



Policy Statement 93-4 (October 4, 1993)

***Procedure for Handling Rent Overcharge
Awards When The Tenant Has Vacated the
Apartment Without Leaving a Forwarding Address***

This Statement serves to establish the Division of Housing and Community Renewal's (DHCR) policy regarding overcharge awards where the tenant vacated the subject apartment and no forwarding address is available.

Upon determination of an overcharge, the order is mailed to the complaining tenant's last known address and to the owner. After Post Office notification that the tenant vacated the apartment and that a forwarding address is not available, DHCR will send a copy of the order together with an explanatory notice to the occupant of the apartment, and a notice to the owner pursuant to this Policy Statement, advising that the complaining tenant cannot be located and directing that, within thirty-five days from the date of said notice (the time within which administrative review must be sought), the entire amount specified in the overcharge order must be deposited into a DHCR escrow account.

Where, however, prior to the issuance of the order, DHCR has determined that the tenant has vacated and that no forwarding address is available, the order shall direct the owner to deposit the entire amount specified in the order in a DHCR escrow account within thirty-five days from the issuance date of the order, pursuant to the "Escrow Notice" attached to the order. A copy of the order shall also be mailed to the occupant of the subject apartment.

An owner who files a Petition for Administrative Review (PAR) shall not be required to make such deposit during the pendency of the PAR.

Upon final determination of the PAR, the amount of the overcharge award, as affirmed or modified by the PAR Order and Opinion, must be deposited by the owner in the escrow account no later than sixty days after such determination (the time within which judicial review must be sought). If the owner commences proceeding for judicial review of the PAR determination pursuant to Article 78 of the Civil Practice Law and Rules within such sixty-day period, and the owner, with the filing of the Article 78 petition, requests an appropriate stay, the owner shall not be required to make such deposit into the DHCR escrow account until the application for a stay is decided. If the stay is denied, the deposit must be made within thirty days of such denial.

The amount of the overcharge award must be deposited by the owner into the escrow account within sixty days of entry of the judgment of the Supreme Court determining the Article 78 proceeding and affirming the overcharge award, in whole or in part. The filing of an appeal from the judgment shall not stay the owner's obligation to deposit the overcharge award, unless such obligation is stayed by direction of a court of competent jurisdiction.

This document is being reissued for informational purposes only.

The original document which contains signatures of authorization is on file at DHCR's Office of Rent Administration.



In addition, an owner may submit a claim to DHCR for an offset against the amount of the overcharge award deposited in the escrow account for costs associated with property damage caused by the complaining tenant, or for any rent arrears based upon such tenant's failure to pay the lawful rent. To assert such claim for offset, the owner must have instituted an action or proceeding against the tenant in a court of competent jurisdiction no later than thirty-five days from the date on which DHCR issues the "Notice To Owner Pursuant to Policy Statement 93- " (directing the owner to deposit the full amount of the overcharge award into a DHCR escrow account) or, if the owner files a PAR, no later than sixty days from the final determination of such PAR.

The institution of such action or proceeding against the tenant does not relieve the owner of the obligation to deposit the full amount of the overcharge award into the escrow account. Provided that the owner is proceeding with due diligence, during the pendency of the court action or proceeding, neither the owner nor the tenant shall be entitled to request that DHCR withdraw the disputed amount from the escrow account and remit it to either of such parties. DHCR will only comply with a request to withdraw the disputed amount from the escrow account if the following conditions are met: a) DHCR is provided with proof that such action or proceeding has terminated in a manner consistent with the request to withdraw the disputed amount, and that a judgment, if any, has been entered, and b) if no appeal has been taken, the time to file a notice of appeal has expired, with DHCR not having been notified of the filing of any notice of appeal, or if an appeal has been taken, the appeal has been finally resolved. Documentation of the resolution of the action or proceeding will be served by DHCR upon the opposing party, if the address of such party is known, and such party shall be given a reasonable opportunity to respond.

Nothing in this Policy Statement should be construed to extend the statute of limitations for commencing any court action or proceeding. It should also be noted that if a court action or proceeding is finally resolved in the owner's favor, and if DHCR is so notified with proper verification thereof, the amount of the judgment may be reflected in the amount of the overcharge award set forth in the Administrator's or PAR decision before the obligation to deposit that amount into the escrow account has arisen.

At periodic intervals, DHCR will issue press releases listing the names of tenants who are entitled to unclaimed overcharge awards, including the addresses of the buildings and apartments involved. The frequency of these press releases will be determined by the number of cases having this status. In addition to press releases, DHCR will place advertisements in the form of unclaimed property announcements in a newspaper of general circulation, advising affected tenants to contact the Office of Rent Administration's Public Information Unit. All overcharge awards remaining unclaimed will be subject to disposition pursuant to the applicable provisions of state law.

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for Rent Administration