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The Relationship Between the New York State Division of Housing and Community Renewal and the New York City Housing Court

Gerald Lebovits



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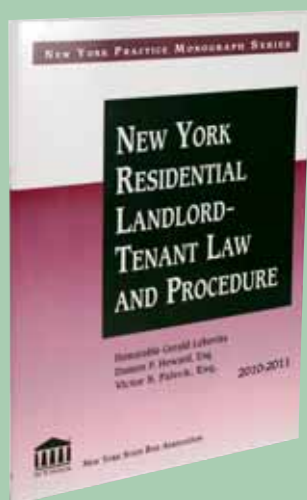
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The Relationship Between the New York State Division of Housing and Community Renewal and the New York City Housing Court

By Sheldon Melnitsky and Gerald Lebovits

The amalgam of laws regulating residential tenancies in New York City is “an impenetrable thicket confusing not only to lawyers but to laymen.”¹ A number of rationales explain their “opacity.”² “[L]egitimate political pressures and the stress of economic and social tensions”³ have led to a history of expansion and contraction over 50 years as New York State and New York City align rent laws to meet changing political and economic conditions. As set out in the legislative findings justifying their enactment, the rent laws seek to balance conflicting purposes of encouraging owner investment to transition to a normal market of free bargaining between owners and tenants, and protecting residents from unreasonable rents that can be exacted due to the acute shortage of dwellings.⁴ The rent laws’ periodic sunseting leads to negotiated modifications, which the Court of Appeals had described as “temporary makeshifts”⁵ enacted as a compromise for their extension. Enthusiastic members of the landlord-tenant bar skillfully and persistently advocate for new interpretations of statutory language that appeared well settled and then aggressively shape the new modifications through litigation.⁶

At its core, the rent laws’ complexity arises from what is at stake for owners and tenants: the continued occupancy and preservation of nearly one million rent-regulated apartments.⁷

Tending this thicket is hard. The legislature has created two separate yet energetic gardeners responsible for its care and feeding: the New York City Civil Court, Housing Part (“Housing Court”), and the New

York State Division of Housing and Community Renewal (“DHCR”).⁸

“This article discusses, in particular, the jurisdictional doctrines that divide responsibility between the DHCR and Housing Court in areas of overlapping authority and some examples of how this has played out in practice.”

The relationship between Housing Court and DHCR is often messy and uneasy. Much like the neighboring gardeners in the *Fantasticks*,⁹ each is equally proud of its own verdant greenery. They have been known to work at cross-purposes; one might water, while the other might prune. Each dreams of creating some lasting union and order to a collective garden.

This article provides a brief introduction to both DHCR and Housing Court and their respective areas of exclusive jurisdiction. This article discusses, in particular, the jurisdictional doctrines that divide responsibility between the DHCR and Housing Court in areas of overlapping authority and some examples of how this has played out in practice. The article also discusses when courts should or need not defer to DHCR as well as the procedures governing the day-to-day interaction of DHCR and Housing Court.

What Are the Rent Laws?

The rent laws encompass four separate rent-regulatory regimens, two of which apply in New York

City. Within New York City are two separate rent regulatory systems: rent control and rent stabilization.¹⁰

Rent control, enacted in the 1950s, regulates a relatively small number of tenancies in housing accommodations built before 1947¹¹ and which have not become vacant since 1971.¹²

Rent stabilization’s jurisdictional reach is largely the product of two laws: the Rent Stabilization Law of 1969¹³ and the Emergency Tenant Protection Act of 1974.¹⁴ Together they cover housing accommodations in buildings of six or more units completed before 1974.¹⁵

Rent-stabilized tenants maintain continued occupancy through a requirement that owners must offer new and renewal leases of one or two-years’ duration.¹⁶ A separate city agency, the New York City Rent Guidelines Board, sets rates for increases on those leases.¹⁷ Additional rent increases are available upon the installation of new equipment or improvements, called Individual Apartment Improvements, or “IAI.”¹⁸ Tenant consent to the installation (and to the corresponding rent increase) is required when a tenant is in occupancy,¹⁹ although the rent may be increased and the IAI installed without consent on vacancy.²⁰ DHCR may, upon an owner’s application, order further increases based on the installation of building-wide major capital improvements.²¹ Receiving regular guideline increases are conditioned on the owner providing and maintaining apartment services.²² DHCR is authorized to reduce the rent by the most recent rate of guideline adjustment if an owner fails to provide these services.²³

When an owner has overcharged a tenant, a court or DHCR may direct a refund with interest.²⁴ If an owner fails to establish that the overcharge was neither willful nor attributable to its negligence, then the owner's liability is increased to three times the amount of the overcharge.²⁵ An owner is also entitled to charge the initial agreed-upon rent to the first rent-stabilized tenant renting a formerly rent-controlled apartment, subject to a "fair market rent appeal commenced by the tenant before DHCR."²⁶

Various exceptions extend to rent stabilization's jurisdictional reach, some of which can result in evicting a tenant in occupancy, others on deregulation after vacancy. Evicting a tenant can result if a court finds that a tenant has failed to occupy the housing accommodation as the tenant's primary residence.²⁷ Deregulation can result under a DHCR order issued when a housing accommodation is occupied by tenants whose income exceeds \$175,000 for each of two years when the rent exceeds \$2,000 ("high-rent/high-income deregulation").²⁸ Deregulation occurs without a DHCR or court order when a housing accommodation becomes vacant with a rent of \$2,000 or more ("high-rent/vacancy deregulation").²⁹

Owners are required annually to serve on tenants and file registrations listing the legal rent with DHCR for each housing accommodation.³⁰ In addition to these annual registrations, an initial registration must be served and filed with DHCR for a formerly rent-controlled accommodation,³¹ and a final or "exit registration" must be served on the first deregulated tenant (and filed with DHCR) after high-rent/vacancy deregulation.³²

What Is DHCR?

DHCR is part of the State of New York's executive department.³³ The legislature created it in 1938, the same year it enacted the Public Housing Law.³⁴ DHCR runs a variety of affordable-housing and community-

renewal programs.³⁵ These programs fund new construction and rehabilitation and provide for DHCR supervision of their ongoing operation.³⁶ DHCR provides staff to the New York State Housing Trust Fund Corporation ("HTFC"), which has its own housing construction and preservation programs.³⁷ DHCR is currently integrating its operations with "New York Homes," an already existing amalgam of the New York State Housing Finance Agency ("HFA") and the State of New York Mortgage Agency ("SONYMA").³⁸

On September 22, 2010, these state housing agencies announced their integration under a single leadership structure as the New York State Homes and Community Renewal ("HCR").³⁹ This new alignment takes similar programs administered by HTFC, HFA, SONYMA, and DHCR and reorganizes them by actual function into three units: Finance and Development, which funds the development of new affordable housing; Community Renewal, which includes programs geared toward community and economic development; and Housing Preservation, which is geared to maintaining and enhancing existing state-supervised housing.⁴⁰ Enforcing the rent laws falls within the Housing Preservation Unit's purview.⁴¹

For the majority of New Yorkers, administering these rent laws is still DHCR's best-known program. DHCR has been the administrative agency in charge of the rent laws since the early 1980s, when the legislature determined that "such laws would better serve the public interest if certain changes were made thereto, including the placing of all of the systems of regulation of rents and evictions under a single state agency."⁴²

DHCR has been designated with respect to rent stabilization "as the sole administrative agency to administer the regulation of residential rents as provided in this act"⁴³ and to adopt and amend implementing regulations, known as the Rent

Stabilization Code ("RSC").⁴⁴ Regulations governing rent stabilization cannot be promulgated "except by action of the Commissioner of the Division of Housing and Community Renewal."⁴⁵

Administrative proceedings before DHCR under the Rent Stabilization Laws are typically instituted by either tenant complaint or owner application.⁴⁶ Tenant complaints usually request either an overcharge award or a rent reduction due to a denial of services. Owner applications are most typically for Major Capital Improvement ("MCI") rent increases. The opposing party in all these proceedings is given an opportunity to file a written answer.⁴⁷ After receiving an answer, DHCR has a variety of processing alternatives but may request an additional written filing as it deems relevant.⁴⁸ DHCR may grant an oral hearing, but it does so only in the unusual case in which a matter cannot be determined on submitted papers.⁴⁹ After the matter is fully submitted, DHCR will issue a determination, signed by one of its Rent Administrators ("RA"). That decision is subject to an internal petition for administrative review to the Commissioner.⁵⁰ The Commissioner, after review, will issue the final DHCR determination.⁵¹ Owners or tenants who deem themselves aggrieved by the Commissioner's determination may commence a Supreme Court proceeding under Article 78 of the Civil Practice Law and Rules in order to review it.⁵²

What Is Housing Court?

