

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 ADMINISTRATIVE
APPEAL OF:

ADMINISTRATIVE REVIEW
DOCKET NO: FP410049RT

Cassie Bellew

RENT ADMINISTRATOR'S
DOCKET NO: EU410005RP

PETITIONER

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ORDER AND OPINION DENYING TENANT'S
PETITION FOR ADMINISTRATIVE REVIEW

On May 23, 2016, the above-named Petitioner-tenant filed a Petition for Administrative Review (PAR) (Docket Number EQ410070RT) of an Order issued by the Rent Administrator on May 3, 2016, concerning the housing accommodation known as 240 West 10th Street, Apartment 34, New York, NY 10014. The Rent Administrator's Order that is the subject of that appeal found that the owner had collected \$11,322.93 in overcharges from the tenant, but that the owner had refunded \$23,321.25 to the tenant, which was more than the total of the overcharges, interest on the overcharges, and excess security held by the owner, and that there were therefore no monies due to the tenant pursuant to that proceeding. The Rent Administrator further found that the owner must renew the tenant's lease. The tenant's PAR was granted in part by PAR Order EQ410070RT, issued on September 7, 2016, and the matter was remanded to the Rent Administrator to investigate whether there was an identity of interest between the owner and the contractor who performed individual apartment improvements (IAIs) in the subject apartment, and to investigate the contractor's invoices submitted by the owner.

Pursuant to the above-referenced remand, the Rent Administrator issued an Order under Docket Number EU410005RP. Said Order found that the owner was in fact entitled to the rent increases for the IAIs at issue because the contractor was paid separate from and unconnected to his duties and payment as the superintendent of the building, and because the owner gave a reasonable explanation of the invoices, which explanation was supported by the contractor's affidavit. The tenant then filed a timely PAR against Rent Administrator's Order EU410005RP and the instant PAR Order is the determination of said PAR.

In the PAR, the tenant alleges that the Rent Administrator should not have accepted the self-serving affidavit of the owner's employee; that the invoices in question were created by that employee, and do not have any breakdown of the major items of material or work done; that the invoices are not accompanied by any receipt for allegedly purchased items, even though these items included many major alleged purchases; that the heightened scrutiny required when IAIs are performed by an owner employee such as herein, the owner has not submitted sufficient proof that any work at all was performed; that the owner does not even present receipts for the refrigerator or for the stove, which would be required to support the warranties for those appliances; and that the acceptance of a third party invoice without any breakdown of the cost of materials or appliances, and without any actual purchase receipts, is insufficient to support the owner's IAI claims.

The tenant further alleges that the owner's explanation for the two identical invoices does not make sense because the work was allegedly completed by November 18, 2013, even though the first payment for this work was not made until March of 2014, and because, if the parties' agreement was that payment would be divided into two payments, both of which were to be delayed, this would have been done with a single invoice showing the two payments; that the owner's explanation only makes sense if the owner was going to make separate payments during the course of the work; that the owner has not explained or clarified this situation; that the owner's proof of payment appear to be fraudulent, as the first check is dated March 25, 2014 and is numbered 1488, while the cancellation number for this check reflects check number 1459; that it appears that the owner submitted a copy of a check that does not correspond to the bank cancellation information appearing below the check; and that the remanded proceeding failed to address the issue of the willfulness of the overcharges, which was raised in the tenant's original PAR.

The tenant also goes into detail regarding why the overcharges herein were willful, and regarding why treble damages should therefore be applied to such overcharges. The tenant also requests an award of legal fees incurred by her during this proceeding.

The owner filed an answer to the tenant's PAR, alleging that the tenant should not be allowed to raise any issue beyond the two issues specifically set forth for reconsideration by the PAR Order that remanded the proceeding to the Rent Administrator; that the tenant's allegations regarding the invoices and the check are identical to her allegations in her first PAR, and have already been fully and finally

Administrative Review Docket No. FP410049RT

determined by the Order determining said first PAR; that no issues beyond the two issues that the first PAR Order specifically set forth for consideration on remand may be considered now; that the Rent Administrator fully considered these two issues, and came to a proper determination of both issues; that the owner's submission and the contractor's affidavit established that the owner paid labor costs for the IAIs at issue, and that such costs were separate from and in addition to the superintendent's normal salary; that the owner submitted copies of cancelled checks showing the superintendent's normal salary payments; and that the superintendent attested to his duties and to his compensation as superintendent.

The owner further alleged that the tenant's original PAR did not take issue with the Rent Administrator's original finding that the owner incurred labor costs for the IAIs that were separate and distinct from the superintendent's salary; that the owner submitted sufficient proof that the IAIs were performed and paid for; that the tenant does not dispute that the IAIs were performed, rather arguing that the owner should be required to produce more documentation to show that the undisputed work was performed; that Operational Bulletin 2016-1 states that, when the worker who performs an IAI is an employee of the owner, the owner must prove that the payment for the IAI work was separate from and in addition to that employee's normal salary; that the owner showed that the superintendent who performed the IAIs was paid for the IAI work separately and in addition to his normal salary; and that the Rent Administrator requested specific evidence from the owner to establish this fact, and the owner submitted such evidence, as outlined above.

