

### RENT REGULATIONS

# DHCR's Evolving Policy On Doorman Replacement



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In *Bazile v. Rubin*, 165 AD3d 793 (2d Dept. 2018), the Second Department reinstated a DHCR order that granted an owner's application to replace part-time lobby attendants with a video security system. The decision highlights DHCR's evolving policy with respect to replacing live security personnel with security cameras.

### Substitution of Services

RSC section 2522.4(e)(3) provides that "an owner may file an application to modify or substitute services, at no change in the legal regulated rent...on the grounds that...such modification or substitution is not inconsistent with the RSL or the Code." Over the years, owners have used this provision to seek DHCR's permission to replace

lobby attendants and doormen with security cameras. These applications became more popular with the advent of "virtual" or "cyber" doorman systems.

### Substitution Denied

*Matter of 1325 Fifth Ave.*, DHCR Adm. Rev. Dckt. No. VG-410002-RO, issued April 13, 2010, provides a good example of DHCR's initial reluctance to allow landlords to substitute cameras for live security personnel. There, the owner sought DHCR's permission to replace security guards with a remotely-monitored video security system known as a "cyber doorman." The owner asserted that the proposed system would be equivalent or superior to the existing security guard service.

DHCR's rent administrator denied the application, and was affirmed on administrative review. DHCR wrote:

The Administrator's determination that the proposed remotely-monitored video system would not be an adequate substitute for physically present security guards is supported by the record. In response to the Application, many tenants submitted statements describing how security guards have been able to immediately respond so as to deter crime in and around the building and assist tenants during emergencies. The owner has not offered convincing evidence that a remotely-monitored video surveillance system would provide the same level of service as physically present personnel who can take immediate action should tenants need assistance or protection. In addition, any totally electronic system, no matter how well designed, can be subject

to breakdowns or malfunctions which would leave tenants totally unprotected for unknown lengths of time.

DHCR ruled to the same effect in *Matter of 118-11 84th Ave.*, DHCR Adm. Rev. Dckt. No. AN-110015-RO, issued Feb. 15, 2013, stating “the doorman provides a security presence which cannot be replicated by a video system.” See also *Matter of 134 West 58th Street*, DHCR Adm. Rev. Dckt. No. BS-410005-RO, issued Sept. 25, 2014.

### Garage Security

In *Matter of 2940 Ocean Parkway*, DHCR Adm. Rev. Dckt. No. TE-210064-RT, issued Jan. 18, 2007, DHCR permitted the owner to install “a state-of-the-art video surveillance system throughout the entire development and the parking lot, eliminating the parking lot security guard.” DHCR conclusively wrote that the tenant did not “provide any evidence to show that the installation of the security cameras and monitoring station actually reduces services.” Although DHCR had previously ruled that security cameras were no substitute for live security personnel, DHCR apparently made an exception with respect to parking

### Substitution of Services Permitted

In *Matter of 87-50 167th Street*, DHCR Adm. Rev. Dckt. No. UD-110067-RT, issued Aug. 5, 2009, DHCR permitted the owner to replace a live lobby attendant with “surveillance cameras, in combination with an electronic entry system, roof door alarms, an improved intercom system and enhanced lighting.” DHCR’s order is perhaps explained by the fact that a lobby

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Over the years, owners have used RSC section 2522.4(e)(3) to seek DHCR’s permission to replace lobby attendants and doormen with security cameras.

attendant, as opposed to a security guard, was being replaced by a fully integrated security system, rather than mere cameras.

In *Matter of 3232 Shore Parkway*, DHCR Adm. Rev. Dckt. No. BN-210041-RT, issued on June 26, 2014, DHCR granted the owner’s application to modify services by replacing 40 hours of lobby attendant service at the entrance of the premises with the installation of five security cameras covering common areas and the immediate exterior of the building. DHCR provided no rationale

for its decision, conclusively stating that “such modification or substitution is not inconsistent with the Rent Stabilization Law or Code.”

In *Various Tenants of 63-60 98th Street*, DHCR Adm. Rev. Dckt. No. BW-110035-RT, issued Aug. 21, 2015, DHCR allowed the owner to substitute a video surveillance system for a part-time lobby attendant. See also *Matter of Givens*, DHCR Adm. Rev. Dckt. No. EQ-610039-RT, issued Dec. 9, 2016 (substitution permitted); *Matter of Brooklyn Housing and Family Services*, DHCR Adm. Rev. Dckt. No. CU-210006-RT, issued Dec. 30, 2016 (“the proposed video surveillance system will be operational during all hours and will monitor common areas and other parts of the building which the lobby attendant cannot observe”).

### ‘Bazile v. Rubin’

In *Various Tenants of 64-20 Saunders Street*, DHCR Adm. Rev. Dckt. No. BW-110034-RT, issued Aug. 28, 2015, DHCR affirmed the owner’s substitution of services application as follows:

DHCR has granted permission in the past to substitute live doormen or lobby attendants with video surveillance systems which offered an equivalent level of building security. In this case, the tenants do not

dispute the fact that the current lobby attendant is only on duty part-time, and there is no attendant present at the building for more than half the hours of each week. The proposed video surveillance system will be operational 24/7 and will monitor areas in and around the building which the lobby attendant cannot observe. The surveillance will be monitored on-site by building staff as opposed to remote monitoring. In view of these facts, the Commissioner finds that the proposed video surveillance system will offer an equivalent level of security as the existing part-time lobby attendant, and there was thus no error by the Administrator in determining that the proposed surveillance system is an adequate substitute for the existing lobby attendant service.

The tenants thereafter commenced an Article 78 proceeding. *Bazile v. Rubin*, Sup. Ct. Queens Co. Index No. 12896/15. Supreme Court (Raffaele, J.) summarized the tenants' objections as follows:

The objecting tenants stated that the presence of the doorman serves to deter intruders from entering the building, and that this could not be replaced by a camera; that the doormen screen visitors to the building;

that the tenants feel more secure with the doormen present in the building; that the doormen had a desk stationed in the lobby for many years that was recently removed...that the doormen help tenants who use a walker or wheelchair, and open the door for them.

Finding the tenants' arguments persuasive, Supreme Court annulled DHCR's order, holding that "cameras cannot adequately perform the services of a doorman and many tenants relied upon the existence of a doorman before they commenced their respective leaseholds."

DHCR appealed, and the Second Department unanimously reinstated DHCR's order. The court found that "DHCR's determination that the rent administrator did not err in finding that the video surveillance system was an adequate substitute for the part-time lobby attendants was rational, and was not arbitrary and capricious."

### Case-by-Case Basis

Although DHCR has apparently liberalized its position as to the substitution of doormen and lobby attendants by video security systems, and although the Second Department has placed its

imprimatur on at least one DHCR order allowing such substitution, is important for practitioners to recognize that DHCR will decide these applications on a case-by-case basis. Where existing security personnel did not provide 24/7 service, or did not patrol all areas of the building, it is more likely that DHCR will grant the substitution of services application. If the new security system is less than comprehensive, or is monitored remotely, DHCR may be less likely to do so.