies the holder as authorized to be on the premises does not violate the terms and conditions of the lease or the Rent Stabilization Law and Code."

On appeal, the tenants, by counsel, allege, among other things, that there must be a plan to allow access to tenants and occupants and their guests who are Sabbath observers without the necessity of producing a card key or photo ID on the Jewish Sabbath or on certain Jewish holidays; that the Administrator did not set forth a standard for determining whether the new security system constituted a diminution of services, a violation of the rent laws and regulations or an unauthorized change in the rent-stabilized leases; that the tenants were denied due process based upon the Administrator's "failure to articulate the standard which was applied in its determination"; that the Administrator's order violated Section 2522.4 (e) of the Rent Stabilization Code, which provides that there shall be no modification or substitution of required services without prior approval of the owner's application by the rent agency; that this violation of the Rent Stabilization Code should have resulted in an order directing the owner to immediately restore the metal key lock system; that the Administrator's order violated the applicable rent laws and regulations that rent-stabilized leases be renewed on the same terms and conditions as the prior lease; that the Administrator's order failed to address the requirement that tenants and occupants, and their invitees and guests, must carry with them an "identity card"; that the Administrator's order trivialized the issue of identity theft, and failed to address the dangers of computer hackers who are capable of gaining access to the premises' computer system; that the owner has not demonstrated that it has sufficient staff to provide security at the building entrances in the event of a power outage, and the recent events in New Orleans have shown the serious possibility of a power outage lasting more than 72 hours; that the replacement of the metal key system with the electronic card key system "presents a serious threat to the life, health and safety of the tenants at Peter Cooper Village and will leave the tenants and occupants at far greater risk of strangers and looters entering the premises in the event of an emergency"; that there is no reason stated for the necessity of a photo ID card and for the maintenance of a photographic data base; that entry into the tenants' buildings will not involve "recognition of the photograph contained on the identification card"; that the Administrator improperly found that the new security system does not constitute a reduction of services, and that the Administrator's order should be revoked and the owner should be directed to restore the metal keys as the method of access to the buildings' entrances.

On appeal, the owner, by counsel, alleges, among other things, that the Administrator's order should clarify that the owner may require individuals without card keys, who request access to any of the buildings, to show some form of photo ID or other identification; that the Administrator's order should be modified to allow tenants and legal occupants the option of having their names listed on their card keys; that the owner should be allowed to list the names of guests and invitees on their card keys; that the owner should be allowed to list non-sensitive personal information, i.e., any information other than a date of birth, Social Security number, bank or credit card account numbers, or mother's maiden name, on the card keys; that the card key should contain information concerning whether the card key holder is a resident, occupant, visitor or employee; that the card keys should be allowed to contain a serial number that can be matched by security personnel to the name of the authorized holder in the owner's computer data base when needed, and that card keys issued to invitees should be allowed to expire on a fixed date.

After a careful consideration of the evidence contained in the record, the Commissioner finds that the owner's petitions should be granted in part, and that the tenants' petitions should be denied.

The Commissioner finds that the Administrator's findings that the owner's implementation of an electronic card key system does not constitute a diminution in services, is not a violation of the rent laws and regulations, and is not an unauthorized change in the tenants' rent-stabilized leases, were correct, and also finds that these findings shall be adopted as the Commissioner's own findings as if they were fully stated as such in this order and opinion.

Based upon the record, the Commissioner notes that the subject owner implemented the new security system based upon the recommendation of the crime prevention unit of NYPD's 13th Precinct, the subject premises' director of security, and by two independent security consultants. The Commissioner accordingly finds that the replacement of the metal key locks on the building entrances with the electronic card key system was not a diminution of services.

Notwithstanding the tenants' submission of an affidavit by the director of the Privacy Rights Clearinghouse, which was submitted in support of the tenants' allegation that the card key security access system will increase the risk of identity theft (an issue that will be discussed below), the Commissioner finds that the tenants do not submit evidence establishing that the tenants would have better security with the metal key locks on the entrance doors than with the card key access system. The Commissioner finds that the tenants' attempt to portray the new security system as inferior to the prior system of metal key locks is based on speculation and hypothetical situations, and is not based on fact or based on any actual past experiences with card key security access systems.

As to the tenants' assertion that the card key security system is a diminution of a required service because it would provide less security than the prior metal key access during a power outage or during some other unforeseen emergency, the Commissioner notes that this assertion is contrary to the opinion of the NYPD's 13th Precinct crime prevention unit. A memo from the 13th Precinct crime prevention unit stated, in part, the following:

A major component of any security system is access control. Maximizing the use of updated electronic technology, access control cards contribute to a safer environment by limiting the number of persons at a given location, allowing only authorized entry. Access control cards equipped with photo identification capability increases the level of security, allowing immediate positive verification of the cardholder. A database record of access cards allow the issuer the ability to void a card in the event it is reported loss or stolen. This feature allows for the integrity of the entire system to be maintained.

Photo identification cards are also considered a valuable asset, enabling the issuer to identify residents and employees, especially at a time of emergency or a catastrophic event.