Finally, the owner alleges that it explained why the two invoices were similar; that the owner explained, as accepted by the Rent Administrator and as outlined in his Order, that the owner and the superintendent agreed to split the payment for the work into two payments as an accommodation to the owner, so the two payments are for the same amounts; that this explanation was also attested to by the contractor; that the tenant should not be allowed to repeatedly raise the allegation that one of the checks was fraudulent; that, nonetheless, the owner now submits a clearer copy of that check, check 1459, showing issuance of said check by the owner and the cashing of said check by the contractor; and that the tenant is not entitled to treble damages.

The tenant responded to the owner's answer by alleging that the owner knew of the rent stabilized status of the premises in 2013, as shown by the settlement that the owner made with another tenant in the

Administrative Review Docket No. FP410049RT

subject premises; that, in spite of this knowledge, the owner filed false information with this Agency when he filed his original 2014 registration with this Agency; that the owner filed for high rent vacancy deregulation; that the 2014 apartment registration shows that the registered rent for the subject apartment was half of what the tenant was being charged; that the owner disingenuously claims to have not known that the apartment was rent stabilized while simultaneously having filed for exemption from rent regulation; that the owner's allegation that the overcharge was not willful because it did not know of the status of the apartment is therefore false; and that the tenant might not have been properly represented by his attorneys earlier in these proceedings.

The Commissioner is of the opinion that this PAR should be denied and that the Rent Administrator's Order at issue should be affirmed.

The matter was remanded to the Rent Administrator for the specific and exclusive purpose of investigating whether the superintendent, who was also the contractor who performed the IAIs, performed such IAIs separate from, and was paid separate from payment for, his normal duties as superintendent, and to investigate the similarity of the two invoices submitted by the owner.

The Commissioner finds that the owner has documented the normal payment of regular wages to the superintendent, in the form of cancelled checks to the superintendent spanning roughly four years, each of which checks states in the memo line that it is to pay the payee's "salary". The owner also submitted two cancelled checks to the contractor (who, again, is also the superintendent), each of which is for half of the amount of the total claimed cost of the IAIs. The owner has also submitted a clearer copy of the check that the tenant disputes, and such clearer copy is of the same disputed check, and clearly shows payment of half of the cost of the IAIs to the contractor. The affidavit of the contractor also attests to the fact that the payments for the IAIs were separate from and not connected to his duties as superintendent. Based on the above-outlined evidence, the Commissioner finds that it was reasonable for the Rent Administrator to find that the contractor was paid for the IAIs separate from and unconnected to his duties as superintendent.

Regarding the invoices, while they are for identical amounts, they are for different work, all of which work, however, was part of the total IAIs claimed by the owner. The owner's explanation as to why the amounts are identical, namely that the parties agreed to split the payments for the IAIs into two equal installments, is reasonable, and is

Administrative Review Docket No. FP410049RT

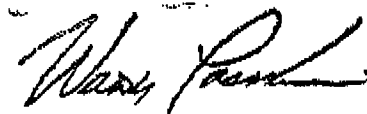
supported by the contractor's affidavit. Further, the proof of payment for the IAIs, referenced above, correlates exactly with the total amount of the two invoices. Under these circumstances, in which the owner submitted proof that payment was made for the IAIs and that such payment was separate from and unconnected to the contractor's alternate duties as superintendent, in which the owner has plausibly explained the similarity of the amounts of the two invoices, in which the amounts of the checks for payment of the IAIs is the same as the sum of the invoices, and in which the contractor's affidavit attests to the facts as set forth by the owner and as supported by the above-referenced evidence, the Commissioner finds that the two invoices submitted by the owner are bona fide and support the finding that the IAIs at issue were in fact performed and paid for. The Rent Administrator was therefore correct to find that the owner is entitled to rent increases for the IAIs at issue.

The tenant's other allegations may not be addressed in the context of this Order. As explained above, the matter was remanded by PAR Order EQ410070RT explicitly and solely for the purpose of investigating the issue of the relationship between the owner and the contractor, and whether the contractor was paid for the IAI work separate from and unconnected to his duties as superintendent, and the issue of the similarity of the two invoices submitted by the owner. These issues have been fully addressed by this Order, and other issues are beyond the scope of this Order.

THEREFORE, in accordance with the provisions of the Rent Stabilization Code it is

ORDERED, that the Rent Administrator's Order docketed under Docket Number EU410005RP is affirmed, and that the tenant's PAR is denied.

ISSUED:
AUG 23 2018



Woody Pascal
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.nysher.org

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 28 Liberty Street, 18th Floor, New York, New York 10005.

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.