

### RENT STABILIZATION

# When Is a Rent Registration ‘Proper’?



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**R**SL §26-517(e) states that the “failure to file a proper and timely initial or annual registration statement shall, until such time as a proper registrations filed,” freeze the stabilized rent. In overcharge cases, tenants will frequently point to any error in a registration as rendering it improper, such that the rent should be frozen.

The courts have established a general rule as to when a registration is deemed proper, and have also established an exception to that rule. The rule and its exception are examined below.

#### ‘Enriquez v. DHCR’

In *Enriquez v. New York State Div. of Hous. & Community Renewal*, 166 A.D.3d 404 (1st Dep’t 2018), the tenant demanded a rent freeze because the registrations, although filed, contained “unlawful rent amounts.” In the underlying DHCR proceeding *Matter of Enriquez*, DHCR Adm. Rev. Dckt. No. EQ-410016-RT, issued Sept. 26, 2016, the agency rejected this argument. Citing RSL §26-517(e) and RSC §2528.4(a), DHCR wrote:

The freezing of the collectible rent as outlined in the above regulations mainly applies to situations where an owner

does not file an annual rent registration. Indeed, the regulations eliminate the penalty prospectively once the registration is filed. Here, both the former and current owner timely filed apartment registrations from 2009-2015 that comport with the leases in effect for those years. The Commissioner finds that the filing of the wrong amount in an apartment registration does not, by itself, make the registration ‘improper’ and does not trigger a freezing of the collectible rent. The regulations do not mandate that the apartment registration is invalid if it does not contain the correct legal regulated rent. Indeed, in almost every case where the Rent Administrator finds a rent overcharge, the apartment registrations are likely to list the wrong legal regulated rent—or at least a rent that does not comport with the Rent Administrator’s findings.

Reversing Supreme Court in the subsequent Article 78 proceeding, the Appellate Division, First Department affirmed DHCR’s interpretation of the statute and regulations:

Contrary to the court’s finding, the subject rent registration statements were ‘proper’ within the meaning of Rent Stabilization Law §26-517(e). That provision requires landlords to ‘file a proper and timely initial or annual registration statement,’ which means a statement of the ‘rent charged on the registration

date,’ or ‘current rent,’ rather than the technically legal collectible rent. The rent registration statements recorded the actual amount of rent charged to the tenant and were not the product of fraudulent leases or otherwise illegal ‘nullities’ (internal citations omitted.)

In *Bel-Air Leasing L.P. v. Berezovska*, 71 Misc.3d 1228(A) (Civ. Ct., New York Co. 2021), decided on June 3, 2021, Judge Jack Stoller, citing *Enriquez*, declined to grant a rent-freeze. Judge Stoller summarized the state of law as follows:

The bottom line is that a rent overcharge cause of action is distinct from a claim

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that a landlord’s rent registrations are defective. The purpose of a rent registration is to memorialize facts about tenancies so as to enable landlords, tenants, DHCR, and Courts to accurately evaluate anything having to do with, inter alia, the legality of rents. Certainly when landlords fail to so memorialize those facts, whether with a design to commit fraud or out of neglect for some other reason,

a number of consequences follow. But when a landlord otherwise complies with an accurate registration of rents charged, the underlying merits of the rents themselves do not implicate the recordkeeping function of the registration itself. (internal citations omitted).

Notably, the Appellate Term, Second Department had adopted this policy 20 years earlier in *Heights Assoc. v. Bautista*, 178 Misc.2d 669, 671-72 (App Term, 2d Dep't 1998). There, the court held that the rent freeze penalty in RSL §26-517(e) does not apply "where a landlord registers an incorrect amount." See also *Armstrong v. Dumbo Lofts Rental* (Sup. Ct. Kings Co. Index No. 523862/19) ("Despite the inclusion of an inflated legal regulated rent, the rent registration statements here recorded the actual amounts of rents charged to plaintiffs, which amounts also comported with the leases in effect. The rent registration statement thus cannot be deemed 'improper' under the RSL"); *John Manning Irrevocable Trust v. Biggart*, 2019 WL 2009271 (Sup. Ct. NY Co. 2019).

### 'Jazilek' and 'Bradbury'

An exception to the general rule was set forth in *Jazilek v. Abart Holdings*, 72 A.D.3d 529, 531 (1st Dep't 2010). There, the First Department found under the facts therein that the registrations filed were not "proper":

The landlord's failure to file a proper and timely annual rent registration statement results in the rent being frozen at the level of the legal regulated rent in effect on the date of the last preceding registration statement. The rent registration filed by the landlord in February 2004 was false, as it continued to list the prior tenant as tenant of record, and listed the prior rent of \$812.34, instead of the actual paid preferential rent of \$1,800. The rent registration filed in June 2004 was also defective, as it listed the legal rent of \$2,200, vastly in excess of \$974.81, the highest possible legal rent at that

time. As such, both the February and the June 2004 registration statements for nullities. (internal citations and quotation marks omitted).

The First Department's second finding in *Jazilek*—that the 2004 registration was improper because it listed a legal rent "vastly in excess" of the lawful rent—its difficult to square with *Enriquez*. There, as noted, the First Department held that a registration is proper if it records the "rent charged on the registration date" or the "current rent." Perhaps for this reason, courts in more recent decisions have limited *Jazilek* to its facts. See *Bel-Air Leasing L.P.*, supra; *John Manning Irrevocable Trust*, supra.

In *Bradbury v. 342 W. 30th St.*, 84 A.D.3d 681 (1st Dep't 2011) Supreme Court, following a non-jury trial, found that the landlord had willfully overcharged tenant. The First Department affirmed on appeal, holding that the registrations in question were not "proper":

Here, although defendant filed registration statements in 2002 and 2003 listing the purported legal rent as \$2,000, the trial court's findings, which we now firm, established that those findings were intentionally false. The trial court concluded that defendant willfully and intentionally charged plaintiff the incorrect rent of \$2,000 and that the maximum allowable rent was \$1,390.87. The court further found that defendant's entire case was 'a sham, filled with perjury, forgery, [and] fabrications' and was 'designed ... to raise the rent of the apartment ... to an unlawful level,' a level that would remove the unit from the protections of rent stabilization.

Id. at p. 84.

Notwithstanding the tension between *Enriquez* and *Bradbury*, the latter remains good law. For example in *Townsend v. B-U Realty*, 67 Misc.3d 1228(A) (Civ. Ct. New York Co. 2020), Justice Gerald Lebovits, citing *Bradbury*, froze the tenant's rent because the amount registered "differs

significantly from the legal rent defendant had registered with DHCR for Lowenthal's tenancy, and supports plaintiffs' claim that defendant intentionally filed false registration statements." See also *Ben-Horin v. Coso 120 W. 105*, 2018 WL 2971167 (Sup. Ct. New York Co. 2018).

In *125 Court St. v. Sher*, 58 Misc.3d 150(A) (App. T. 2d Dep't 2018), the Second Department of the Appellate Term, citing *Jazilek* and *Bradbury*, froze the tenant's rent because the landlord "failed to register the correct maximum legal rent for the initial 2005 lease through until September, 2013." There, the 2005 registration erroneously stated that the subject unit was temporarily exempt from rent stabilization. That, arguably, is an improper registration. The 2006-2013 registrations, however, corrected that mistake. It is unclear whether that portion of the *125 Court St.* decision survives *Enriquez*.

The case law establishes that a registration that correctly recites the rent actually charged to the tenant has been properly filed. Cases citing the exception to this rule appear to be limited by their particular facts, and are sometimes inconsistent with each other or with *Enriquez*. Further clarification from the courts is needed.