New York State
Division of Housing and Community Renewal
Office of Rent Administration

Policy Statement 89-2 (February 27, 1989)

Application of the Treble Damage Penalty

This policy statement is being issued to clarify DHCR's position on the application of treble damages upon the finding of a rent overcharge pursuant to the Rent Stabilization Law (RSL).

Section 26-516 (a) of the Rent Stabilization Law, as amended by the Omnibus Housing Act of 1983, provides that any owner who is found to have collected an overcharge "...shall be liable to the tenant for a penalty equal to three times the amount of the overcharge. If the owner establishes by a preponderance of the evidence that the overcharge was not willful, the...(DHCR)... shall establish the penalty as the amount of the overcharge plus interest."

Section 25-51666 (a)(2)(i) of the RSL limits the imposition of treble damages to no more than two years before the filing of the complaint and denies treble damages to any overcharge occurring prior to April 1, 1984.

Pre-April 1,1984 Overcharges

Section 26-516 (a)(2)(i) precludes the imposition of treble damages to any overcharge occurring prior to April 1, 1984. Nevertheless, it is DHCR policy to apply the penalty to overcharges occurring on or after April 1, 1984 even though the tenant's complaint of rent overcharge has been filed prior to April 1, 1984.

In order to obviate any "due process" objections by owners to the effect that when the overcharge complaint was filed the treble damage section had not yet gone into effect so that the owner was unaware of the potential treble damage penalty, it is DHCR's policy to notify such owners prior to the issuance of the order that if an overcharge was determined pursuant to that complaint, they would be liable for treble damages for overcharges occurring on or after April 1, 1984. The owner may submit evidence that the overcharge was not willful. The assessment of this evidence by DHCR is described more fully below.

It is also DHCR policy that where such an owner did not receive such prior notice, upon the owner raising the no-notice issue at PAR, the Rent Administrator's order, to the extent that it imposes treble damages, shall be set aside.

Post April 1, 1984 Overcharges

The RSL assesses treble damages where the overcharge is "willful". The statute, in fact, creates a presumption of willfulness subject to rebuttal by the owner showing non-willfulness of the overcharge by a preponderance of the evidence. In the absence of such affirmative proof by the owner or after the submission of inadequate proof, DHCR staff, shall assess treble damages where a determination of overcharge is made.

The owner must prove by a preponderance of the evidence that the overcharge was not a willful act. This simply means that where an owner submits no evidence or where the evidence is equally balanced, the overcharge is deemed to be willful. The owner can submit such evidence after receiving notice of a tenant's filing of an overcharge complaint prior to the final order being issued. When an owner receives the second and final notice that an overcharge has been determined and treble damages are about to be imposed, he or she will be notified to submit evidence within twenty (20) days to prove that the overcharge was not willful.

DHCR has determined that the burden of proof in establishing lack of willfulness shall be deemed to have been met and, therefore, the treble damage penalty is not applicable, in some situations, where it is apparent or where it is demonstrated that an overcharge occurred under certain specified circumstances. Examples of such circumstances are as follows:

1) Purchase of a building at a judicial or bankruptcy sale, where complete prior rent records, are not available.

2) Where an owner adjusts the rent on his or her own within the time afforded to interpose an answer to the proceeding and submits proof to the DHCR that he or she has tendered, in good faith, to the tenant a full refund of all excess rent collected, plus interest.

3) Where the overcharge is caused by the hyper-technical nature of the rent computation, provided that

   • an owner who continues making the same technical error after an order correcting such error has been issued by the DHCR, will not be excused from treble damages when DHCR determines an overcharge by such owner upon a subsequent complaint.

   • an owner who miscalculates a renewal lease increase after May 1, 1988, the date on which DHCR's notice of Lease Renewal Form (RTP-8) went into effect in New York City, will not be excused from treble damages when DHCR determines an overcharge upon a complaint filed by a tenant which involves a renewal lease commencing on or after October 1, 1988. The RTP-8 shows the proper method for computing lease renewal increases.

Typical, hyper-technical computation errors include:

a) Where the owner erroneously included the 2.2% increase in a 421-a building in the base rent on or after November 19, 1982;

b) Where an owner charges a 2.2% increase in a 421-a building for the tenth year of the tax exemption schedule;

c) Where the owner "piggy-backed" guidelines increases within the same guidelines year;

d) Where the rent guidelines increases were computed on the September 30th rent plus a "supplementary adjustment", a rent increase for new equipment installed or an MCI increase which became effective after September 30th, instead of first calculating the guidelines increases and then adding on the other charges.

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