Housing Court is the Housing Part of New York City Civil Court.⁵³ It was created in 1972 with the passage of New York City Civil Court Act § 110 based on legislative findings that "effective enforcement of state and local laws for the establishment and maintenance of proper housing standards is essential"⁵⁴ and that effective enforcement will be greatly advanced by the creation of a court "with jurisdiction of sufficient

scope (i) to consolidate all actions related to effective building maintenance and operation [and] (ii) to recommend or employ any and all remedies, programs, procedures and sanctions authorized by federal, state or local laws for the enforcement of housing standards....”⁵⁵

Although its original mission was to resolve code-violations cases, by the time the court opened “nonpayment, holdover, and illegal lockout proceedings were added to the Housing [Court’s] jurisdiction to recognize the mutuality of obligations in landlord-tenant relationships, to promote a unified resolution of landlord-tenant disputes, and to adjudicate cases involving possession over residential premises in New York City.”⁵⁶

In addition to having the authority to grant injunctive relief,⁵⁷ Housing Court may entertain counterclaims within Civil Court’s subject-matter jurisdiction if sued upon separately.⁵⁸ In summary proceedings, a tenant-respondent is entitled to raise any legal or equitable defense or counterclaim within the court’s jurisdiction.⁵⁹

Jurisdiction

Given these broad delegations of responsibility, both DHCR and Housing Court could seemingly lay claim to jurisdiction over any dispute arising under the rent laws. Each specific remedy and cause of action must be individually scrutinized based on its express statutory authorization and its historical usage to ascertain the legislature’s intent with respect to that remedy.

Broadly, the inquiry falls within one of three categories: whether the litigants seek a remedy in which either the Housing Court or DHCR has exclusive jurisdiction; whether the parties seek a remedy in which there is concurrent, or shared, jurisdiction; and assuming concurrent jurisdiction, whether the parties seek a remedy in which DHCR rather than Housing Court is afforded primary jurisdiction.

Exclusive Jurisdiction

Despite its broad authority, Housing Court is a court of limited jurisdiction. Article VI § 7(a) establishes Supreme Court as “competent to entertain all causes of action unless its jurisdiction has been specifically proscribed” by the legislature.⁶⁰ The legislature has the authority to create new causes of action in which Supreme Court’s general jurisdiction is preserved.⁶¹ Where the authority is given to an administrative agency within the executive branch, exclusive original jurisdiction may be conferred on that agency, subject only to court jurisdiction by way of court review of the administrative action.⁶²

*Sohn v. Calderon*⁶³ is the leading case establishing DHCR’s exclusive jurisdiction over a cause of action under the rent laws. In *Sohn*, the Court of Appeals held that permission to seek the eviction of both rent-stabilized and rent-controlled tenants based on demolition of the premises falls exclusively within DHCR’s purview. The court reached this assessment with respect to rent control based on the express wording of a statute that provided that an eviction order must be issued or determined by the “[C]ity [R]ent [A]gency” —since 1983, the DHCR.⁶⁴ With respect to rent stabilization, the court relied on DHCR’s own regulations and on similar policies of exclusivity exercised by DHCR’s predecessor agency, the New York City Conciliation and Appeals Board, whose policies DHCR had expressly been authorized to continue.⁶⁵ Fair Market Rent Appeals are also within DHCR’s exclusively purview.⁶⁶

On the other hand, DHCR was expressly divested in 1983 of the jurisdiction to ascertain the existence of the exemption from rent stabilization protection based on non-primary residency; that residency must be “determined by a court of competent jurisdiction.”⁶⁷

Concurrent and Primary Jurisdiction

Given the breadth of both Housing Court and DHCR authority, concurrent jurisdiction is the norm rather than the exception. Even within areas of concurrent jurisdiction, there are times under the doctrine of primary jurisdiction when Housing Court or even Supreme Court should defer to DHCR to make a determination.

The Court of Appeals has described this doctrine as representing “an effort to ‘coordinate the relationship between courts and administrative agencies,’ generally enjoins courts having concurrent jurisdiction to refrain from adjudicating disputes within an administrative agency’s expertise, particularly where the agency’s specialized experience and technical expertise is involved.”⁶⁸ There is flexibility to the doctrine. As the Court of Appeals has noted, “the rule is certainly not without exceptions....”⁶⁹

In *Davis v. Waterside*, the leading case upholding DHCR’s primary jurisdiction, the Appellate Division, First Department, reversed a Supreme Court stay of a DHCR proceeding commenced to determine the applicability of the Rent Stabilization Law to a formerly subsidized housing development.⁷⁰ In *150 Greenway Terrace, LLC v. Gole*, an owner’s declaratory judgment action to restrict access to storage space was stayed in favor of a pending service complaint before DHCR.⁷¹ In *Davidson v. 506 E. 88th St. LLC*, the court granted injunctive relief to prevent an owner from engaging in construction that would interfere with the tenant’s exclusive use of a garden. The court noted that an earlier DHCR determination had arguably, but “implicit[ly],” guaranteed the tenant’s garden use. While the parties sought clarification from DHCR, the Supreme Court action would not go forward.⁷²

The Appellate Division, First Department, has noted that when faced with a declaratory judgment action on a matter that falls within the more

express jurisdiction of Housing Court or DHCR that it seeks injunctive relief, the Supreme Court may consider whether relief is more appropriate for the remedies available to DHCR or Housing Court.⁷³

Overcharges: A Study in Concurrent and Primary Jurisdiction

The determination of rent overcharges has long been an area of concurrent jurisdiction.⁷⁴ Until recently, it was unsettled whether the doctrine of primary jurisdiction required deferral to DHCR when an overcharge determination required not only applying the appropriate guideline increase but also analyzing the propriety of a claimed increase for IAIs.⁷⁵ Neither DHCR nor prior tenant consent is necessary to impose an IAI increase for improvements made after a tenant vacates.⁷⁶ The propriety of that increase is tested only through a tenant-overcharge claim.⁷⁷ The review requires assessing whether the IAI is actually an improvement or simply a repair.⁷⁸ Given the four-year statute of limitations on commencing an overcharge claim, reviewing supporting documentation, including costs, can occur several years after the actual IAI installation.⁷⁹

In *Rockaway One. Co., LLC v. Wiggins* and *Vazquez v. Sichel*, the courts rejected the position that primary jurisdiction bars considering a tenant's counterclaim for overcharges based on IAIs in a summary proceeding.⁸⁰

Both courts noted Housing Court's jurisdiction over counterclaims and the unbroken line of case law regarding concurrent jurisdiction over overcharges.⁸¹ Neither court saw these IAI claims as requiring that DHCR be given the initial opportunity to address them or that a court's fact-specific assessment would ultimately benefit from DHCR's expertise.⁸² The *Vasquez* court noted that DHCR's promulgation of regulations over IAIs already enhances the courts' tools in making these

determinations.⁸³ The formula for IAI increases was alternately described as "not complicated"⁸⁴ or "foreign to the courts."⁸⁵ As noted in *Rockaway One Co., LLC v. Wiggins*, declining jurisdiction would ultimately be inconsistent with Civil Court's adjudicative responsibilities.⁸⁶