The record reflects that the card key system has already been implemented and utilized in other apartment complexes (e.g., the court [Solomon, J.] order, under Index No. 100010/04, noted that the card key system has been installed in other apartment complexes, including the University Towers apartment complex in Brooklyn). The Commissioner points out that the tenants, in their voluminous submissions, do not state or show that tenants who reside in apartment complexes which have replaced metal key locks with the card key system have had their security decreased, and further points out that the tenants do not provide any anecdotal incidents where the card key system performed less efficiently than a metal key lock system.

As to tenants who are Jewish Sabbath observers, and, as such, based on their religious beliefs are prohibited from using their card key on the Jewish Sabbath and on certain Jewish holidays, the Commissioner notes that the owner alleges that these individuals will be accommodated and that they will be provided assistance in obtaining access to their building. The Commissioner finds that the tenants do not show that the owner has not, and/or will not, accommodate Jewish Sabbath observers in gaining access to their building, and further finds that the tenants do not submit any affidavits or statements from Jewish Sabbath observers alleging that they have been denied access to their building or anticipate any problems in obtaining access to their building on the Jewish Sabbath and on certain Jewish holidays. The Commissioner points out that Jewish Sabbath observers should inform the owner, and/or relevant security personnel, the times when the Jewish Sabbath begins and ends, and the dates and times of Jewish holidays on which the owner would need to accommodate and assist Jewish Sabbath observers in entering their buildings.

Based upon the record, the Commissioner finds that the number of card keys given to tenants, legal occupants, and guest and invitees, is the same as the number of metal keys given under the prior system. The Commissioner accordingly finds that the tenants' allegation that individuals who were entitled to a metal key will not have access to a card key is without merit. ★

As to the issue of identity theft, the Commissioner points out that the owner already requires the Social Security number of at least one tenant in each apartment based upon the laws regarding security deposits, and that the owner would have this information under the prior system or under the new card key system. The Commissioner finds that the owner has taken sufficient precautions in minimizing any risk of identity theft by not placing any confidential personal information (e.g., birth date, Social Security number, bank or credit card account numbers, and mother's maiden name) on

the card key, and the Administrator's order stated that except for the tenant (or tenants where there is a joint account) in each apartment who is relevant to the security deposit, the owner may not request or retain the Social Security number of any tenant or legal occupant. The Commissioner further finds that it is implied in the Administrator's order that the photographic data base used in connection with the card key system will also not contain confidential personal information. As to the aforementioned affidavit prepared by the director of the Privacy Rights Clearinghouse, the Commissioner notes that the affiant does not cite any occurrences of identity theft in any residential or commercial premises that utilize the electronic card key system, and the affiant's opinion as to the threat of identity theft was based on speculation, and not on any actual occurrences. The Commissioner is of the opinion that a finding of a diminution of services is not warranted based upon mere speculation.

Based upon the above and the Administrator's findings, the Commissioner finds that the installation and utilization of the electronic card key system does not constitute a diminution of services because the tenants have not shown that a decrease in the security of the subject premises has occurred; that the tenants do not show that the new security system will decrease or limit lawful access to the subject premises, and moreover, the tenants do not show that individuals will not be able to obtain a card key who were entitled to a metal key to the buildings' entrances under the prior system.

As previously determined by the Administrator, the Commissioner finds that changing the locks in the subject premises does not require prior approval by the rent agency, as the only difference in obtaining access to the premises is that a card key will be used, instead of a metal key. Moreover, the new method of obtaining access to the subject premises was based upon the recommendations of the security experts cited by the owner.

The Commissioner is of the opinion that in this proceeding, as two separate New York State Supreme Court justices have reviewed the issues pertaining to the owner's installation and implementation of the card key system; as the rent agency's Administrator and Commissioner have reviewed the issues pertaining to the card key system arising out of the rent laws and regulations, as directed by the orders of Justice Solomon and Justice Acosta, and as Justice Acosta's order stated that the court will retain jurisdiction over this matter, requiring the owner to file a separate application seeking permission to install and implement the card key system would be unnecessary, and an ineffective use of limited administrative resources and duplicative of prior court and agency proceedings. Moreover, the Commissioner notes that whatever issues the tenants may have been allowed to raise in such a separate proceeding where the owner filed an application seeking permission to install the card key system, were raised or could have been raised in either the court proceedings or in this proceeding before the rent agency.

Based upon the above, and the Administrator's findings, the Commissioner finds that the owner's plan to install and implement an electronic card key system does not violate the rent laws and regulations.

As to the issue of the tenants' leases, the Commissioner notes that Justice Solomon's order stated, in part, the following: "Moreover, Tenants do not point to any provision of the lease violated by the proposed security system. Indeed, paragraph 6 of the lease provides that the tenant agrees to

observe such rules and regulations adopted by Met Life relating to the buildings and grounds.” Furthermore, the Commissioner finds that the tenants do not show that a metal key lock mechanism on the building’s entrance doors, or the use of a metal key, is a term and condition of the tenant’s lease. The Commissioner further finds that the replacement of the metal keys with a card key is a mere utilization of technological advances in providing required services, and that such technology did not exist until recently. Moreover, the Commissioner finds that the owner’s provision of a required service in a different manner from that used before based upon changes in technology (e.g., satellite dish or cable in place of TV antennas, a heating mechanism using gas or oil instead of coal, and an electronic card key in place of a metal key) does not constitute a change in the terms and conditions of a lease.

