

George E. Pataki
Governor



Judith A. Calogero
Commissioner

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

March 18, 2003

Brownstone Publishing, Inc.
149 Fifth Avenue
New York, NY 10010-6801

Attn: Susan R. Lipp
Legal Editor
Apartment Law Insider

Dear Ms. Lipp:

Your letter of February 21, 2003, to Deputy Counsel David Cabrera requesting an opinion regarding storage space has been referred to the undersigned for reply.

In your request, you describe the facts as follows:

An owner contracts with an outside storage company to build storage bins in the subject building for rental to rent-regulated tenants residing therein. There will be separate leases for the spaces, to which only the storage company and the tenants will be parties, and such aspects of management of the rental of the spaces, such as billing and collection of rents will be conducted by the storage company. However, the storage company will pay a percentage of rents collected to the owner. Prior to the construction of the bins, the owner did not provide the tenants with free storage space, nor did the owner include riders with the leases requiring such provision.

You pose the following questions:

- 1) Will provision for storage space for a fee become a required or ancillary service which the owner must continue?

- 2 -

- 2) Would the payment to the owner by the storage company be considered a rent overcharge?
- 3) Would the rents charged by the storage company be limited by guidelines increases?

The following provisions of the Rent Stabilization Code (RSC) apply to this situation.

Pursuant to RSC Section 2520.6(c), "Rent" includes any charge or fee received "in connection with the use or occupation" of a housing accommodation. "Housing accommodation," pursuant to RSC Section 2520.6(a) includes all facilities, such as storage space, supplied in connection with occupation of dwelling space.

Pursuant to RSC Section 2520.6(r)(3), required "ancillary services" include all services not contained within the individual housing accommodation, such as storage space; provided by the owner at any time.

Pursuant to RSC Section 2520.6(r)(4), an ancillary service for which there is a separate charge will not be subject to regulation under the RSC:

"where no common ownership between the operator of such service and the owner exists or existed on the applicable base date, or any time subsequent thereto, and such service is or was provided on the applicable base date and at all times thereafter by an independent contractor pursuant to a contract or agreement with the owner. Where, however, on the applicable base date or at any time subsequent thereto, there is or was a separate charge, and there is or was common ownership, directly or indirectly, between the operator of such service and the owner, any increase, other than the charge provided in the initial agreement with a tenant to lease, rent or pay for such service, shall conform to the applicable rent guidelines rates." (Emphasis added).

It appears from the facts you present that the storage space provided will at all times be provided and operated by an independent contractor pursuant to an agreement with the owner, pursuant to which the owner will receive a fee from the contractor reflecting a percentage of gross rents received by the contractor, that is not attributable to any individual tenant's payment for storage space.


Consequently, in view of the above-discussed RSC provisions, the answer to all three questions posed would be "no."

I trust that we have responded fully to your inquiry.

- 3 -

Please be advised that this opinion letter is not a substitute for a formal agency order issued upon prior notice to all parties and with all parties having been afforded an opportunity to be heard.

Very truly yours,


Charles Goldstein
Associate Counsel

CG:lp

cc: Deputy Commissioner Roldan
Deputy Counsel Cabrera (D-12,086)
(COL-1474)