Court interpretation of DHCR policy on IAIs nonetheless continues to be a matter of controversy and dispute. In *Jemrock v. Krugman*,⁸⁷ the Court of Appeals reversed a divided Appellate Division that had affirmed a divided Appellate Term that itself had reversed Civil Court with respect to an IAI assessment. In light of the extensive nature of the claimed improvements, the majority and dissent split on what level of proof, with respect to both the expenditures and a breakdown between repairs and improvements, was needed to justify the increase. The Court of Appeals remanded the matter to the Appellate Division for further fact-finding. The Court of Appeals noted that both the Appellate Division majority and dissent, although citing DHCR policies, had themselves created new legal standards.⁸⁸

The Court of Appeals instead found that contrary to both parties' contentions, as well as to the Appellate Division's majority and dissenting opinions, the resolution of this issue is not governed by any inflexible rule that an owner is always required, or is never required, to submit an item-by-item breakdown showing an allocation between improvements and repairs if the landlord has engaged in extensive renovation work. Rather, the Court found that "[t]he question is one to be resolved by the fact finder in the same manner as other issues, based on the persuasive force of the evidence submitted by the parties."⁸⁹ The Appellate Division on remand ultimately found that the owner's proof was sufficient.⁹⁰

Although DHCR and the courts might make similar factual assessments on the propriety of increases with respect to IAI, their methodolo-

gies often differ. More often than not, Housing Court will hold a trial to develop the necessary facts.⁹¹ DHCR, on the other hand, has relied on inspections or, even more simply, on an owner's failure to meet its burden of establishing the propriety of the increase.⁹²

Even now there are instances in which parties still dispute whether primary jurisdiction should result in deferral to DHCR to resolve overcharge claims. In *Roberts v. Tischman*,⁹³ a class action brought on behalf of the tenants of a large rent-stabilized housing complex, the Court of Appeals decided that an owner's receipt of tax benefits under the J-51 program precluded high-rent/high-income and high-rent vacancy deregulation. Although the decision resolved this jurisdictional question, the actual impact of the court's decision, including recovering possible rent overcharges, was left to future litigation. The *Roberts* decision has resulted in similar actions in Supreme Court as well as litigation in Housing Court about possible overcharges in rent-stabilized properties with J-51 benefits.⁹⁴ Some courts have made their own overcharge assessments.⁹⁵ Others have expressed an opinion that it is more appropriately resolved before the DHCR.⁹⁶

Concurrent jurisdiction over overcharges might also at times cause confusion on what has been determined in a Housing Court proceeding. DHCR routinely sees stipulations resolving Housing Court nonpayment proceedings and must assess whether the stipulations encompass withdrawing or settling an overcharge claim.⁹⁷ DHCR will consider a stipulation to resolve overcharges and calculate the legal rent if the stipulation provides that the settlement encompasses that resolution.⁹⁸

If a tenant has filed an overcharge complaint with DHCR, Housing Court will not entertain a counterclaim or defense of rent overcharge.⁹⁹ The pendency of a DHCR overcharge complaint does not, however, prevent

the Supreme Court from staying a Housing Court proceeding pending the DHCR's determination or the court's awarding something less than full payment of rent as an interim measure while the DHCR proceeding is pending.¹⁰⁰

Services: A Study in Separate Jurisdiction

Different remedies are available if an owner fails to provide appropriate services. Housing Court might consider that failure as a counterclaim based on a breach of contract.¹⁰¹ More likely, a rent abatement might be granted based on a breach of the statutory implied warranty of habitability under Real Property Law § 235-b.¹⁰² With respect to DHCR, the Rent Stabilization Law provides that “[i]n addition to any other remedy provided by law,” a tenant may apply for a reduction in rent to the level in effect before the most recent adjustment and an order requiring services to be maintained.¹⁰³

Although warranty claims and DHCR rent-reduction proceedings both deal with deprivation of services, the standards for granting relief are significantly different. DHCR's obligation to reduce the rent is mandatory unless the alleged deprivation of service is *de minimis*.¹⁰⁴ The Appellate Term has noted that the fundamental purpose of Real Property Law § 235-b is to address more significant deprivations of services: “to protect residential occupants from conditions ‘dangerous, hazardous or detrimental...life, health [and] safety’...and to afford a remedy for deprivation in those ‘essential functions’ which a ‘reasonable person’ would expect a residence to provide.”¹⁰⁵

In *Solow v. Wellner*, the Appellate Term held that “perceived decreases in amenities and conveniences arguably forming the basis for an application to the Division of Housing and Community Renewal [to reduce the regulated rent] based upon the owner’s failure to maintain required services...are not within the intended

scope of Real Property Law § 235-b.”¹⁰⁶

DHCR's finding that a specific service is required to be provided as an ancillary service can still be binding on a court.¹⁰⁷ Conversely, a Housing Court stipulation that in general terms resolves habitability complaints does not prevent tenants from filing a specific service complaint with DHCR if the owner fails, on a going-forward basis, to provide services.¹⁰⁸

To prevent duplicative reductions based on the same denial of services, both Real Property Law § 235-b and the Rent Stabilization Law were amended in 1997 to require both DHCR and Housing Court to take into account any reduction already received in the other forum for the same period.¹⁰⁹

Must DHCR and Housing Court Listen to Each Other?

In light of their concurrent jurisdiction, DHCR and the courts often make their own factual and legal assessments. These assessments might impinge on future decisions independent of those assessments. How bound each forum is by the other's opinion depends on the subject matter of the pronouncement. In furtherance of its statutory responsibilities, DHCR makes administrative adjudications governing specific parties in administrative proceedings. It also issues more general interpretations on the rent laws and the Rent Stabilization Code. Each DHCR assessment is governed by a different standard.

Assuming that DHCR properly exercised its jurisdiction, a final DHCR administrative determination is dispositive of the parties' rights in the administrative proceeding and cannot be collaterally attacked in a court case.¹¹⁰

DHCR's more generalized assessment of the meaning of the law it administers is not necessarily entitled to that same deference. The Court of Appeals has enunciated two separate standards of review when DHCR

makes a pronouncement regarding its interpretation of the Rent Stabilization Law. One involves DHCR's specialized expertise in evaluating factual data as the legislature specifically delegated to it.¹¹¹ The other involves DHCR's apprehension of the legislature's intent.¹¹² When the interpretation of a statute involves “knowledge and understanding of underlying operational practices or entails an evaluation of factual data and inferences to be drawn,”¹¹³ the courts should defer to DHCR as the governmental agency charged with responsibility for administration if that interpretation is not irrational or unreasonable.¹¹⁴

On the other hand, if a question is “one of pure statutory reading and analysis dependent only upon accurate apprehension of legislative intent,”¹¹⁵ the court accords no particular deference to DHCR's interpretation. Statutory construction is the court's function, not a specialized agency's.¹¹⁶

DHCR's interpretation of its own regulations is, however, entitled to a greater level of deference.¹¹⁷ The interpretation given to a regulation by the agency that promulgated it and is responsible for its administration is entitled to deference if that interpretation is not irrational or unreasonable.¹¹⁸

Not Listening: Horizontal Multiple Dwellings

To withstand appellate review, neither Housing Court nor DHCR is required to reach the same result when acting as the trier of fact, even when the factual circumstances it adjudicates are arguably similar.