As found by the Administrator, the posing for a photograph by the tenants for purposes of the card key security system is a minimal and one-time inconvenience, which is no more of an inconvenience than a tenant having to remain at home when the owner needs access to make repairs. The Commissioner finds that whatever inconvenience a tenant may incur in having to have his photograph taken is more than compensated by the security that is provided by the card key system. Based upon the above and the findings by the Administrator, the Commissioner finds that the owner’s installation and implementation of the card key system does not violate the tenants’ rent-stabilized leases, and that it does not change any of the terms and condition of such leases.

The Commissioner finds that the tenants do not establish a legal basis for reinstating the metal key locks, and the tenants do not establish that their rights will be harmed under the rent laws and regulations, with the use of the card key system. Accordingly, the Commissioner finds that the tenants’ PARs should be denied.

In the owner’s PARs, it was noted that during the litigation before Justice Solomon, the owner agreed to the placing of the name of a tenant or a legal occupant on the card key as optional, instead of mandatory, based upon the concern of some tenants that a criminal could use the name to ascertain which building the card key provided access to. The Commissioner finds no reason why a tenant or a legal occupant should not have the option of placing his name on the card key, and that the section of the Administrator’s order which prohibits any name from appearing on the card key should be modified to afford tenants and legal occupants the option of having their names on the card key.

The Commissioner notes that a guest was defined in the Administrator’s order as including relatives, and, as such, it is probable that many guests will share the same last name with the tenants who provided them with a card key (e.g., parents, children, and siblings of tenants). The Commissioner accordingly finds that the option of placing a name on the card key should also be extended to guests for the same reason the owner provided for making it optional for the names of tenants and legal occupants to be placed on card keys.

The Commissioner notes that an invitee was defined in the Administrator's order as including employees, independent contractors and caregivers, and, as such, it not likely that an invitee will be related to the tenant who issued to them a card key. The Commissioner accordingly finds that the owner may require the names of invitees to be placed on card keys.

~~The Commissioner finds that the Administrator's order should be modified to permit non-~~sensitive information (i.e., using a letter to designate whether the card key holder is a tenant or legal occupant, guest, or invitee, and a serial number that can be matched by security personnel to the name of the card key holder in the owner's computer database when needed) on the card key because such non-sensitive information is for security purposes, and that the above non-sensitive information on a card key does not increase the risk of identity theft. The owner's characterization shall have no bearing upon any future proceeding involving status or succession rights.

As to the owner's assertion that the issue of the expiration of card keys for invitees was not an issue before the Administrator, the Commissioner finds that this assertion is without merit as issues pertaining to the card key system arising out of the rent laws and regulations were properly before the Administrator. The Commissioner further finds that the Administrator correctly found that a blanket policy of the card keys of invitees expiring within thirty days could be viewed as such a radical change from past practice as to be in violation of the rent laws and regulations. As to the expiration of the card keys of invitees, the Commissioner finds that the Administrator correctly found that the expiration date should be based upon the invitees' occupation, the type of work performed, and when such work is reasonably expected to be completed (e.g., contractors may need access for no more than a few weeks but caregivers may need access for many years).

The Commissioner finds that the Administrator's order should be modified to reflect that individuals without a card key who seek access to any of the subject premises' buildings may be required to show some form of photo ID to security personnel, based upon the security needs of the subject premises. The Commissioner finds that as security personnel may review the photos of card key holders as they enter their buildings, via the integrated CCTV system, it is only logical to allow security personnel to be able to ask for a photo ID of non-card key holders.

Based upon the above, the Commissioner finds that the owner's PARs should be granted in part.

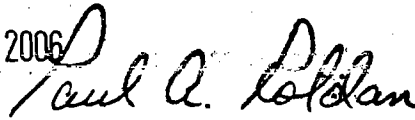
The Commissioner notes that in the absence of a court order, there is no stay of this order and opinion issued by the rent agency. The Commissioner accordingly finds that the owner may now implement the card key security system as approved by the rent agency.

THEREFORE, in accordance with the Rent Stabilization Law and Code, it is

ORDERED, that the tenants' petitions be, and the same hereby are, denied, and that the owner's petitions be, and the same hereby are, granted in part as provided for in this order and opinion, and it is

FURTHER ORDERED, that the Administrator's order (issued under Docket Nos. TD410007AD, TD410010AD, TD410015AD, and TD410017AD) be, and the same hereby is, modified in accordance with order and opinion, and as so modified the Administrator's order be, and the same hereby is, affirmed.

ISSUED: APR 28 2006



PAUL A. ROLDAN
Deputy Commissioner



State of New York
Division of Housing and Community Renewal
Office of Rent Administration
Gertz Plaza, 92-31 Union Hall Street
Jamaica, NY 11433
Web Site: www.dhcr.state.ny.us

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.