Both DHCR and the courts have been called upon to decide whether ostensibly separate structures are a single building of six or more units, the threshold number of units to be subject to the Rent Stabilization Law. These highly fact-specific “horizontal multiple dwelling” assessments are based on a variety of factors, includ-

ing common ownership, management, delivery of services, and architectural fixtures. Each case turns on specific facts, with the bottom line that common ownership and a common heating plant is not enough.¹¹⁹ Housing Court's review of these factors need not mirror DHCR's.

In *Bambeck v. DHCR*, the Appellate Division, in upholding DHCR's determination that the building constituted a horizontal multiple dwelling, distinguished various Housing Court decisions and found that elements of commonality, similar to those in *Bambeck*, were insufficient to constitute a horizontal multiple dwelling.¹²⁰ The court noted that some cases have held that contiguous buildings were separate and did not constitute horizontal multiple dwellings. However, the court stated that "significantly" the issues in those cases were presented to the courts in the first instance and not on judicial review of an administrative determination.¹²¹

In *Howell v. Francesco*, the Appellate Term was faced with the opposite situation: a tenant cited to factually similar DHCR determinations that buildings constituted a horizontal multiple dwelling as precedent although Housing Court had found the tenant's building to be separate premises.¹²² The court held that DHCR precedents are not binding on Housing Court.¹²³ As the Appellate Term explained, DHCR cases supporting a contrary result "arise from administrative determinations involving a more deferential standard of review."¹²⁴

Not Listening and Registration

DHCR and the courts have taken different positions concerning the consequences of an owner's failure to serve the initial rent-stabilized registration when the apartment was rent controlled.

In plenary actions, notably in *Smitten v. 56 MacDougal Street*, the court had determined that an owner's failure to serve the initial registration

would result in the first rent-stabilized tenant's rent frozen at the prior rent-controlled rate.¹²⁵

Conversely, rather than freezing the rent at the earlier rent-controlled rent, DHCR held that an owner's failure to serve the registration extended the time to commence a fair-market rent appeal to challenge the initial stabilized rent.¹²⁶ In a fair-market rent appeal, DHCR compares the initial stabilized rent against a guideline promulgated by the Rent Guidelines Board with rents generally prevailing in the same areas for substantially similar housing accommodations and directs a refund if the initial rent exceeds those standards.¹²⁷

The Appellate Division has rejected litigation seeking to compel DHCR to follow the *Smitten* rule.¹²⁸ As with horizontal multiple dwellings, the Appellate Division held that its own affirmance in *Smitten* was not germane to its review of a DHCR determination in which a court will defer to the agency's own methodology and procedures if they are rationally based.¹²⁹

As noted in subsequent litigation, the use of these two separate standards was eventually extinguished by legislation removing the rent freeze as a possible penalty for failing to serve an initial registration.¹³⁰ Nonetheless, this divergence of approach on penalties for registration later replicated itself. In 2000, the New York City Council enacted a requirement that upon high-income/vacancy deregulation, owners must serve an "exit registration" on the first tenant after deregulation.¹³¹ In plenary actions, courts assumed that the failure to serve an exit registration barred the apartment's deregulation.¹³²

On the other hand, in a case involving a DHCR determination, the court found that an owner's failure to serve this registration cannot preclude the deregulation of an apartment.¹³³ State legislation had mandated deregulation, and the City Council could not modify that result.¹³⁴

To gain some consistency in approach, DHCR has proposed legislation that would make this exit registration a state legislative requirement and extend the ordinary four-year period of overcharge review until service of the registration was effected.¹³⁵

Examples of Listening

In several instances, DHCR has departed from its own internal precedent, changing policy on the strength of court cases dealing with the same subject matter.

In *Rosario v. Diagonal Realty*,¹³⁶ DHCR appeared as amicus in the Court of Appeals supporting a position that an owner whose tenant is the recipient of a Section 8 voucher must continue that participation in the federal Section 8 rent-subsidy program. Although federal law might not have compelled that continuation, the Rent Stabilization Law's requirement of renewing leases required that the owner continue to accept Section 8 subsidies as a term and condition of the lease. The courts had split on this issue. In its own administrative determination, DHCR initially sided with those courts that had found that Section 8 participation need not be continued.¹³⁷ In taking the opposite position as amicus, DHCR disavowed its prior decisions, which had primarily relied on what had become the minority view of those courts that had reviewed the issue.¹³⁸

Another example is preferential rents. In 2003, the legislature codified the rules governing preferential rents.¹³⁹ Preferential rents are rents charged to and paid by the tenant that are less than the legal rent allowed under the Rent Stabilization Law.¹⁴⁰ The legislature provided that rents "may be charged upon renewal or upon vacancy...at the option of the owner, be based on such previously established legal rent...."¹⁴¹ In short, the owner's obligation to accept a lower rent terminated with the actual lease that contained a preferential

rent provision rather than continuing through mandated renewal leases.

DHCR initially took the position that this codification overrode agreements to the contrary in which an owner expressly agreed to continue a preferential rent throughout subsequent renewals. Courts had ruled otherwise,¹⁴² and DHCR changed its position to conform to the courts.¹⁴³

How Can Housing Court and DHCR Communicate?

Housing Court and DHCR rarely communicate face to face. DHCR will comply with properly served subpoenas to produce documents (assuming that the production of documents would be appropriate). DHCR personnel cannot be subpoenaed to explain policies, procedures, or the impact of specific orders or to testify about the regulated rent of a housing accommodation.¹⁴⁴ Doing so constitutes coerced expert-opinion evidence that is as inappropriate from government officials as it would be from members of the public.¹⁴⁵

For DHCR to provide subpoenaed records, a court must issue the subpoena.¹⁴⁶ DHCR may comply through the production of a certified copy of the record without a witness for authentication.¹⁴⁷ Proof of registration, a prerequisite for nonpayment proceedings, has been traditionally obtained this way.

Under a memorandum of understanding between DHCR and the Office of Court Administration, DHCR is making available to Housing Court electronic access to relevant registration data to obviate the need for subpoenas or paper transfers.¹⁴⁸ Housing Court will be able to ascertain whether the apartment is registered, what years it has been registered, the registered rent for the apartment, and the most recently registered owner/agent.

Although this information will satisfy certain affirmative pleading and proof requirements, registration data is not by itself dispositive

of the legality of a registered rent or the regulated status of an apartment. Nonetheless, registration data can be useful in resolving or narrowing what might be in dispute.

As to administrative proceedings before DHCR, DHCR may expedite a case at the court's request "where there is a pending DHCR matter which will aid in the resolution of a case before the Court."¹⁴⁹

"The sheer volume of affirmative cases generated by the Rent Stabilization Law and the rent law's complexity makes DHCR's role as adjudicator and specialist important and crucial."

Even when there is no pending DHCR case, DHCR may respond to written inquiries on certain points of law from a court. The legislature has provided that "[i]n any action or proceeding before a court wherein a party relies for a ground of relief...or brings into question the construction or validity of this act or any regulation, order or requirement hereunder, the court...may at any stage certify such fact to the division of housing and community renewal."¹⁵⁰

Conclusion

Dual jurisdiction is a necessary adjunct of the responsibilities of both Housing Court and DHCR. Resolving matters within the court's purview requires resolving rent-stabilization issues to afford complete relief to the parties. However, many rent-stabilization issues can be raised only in Housing Court by a tenant's affirmative defense or counterclaim. The sheer volume of affirmative cases generated by the Rent Stabilization Law and the rent law's complexity makes DHCR's role as adjudicator and specialist important and crucial.

Although Housing Court and DHCR disagree over specific matters

of implementation, the benefits of having these two separate adjudicators outweigh any detriment. In the process of resolving these disagreements, the administration and proper interpretation of the Rent Stabilization Law is enhanced by obtaining different points of view.

Endnotes

1. See, e.g., *Roberts v. Tischman*, 13 N.Y.3d 270, 295, 918 N.E.2d 900, 913, 890 N.Y.S.2d 388, 392 (2009) (quoting 89 Christopher St. Inc. v. Joy, 35 N.Y.2d 213, 215, 318 N.E.2d 776, 780, 360 N.Y.S.2d 612, 640 (1974)); *City of New York v. State of N.Y. Div. of Hous. & Cmty. Renewal*, 97 N.Y.2d 216, 219, 765 N.E.2d 829, 830, 739 N.Y.S.2d 333, 334 (2001); *LaGuardia v. Cavanaugh*, 53 N.Y.2d 67, 69, 423 N.E.2d 9, 18, 440 N.Y.S.2d 586, 586 (1981).
2. *Tischman*, 13 N.Y.3d at 295, 918 N.E.2d at 913, 890 N.Y.S.2d at 388.
3. *89 Christopher St.*, 35 N.Y.2d at 220, 318 N.E.2d at 780, 360 N.Y.S.2d at 618.
4. See N.Y. ADMIN. CODE tit. 26, ch. 3, §§ 26-401, 26-501 (LEXIS 2009); N.Y. UNCONSOL. LAWS §§ 8522, 8602, 8622 (McKinney 2010).
5. *89 Christopher St.*, 35 N.Y.2d at 220, 318 N.E.2d at 780, 360 N.Y.S.2d at 618.
6. *Id.* (holding that the real resolution lies with legislative authority).
7. *Id.* (noting what is at stake for tenants and landowners).
8. See *New York City Civil Court Housing Part*, NEW YORK STATE UNIFIED COURT SYSTEM, <http://www.nycourts.gov/courts/nyc/housing/index.shtml> (last visited Oct. 19, 2010); see also *History of DHCR and Past Commissioners*, NYS DHCR.GOV, <http://nysdhcr.gov/AboutUs/history.htm> (last visited Oct. 20, 2010).
9. See HARVEY SCHMIDT & TOM JONES, *THE FANTASTICKS* (30th anniversary ed. 1990); *THE FANTASTICKS OFFICIAL WEBSITE*, <http://www.thefantasticks.com/webpages/home.html> (last visited Oct. 20, 2010).
10. See FERN FISHER & ANDREW SCHERER, *RESIDENTIAL LANDLORD-TENANT LAW IN NEW YORK*, § 4.1 (2009-2010).
11. N.Y. ADMIN. CODE tit. 26, ch. 3, § 26-403(1)(h) (LEXIS 2009).
12. See *id.* § 26-403(9).
13. See *id.* § 26-501.
14. See N.Y. UNCONSOL. LAWS § 8621 (McKinney 2010).
15. See *id.* §§ 8625(a)(4)-(5); N.Y. ADMIN. CODE tit. 26, ch. 3, § 26-504(a).
16. See N.Y. ADMIN. CODE tit. 26, ch. 3, § 26-511(c)(4).

17. *See id.* § 26-510(b).
18. *See id.* § 26-511(c)(13).
19. *See id.*
20. *See id.*
21. *See id.* § 26-511(c)(6)(b).
22. *See* N.Y. ADMIN. CODE tit. 26, ch. 3, § 26-511(c)(8).
23. *See id.* §§ 26-511(c)(6)(b), 26-514.
24. *See id.* § 26-511(c)(3).
25. *See id.* § 26-516(a).
26. *Id.* § 26-513(b)(1).
27. *See* N.Y. UNCONSOL. LAWS § 8625(a)(11) (McKinney 2010).
28. *See* N.Y. ADMIN. CODE tit. 26, ch. 3, §§ 26-504.1, 26-504.3.
29. *See id.* § 26-504.2(a).
30. *See id.* § 26-517.
31. *See id.* §§ 26-517(c), 26-513(d)–(e).
32. *See id.* § 26-504.2(b).
33. N.Y. EXEC. LAW §§ 31(6), 260 (LEXIS 2010).
34. N.Y. PUB. HOUS. LAW art. II, §§ 10, 226 (LEXIS 2010).
35. *See* NYS Division of Housing & Community Renewal: Agency Description, NYSDHCR.GOV, <http://nysdhcr.gov/AboutUs/AgencyDescription.htm> (last visited Oct. 20, 2010).
36. *See* NYS Division of Housing & Community Renewal: Office of Community Development, NYSDHCR.GOV, <http://nysdhcr.gov/AboutUs/Offices/CommunityDevelopment/> (last visited Oct. 20, 2010).
37. *See* N.Y. PRIVATE HOUS. FIN. LAW, art. III, § 45-a (LEXIS 2010).
38. Press Release, *New York's Top Housing Official Announces Consolidation of Housing Agencies to Form Single New Organization* (Sept. 22, 2010), NYSDHCR.GOV, <http://nyshcr.org/Press/News100922.htm> (last visited Oct. 20, 2010).
39. *See id.*
40. *See id.*
41. *See id.*
42. Ch. 403, § 1, 1983 N.Y. Laws 698 (McKinney).
43. N.Y. UNCONSOL. LAWS § 8628(a) (McKinney 2010).
44. N.Y.C.R.R. tit. 9, ch. VIII, § 2520 (LEXIS 2010).
45. N.Y. ADMIN. CODE tit. 26, ch. 4, § 26-511(b).
46. N.Y.C.R.R. tit. 9, ch. VIII, § 2527.1.
47. *See* N.Y.C.R.R. tit. 9, ch. VIII, § 2527.4.
48. *See id.* § 2527.5(b).
49. *See id.* § 2527.5(h).
50. *See id.* § 2529.1.
51. *See id.* § 2529.8.
52. For more explanation of DHCR's administrative procedure and Article 78 proceedings, see DAVID FINKELSTEIN & LUCAS A. FERRARA, NEW YORK PRACTICE SERIES – LANDLORD AND TENANT PRACTICE IN NEW YORK, § 17:51 (Westlaw 2009-2010 ed.), available at NYPRAC-LT 17:51.
53. *See* N.Y. CITY CIV. CT. ACT § 110 (McKinney 2010).
54. L.1972, c. 982, § 1(a), as amended by L.1978, c. 310, § 4, eff. June 19, 1978 (legislative findings and statement of policy for N.Y. Civil Court Act §110).
55. *Id.* § 1(b).
56. Schanzer v. Vendome, 7 Misc. 3d 1018(A), 801 N.Y.S.2d 242 (N.Y. Civ. Ct. N.Y. County 2005) (Gerald Lebovits, J.).
57. *See* Central Park Gardens v. Klein, 107 Misc. 2d 414, 414, 434 N.Y.S.2d 125, 126, 1980 N.Y. Misc. LEXIS 2869 (N.Y. Civ. Ct. N.Y. County 1980).
58. *See* N.Y. Civ. Ct. Act § 208(a); *see also* Rockaway Ave. Co. v. Wiggins, 35 A.D.3d 36, 43, 822 N.Y.S.2d 103, 109 (2d Dep't 2006); Vasquez v. Sichel, 12 Misc. 3d 604, 605, 814 N.Y.S.2d 482, 483 (N.Y. Civ. Ct. N.Y. County 2005).
59. *See* N.Y. CONST. art. VI, § 7(b).
60. *Id.* § 7(a).
61. *See id.* § 7(b).
62. *See* Sohn v. Calderon, 78 N.Y.2d 755, 761, 587 N.E.2d 807, 808, 579 N.Y.S.2d 940, 941 (1991); Loretto v. Teleprompter Manhattan CATV Corp., 58 N.Y.2d 143, 147, 446 N.E.2d 428, 431, 459 N.Y.S.2d 743, 746 (1983).
63. 78 N.Y.2d at 762, 587 N.E.2d at 809, 579 N.Y.S.2d at 942.
64. *Id.* at 765, 587 N.E.2d at 810, 579 N.Y.S.2d 943.
65. N.Y. ADMIN. CODE tit. 26, ch. 3, § 26-408(b) (McKinney 2009); *see* Sohn, 78 N.Y.2d at 764–68, 587 N.E.2d at 810–13, 579 N.Y.S.2d at 934–36.
66. *See* N.Y.C.R.R. tit. 9, ch. VIII, § 2522.3(a) (McKinney 2010) (stating that a tenant has a right to file the fair market rent appeal with the DHCR if the initial rent exceeds the fair market rent for the housing accommodation); 430 Realty Co. LLC v. Heftler, 185 Misc. 2d 450, 461, 712 N.Y.S.2d 853, 860 (N.Y. Civ. Ct. N.Y. County 2000) (citing Smitten v. 56 MacDougal St. Co., 167 A.D.2d 205, 206, 561 N.Y.S.2d 585, 586 (1st Dep't 1990), *superseded by statute*, N.Y.C. RENT STAB. LAW § 2521.1(a)(1) (McKinney 2010), as *recognized in* Ramlie v. Soufer Family LLC, 287 A.D.2d 388, 388, 731 N.Y.S.2d 455, 455 (1st Dep't 2001)).
67. *See* Emergency Tenant Protection Act of 1983, Ch. 403, §55, 1983 N.Y. Laws 739-40 (McKinney) (codified at N.Y. UNCONSOL. LAWS § 8625(a)(11) (McKinney 2010)).
68. *See* Sohn, 78 N.Y.2d at 768, 587 N.E.2d at 812, 579 N.Y.S.2d at 940 (quoting Capital Tel. Co., Inc. v. Pattersonville Tel. Co., Inc., 56 N.Y.2d 11, 22, 436 N.E.2d 461, 466, 451 N.Y.S.2d 11, 16 (1982)).
69. *See* Sohn, 78 N.Y.2d at 768, 587 N.E.2d at 812, 579 N.Y.S.2d at 945.
70. *See* 274 A.D.2d 318, 318, 711 N.Y.S.2d 4, 5–6 (1st Dep't 2000).
71. *See* 2008 N.Y. Slip Op. 30246(U), *2 (N.Y. Sup. Ct. N.Y. County 2008); *see also* In re Young v. Town of Bedford, 37 A.D.3d 729, 729, 831 N.Y.S.2d 224, 225 (2d Dep't 2007); Davidson v. 506 E. 88th St. LLC, 2008 WL 293052, 2008 N.Y. Slip Op. 30246(U).
72. *See* Davidson, 2008 WL 293052, 2008 N.Y. Slip Op. 30246(U) at *2.
73. *See, e.g.,* Bartley v. Watentas, 78 A.D.2d 310, 313, 434 N.Y.S.2d 379, 382 (1st Dep't 1980).
74. *See, e.g.,* Jenkins v. State of N.Y. Div. of Hous. & Cmty. Renewal, 264 A.D.2d 681, 681, 695 N.Y.S.2d 563, 564 (1st Dep't 1999); In re Matter of Smith, 254 A.D.2d 424, 424, 678 N.Y.S.2d 745, 745 (2d Dep't 1998); Crimmins v. Handler & Co., 249 A.D.2d 89, 91, 671 N.Y.S.2d 469, 471 (1st Dep't 1998); Draper v. Georgia Prop., Inc., 230 A.D.2d 455, 460, 660 N.Y.S.2d 556, 560 (1st Dep't 1997) (Andrias, J., dissenting), *aff'd*, Draper, 94 N.Y.2d 809, 811, 723 N.E.2d 71, 72, 701 N.Y.S.2d 322, 323 (1999); Smitten, 167 A.D.2d at 206, 561 N.Y.S.2d at 585 (1st Dep't 1990), *superseded by statute*, N.Y.C. RENT STAB. LAW § 2521.1, as *recognized in* Ramlie v. Soufer Family LLC, 287 A.D.2d 388, 388, 731 N.Y.S.2d 455, 455 (1st Dep't 2001).
75. *See* Vasquez v. Sichel, 12 Misc. 3d 604, 607, 814 N.Y.S.2d 482, 485 (N.Y. Civ. Ct. N.Y. County 2005) (discussing both New York City Administrative Code § 26-516(a) as well as N.Y.C.R.R. § 2526.1(a) (1)).
76. *See* Vasquez, 12 Misc. 3d at 608, 814 N.Y.S.2d at 486 (citing Ling Ling Yung v. County of Nassau, 77 N.Y.2d 568, 572, 571 N.E.2d 669, 671, 569 N.Y.S.2d 361, 363 (1991)).
77. *See* H.O. Realty Corp. v. State of N.Y. Div. of Hous. & Cmty. Renewal, 46 A.D.3d 103, 107, 844 N.Y.S.2d 204, 207 (1st Dep't 2007) (Sweeny, J., dissenting); N.Y.C. RENT STAB. LAW § 26-516(a) (McKinney 2009).
78. *See id.*
79. N.Y. ADMIN. CODE tit. 26, ch.4, § 26-516(a); *see* H.O. Realty Corp., 46 A.D.3d at 106, 844 N.Y.S.2d at 206–07 (1st Dep't 2007).
80. *See, e.g.,* Rockaway One Co., LLC v. Wiggins, 35 A.D.3d 36, 39–40, 822 N.Y.S.2d 103, 106–07 (2d Dep't 2006);

- Vazquez, 12 Misc. 3d at 611, 814 N.Y.S.2d at 488.
81. See *Rockaway One Co.*, 35 A.D.3d at 38, 822 N.Y.S.2d at 109; *Vasquez*, 12 Misc. 3d at 606, 814 N.Y.S.2d at 484–85.
 82. *Rockaway One Co.*, 35 A.D.3d at 38, 822 N.Y.S.2d at 109.
 83. See *Vasquez*, 12 Misc. 3d at 607, 814 N.Y.S.2d at 485.
 84. *Id.* at 612, 814 N.Y.S.2d at 489.
 85. See *Rockaway One Co., LLC*, 35 A.D.3d at 42, 822 N.Y.S.2d at 108.
 86. See *id.* at 43, 822 N.Y.S.2d at 109.
 87. See *Jemrock Realty Co, LLC v. Krugman*, 13 N.Y.3d 924, 926, 922 N.E.2d 870, 871, 895 N.Y.S.2d 284, 285 (1st Dep’t 2010).
 88. See *id.*
 89. *Id.*
 90. See *id.*
 91. See, e.g., *Fenster v. 37 W. 72nd St. Inc.*, 906 N.Y.S.2d 860, 864, 2010 N.Y. Misc. Lexis 3481, *12 (Sup. Ct. N.Y. County 2010).
 92. See *Graham Court Owners Corp. v. State of N.Y. Div. of Hous. & Cmty. Renewal*, 71 A.D.3d 515, 516, 899 N.Y.S.2d 7, 8 (1st Dep’t 2010); *Merit Mgmt. LLC v. State of N.Y. Div. of Hous. & Cmty. Renewal*, 278 A.D.2d 178, 718 N.Y.S.2d 336, 337 (1st Dep’t 2000).
 93. *Roberts v. Tishman*, 13 N.Y.3d 270, 286, 918 N.E.2d 900, 906, 890 N.Y.S.2d 388, 390 (2009).
 94. See, e.g., *Nezry v. Haven Ave. Owner LLC*, 28 Misc. 3d 1226A, 2010 N.Y. Slip Op. 51506(U) (Sup. Ct. N.Y. County 2010); see also *Independence Plaza N. Tenants’ Ass’n*, 2010 N.Y. Slip Op. 20353, 2010 N.Y. Misc. LEXIS 4131 (Sup. Ct. N.Y. County 2010).
 95. E.g., *Vazquez v. Sichel*, 12 Misc. 3d 604, 605, 814 N.Y.S.2d 482, 484 (N.Y. Civ. Ct. N.Y. County 2005).
 96. E.g., *Gerard v. Clermont York Assocs. LLC*, Sup. Ct. N.Y. County Index No. 101150/2010 (Aug. 3, 2010) (Sherwood, J.) (unpublished opinion).
 97. See *Firstmark Development Co., Inc. v. N.Y. State Div. of Hous. & Cmty. Renewal*, 283 A.D.2d 274, 276, 726 N.Y.S.2d 391, 393 (1st Dep’t 2001).
 98. See, e.g., *4947 Assocs. v. State of N.Y. Div. of Hous. & Cmty. Renewal*, 199 A.D.2d 179, 179, 605 N.Y.S.2d 91, 92 (1st Dep’t 1993); *Hampares v. State of N.Y. Div. of Hous. & Cmty. Renewal*, 283 A.D.2d 311, 312, 724 N.Y.S.2d 844, 849 (1st Dep’t 2001).
 99. See *Graham Court Owners Corp. v. Allen*, N.Y.L.J., Aug. 17, 1994, at 22, col. 6 (N.Y. Civ. Ct. N.Y. County) (citing *Terrace Realty Co. v. Morales*, N.Y.L.J., Jan. 5 1994, at 28, col. 6 (Yonkers City Ct.) (previous filing of rent overcharge claim with DHCR is grounds for dismissal of rent overcharge defense or counterclaim)).
 100. See, e.g., *Gardner v. State of N.Y. Div. of Hous. & Cmty. Renewal*, 166 Misc. 2d 290, 297, 630 N.Y.S.2d 744, 748 (Sup. Ct. Bronx County 1995).
 101. See *Missionary Sisters of the Sacred Heart v. Meer*, 131 A.D.2d 393, 396, 517 N.Y.S.2d 504, 507 (1st Dep’t 1987).
 102. See, e.g., *Ludlow Props., LLC v. Young*, 4 Misc. 3d 515, 520, 780 N.Y.S.2d 853, 857 (N.Y. Civ. Ct., N.Y. County 1994) (holding that a 45-percent rent abatement was appropriate for those months during which the apartment continued to be infested with bed bugs); *Port Chester Hous. Auth. v. Mobley*, 6 Misc. 3d 32, 34, 789 N.Y.S.2d 798, 800 (Sup. Ct. App. T. 1st Dep’t 2004) (holding that the tenant was only entitled to a rent abatement based on the Authority’s failure to correct an insect and rodent infestation).
 103. See N.Y.C.R.R. tit. 26, ch. IV, § 26-514 (LEXIS 2009).
 104. See, e.g., *Hyde Park Gardens v. State of N.Y. Div. of Hous. & Cmty. Renewal*, 73 N.Y.2d 998, 1000, 539 N.E.2d 101, 102, 541 N.Y.S.2d 345, 346 (1989); *ANF Co. v. State of N.Y. Div. of Hous. & Cmty. Renewal*, 176 A.D.2d 518, 520, 574 N.Y.S.2d 709, 710 (1st Dep’t 1991). For de minimis, see N.Y. R.C.N.Y. tit. 9, ch. 8, § 2523-4(e) (LEXIS 2010).
 105. *Solow v. Wellner*, 154 Misc. 2d 737, 740–41, 595 N.Y.S.2d 619, 621 (Sup. Ct. App. T. 1st Dep’t 1992) (citations omitted).
 106. *Id.*
 107. See *Missionary Sisters*, 131 A.D.2d at 394, 517 N.Y.S.2d at 505.
 108. See *Delano Vill. Co. v. State of N.Y. Div. of Hous. & Cmty. Renewal*, 245 A.D.2d 196, 197, 666 N.Y.S.2d 617, 618 (1st Dep’t 1997); see also, *Hyde Park Gardens v. State of N.Y. Div. of Hous. & Cmty. Renewal*, 73 N.Y.2d 998, 539 N.E.2d 101, 541 N.Y.S.2d 345 (2d Dep’t 1989).
 109. See N.Y. ADMIN. CODE § 26-514 (as amended by Ch. 116 of the Laws of 1997, § 42) (providing that “the amount of reduction in rent ordered by the state division of housing and community renewal under this subdivision shall be reduced by any credit, abatement or offset in rent which the tenant has received pursuant to section two hundred thirty-five b of the real property law, that relates to one or more conditions covered by such order”); N.Y. REAL PROP. LAW § 235-b(3)(c) (McKinney 2010) (added by c.116 of the laws of 1997, § 39) (providing that “where the premises is subject to regulation pursuant to the local emergency housing rent control law, the emergency tenant protection act of [1974], the rent stabilization law of [1969] or the city rent and rehabilitation law, [the court shall] reduce the amount awarded hereunder by the total amount of any rent reduction ordered by the state division of housing and community renewal pursuant to such laws or act, awarded to the tenant, from the effective date of such rent reduction order, that relates to one or more matters for which relief is awarded hereunder”).
 110. See *Gild v. Fried*, 298 A.D.2d 275, 748 N.Y.2d 736 (1st Dep’t 2002); *Stone v. Goldberg*, 215 A.D.2d 180, 180, 625 N.Y.S.2d 568, 568 (1st Dep’t 1995); *Chatsworth 72nd St. Corp. v. Rigai*, 71 Misc. 2d 647, 651, 336 N.Y.S.2d 604, 609 (N.Y. Civ. Ct. N.Y. County 1972).
 111. See *Ansonia Residents Ass’n v. N.Y. State Div. of Hous. & Cmty. Renewal*, 75 N.Y.2d 206, 213, 551 N.E.2d 72, 74, 551 N.Y.S.2d 871, 873 (1st Dep’t 1989).
 112. See *id.* at 214.
 113. *Id.* at 213.
 114. See *id.*
 115. *Id.* at 214. Although the application of these two standards most often arises in court review of DHCR’s determinations, it is not limited to those instances. See, e.g., *Roberts v. Tishman*, 13 N.Y.3d 270, 918 N.E.2d 900, 890 N.Y.S.2d 388 (2009).
 116. See *Ansonia Residents*, 75 N.Y.2d at 214.
 117. See *Gaines v. State of N.Y. Div. of Hous. & Cmty. Renewal*, 90 N.Y.2d 545, 548–49, 686 N.E.2d 1343, 1344–45, 664 N.Y.S.2d 249, 250–51 (1997) (citations omitted).
 118. See *id.*
 119. *Salvati v. Eimicke*, 72 N.Y.2d 784, 792, 533 N.E.2d 1045, 1048, 537 N.Y.S.2d 16, 19 (1st Dep’t 1988); *ANDREW SCHERER, RESIDENTIAL LANDLORD TENANT IN NEW YORK §§ 4:32–4:33* (2009-2010 ed.).
 120. See *In re Bambeck v. State of N.Y. Div. of Hous. & Cmty. Renewal*, 129 A.D.2d 51, 57, 517 N.Y.S.2d 130, 136 (1st Dep’t 1987).
 121. *Id.*
 122. See *Howell v. Francesco*, 195 Misc. 2d 844, 845, 760 N.Y.S.2d 618, 619 (Sup. Ct. App. T. 2d Dep’t 2003).
 123. See *id.* at 846, 760 N.Y.S.2d at 619 (noting that “most of the cases cited by tenants as supporting a contrary result arise from administrative determinations involving a more deferential standard of review”); *In re Bambeck*, 129 A.D.2d at 57–58, 517 N.Y.S.2d at 134–135 (1st Dep’t 1987).
 124. *Howell*, 195 Misc. 2d at 845, 760 N.Y.S.2d at 619.
 125. See *Smitten v. 56 MacDougal Street*, 167 A.D.2d 205, 206, 561 N.Y.S.2d 585, 585 (1st Dep’t 1990).
 126. See *430 Realty Co., L.L.C. v. Heftler*, 185 Misc. 2d 450, 460, 712 N.Y.S.2d 853, 860 (1st Dep’t 2004) (noting that the DHCR exercises exclusive original jurisdiction in fair market rent appeals).
 127. See N.Y. ADMIN. CODE § 26-513(b)(1).

128. See, e.g., *Acunto v. State of N.Y. Div. of Hous. & Cmty. Renewal*, 269 A.D.2d 169, 169, 702 N.Y.S.2d 811, 812 (1st Dep't 2000); *Dattoma v. State of N.Y. Div. of Hous. & Cmty. Renewal*, 262 A.D.2d 54, 54, 689 N.Y.S.2d 634, 634 (1st Dep't 1999).
129. See *Acunto*, 269 A.D. 2d at 169, 702 N.Y.S.2d at 812; see also *Smitten*, 167 A.D.2d at 206, 561 N.Y.S.2d at 585.
130. See, e.g., *Tribeca M. Corp. v. Haller*, N.Y.L.J., Sept. 17, 2003, at 17, col. 1 (N.Y. Civ. Ct. N.Y. County); see also *Murray v. Morrison*, 181 Misc. 2d 209, 214, 695 N.Y.S.2d 255, 259 (Sup. Ct. App. T. 2d Dep't 1999).
131. See N.Y. ADMIN. CODE § 26-504.2(b).
132. See *Tribeca M. Corp. v. Haller*, N.Y.L.J., Sept. 17, 2005, at 20, col. 3 (App. T. 1st Dep't 2006), *aff'g*, 11 Misc. 3d 134(A), 816 N.Y.S.2d 702 (Civ. Ct. N.Y. County 2003) (Gerald Lebovits, J.); see also, 430 Realty Co. LLC v. Heftler, 185 Misc. 2d 450, 457, 712 N.Y.S.2d 853, 858 (Sup. Ct. App. T. 2d Dep't 2000).
133. See, e.g., *Bronner v. State of N.Y. Div. of Hous. & Cmty. Renewal*, 3 A.D.3d 430, 431, 771 N.Y.S.2d 121, 122 (1st Dep't 2004) ("In any event, any alleged failure to serve petitioners with such notice did not extend DHCR's jurisdiction to consider the question of deregulation in the latest proceeding.") (citation omitted).
134. See *id.*
135. Despite the legal possibility of different remedies existing side by side to enforce on the same substantive statutory provision, ultimately it is in the best interest on broad issues that these inconsistencies be resolved. Inconsistent assessments of interest on service orders that a tenant has not enforced and its consequences given the four-year statute of limitations is pending before the Court of Appeals for resolution. See *In re Cintron v. Calogero*, 59 A.D.3d 345, 346, 875 N.Y.S.2d 76, 77 (1st Dep't 2009) (holding that pursuant to Rent Stabilization Law of 1969, DHCR appropriately limited recoverable amount to four years prior to the filing of the overcharge complaint, and the amount of treble damages to the two years prior to the filing of said complaint). *But cf.* *Jenkins v. Fieldbridge*, 65 A.D.3d 169, 172, 877 N.Y.S.2d 375, 377 (2d Dep't 2009) (finding that the trial court cannot examine the rental history prior to four-year period preceding the filing of the rent overcharge complaint and the trial court could consider the rent reduction order when considering both CPLR § 213(a) and N.Y. ADMIN. CODE § 26-514). See also *Rich v. 105th St. Assoc. LLC*, 906 N.Y.S.2d 23, 25, (1st Dep't 2010) (holding that the proper legal regulated rent for purposes of determining an overcharge is deemed to be the rent charged on the base date, plus any subsequent lawful increases or adjustments, and that the base date in these cases is four years before the filing of the overcharge complaint).
136. *Rosario v. Diagonal Realty*, 8 N.Y.3d 755, 760, 872 N.E.2d 860, 862, 840 N.Y.S.2d 748, 748 (1st Dep't 2007).
137. See Memorandum, Gregory A. Kern, *Landlords Attempting to Opt Out of Section Eight for Rent Stabilized Apartments*, New York City Housing Authority Leased Housing Department (Jul. 23, 2003), available at https://a996-housingauthority.nyc.gov/Landlord/view_doc.aspx?id=153 (explaining that in 2002, DHCR released a Commissioner's Order and Opinion which agreed with two decisions from Westchester County that held a landlord of an occupied Section 8 rent-stabilized apartment could offer a tenant a renewal term without a Section 8 subsidy).
138. *In re Admin. Appeal of Highland Mgmt. Corp.*, DHCR Ad Review Docket No. QB910041RO, DRO Docket No. PK910001RV (Nov. 6, 2002) (unpublished opinion) (citing 30 Eastchester LLC v. Healy, 2002 N.Y. Slip. Op. 40066(U), 2002 Misc. Lexis 233 (N.Y. Civ. Ct. Monroe County 2002)).
139. See *DCHR Fact Sheet # 40: Preferential Rents*, NEW YORK CITY RENT GUIDELINES BOARD, <http://www.housingnyc.com/html/resources/dhcr/dhcr40.html> (last visited Oct. 20, 2010) ("A preferential rent is a rent which an owner agrees to charge that is lower than the legal regulated rent that the owner could lawfully collect.").
140. See *id.*
141. N.Y. ADMIN. CODE § 26-511(c)(14) (as added by Ch. 82 of the Laws of 2003, § 6).
142. See *Von Rosenvinge v. Wellington Fee, LLC*, 19 Misc. 3d 1118A, 862 N.Y.S.2d 818 (Sup. Ct. N.Y. County 2006) (holding that the landlord may charge the legal regulated rent once the period of lease which contains preferential rent provision expires).
143. See 218 E. 85 St. LLC v. State of N.Y. Div. of Hous. & Cmty. Renewal, 23 Misc. 3d 557, 562, 872 N.Y.S.2d 640, 645, 2009 N.Y. Misc. LEXIS 118, *2 (Sup. Ct. N.Y. County 2009) (holding that DHCR's interpretation of the 2003 amendment to the Rent Stabilization Law is rational when DHCR abandoned previous decisions and adopted the position that requires a renewal lease be offered on the "same terms and conditions" as in the previous lease).
144. See *DHCR Operational Bulletin 93-1*, NYSDHCR.GOV, <http://www.dhcr.state.ny.us/Rent/OperationalBulletins/orao931.pdf> (last visited Oct. 20, 2010).
145. See *Headley v. City of N.Y.*, 21 N.Y.2d 786, 787, 235 N.E.2d 450, 451, 288 N.Y.S.2d 478, 479 (1st Dep't 1968) (affirming the trial court's decision refusing to allow the claimants to call appraisers for the city as witnesses).
146. See DHCR Operational Bulletin, *supra* note 143 (noting that the Office of Rent Administration will not respond to a subpoena unless it is a "judicial subpoena" that must be marked "So Ordered" and signed by a judge of the court issuing the subpoena).
147. See N.Y. CPLR § 2307 (McKinney Consol. 2010).
148. For example, when dealing with housing for persons with special needs, DHCR has developed an electronic system for Living Assistants ("LAS") to support the housing needs of persons with special needs. The system enables LAS to transmit necessary information, track program participation and facilitates prompt payments to landlord. See *NYS Division of Housing & Community Renewal: Housing for Persons with Special Needs*, NYSDHCR.GOV, www.ncsha.org/system/files/NYSDHCR_SN_Special+Needs.pdf (last visited Oct. 20, 2010).
149. See *Fact Sheet #34: Expedited Proceedings*, NYSDHCR.GOV, <http://www.dhcr.state.ny.us/Rent/FactSheet/orafac34.pdf> (last visited Oct. 20, 2010).
150. N.Y. UNCONSOL. LAWS § 8632(a)(7) (McKinney 2010).

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