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C

Civil Court, City of New York,
New York County.
Jaime VAZQUEZ, Plaintiff
v.
Fred SICHEL, Defendant.

Dec. 2, 2005.

Background: Tenant residing in rent-stabilized apartment sued landlord alleging that landlord had overcharged by imposing excessive "Individual Apartment Improvement" (IAI) rent increase. Action was removed to Civil Court. Landlord moved to dismiss for lack of jurisdiction.

Holdings: The Civil Court, City of New York, New York County, Lucy Billings, J., held that:
(1) Supreme Court and Civil Court had concurrent jurisdiction, with state's Division of Housing and Community Renewal (DHCR), over tenant's challenge, and
(2) Civil Court would decide case on merits rather than invoking doctrine of primary jurisdiction and deferring to DHCR's expertise.
Motion denied.

West Headnotes

[1] Landlord and Tenant ⚿200.71
233k200.71 Most Cited Cases
Supreme Court and Civil Court had concurrent jurisdiction, with state's Division of Housing and Community Renewal (DHCR), over tenant's challenge to landlord's allegedly excessive "Individual Apartment Improvement" (IAI) rent increase for rent-stabilized apartment; provisions of municipal administrative code and state administrative regulation authorizing DHCR's imposition of treble-damages penalty did not vest in DHCR exclusive jurisdiction over overcharge cases, but merely conditioned DHCR's imposition of penalty on its finding an overcharge. McKinney's Const. Art. 6, § 7(a); Art. 9, § 2(c); McKinney's Judiciary Law § 140-b; McKinney's Municipal Home Rule Law § 11(1)(e); New York City Administrative Code, §§ 26-511(b), 26-516(a); 9 NYCRR 2526.1(a)(1).

[2] Courts ⚿30
106k30 Most Cited Cases
Neither city statute nor state regulation may deprive court of jurisdiction conferred by state constitution and state statutes.

[3] Administrative Law and Procedure ⚿ 228.1
15Ak228.1 Most Cited Cases
In order for state legislature to confer exclusive original jurisdiction on administrative agency to adjudicate disputes under regulatory program authorized by statute, legislature must specifically make that choice. McKinney's Const. Art. 6, § 7(a).

[4] Landlord and Tenant ⚿200.71
233k200.71 Most Cited Cases
In tenant's suit challenging landlord's allegedly excessive "Individual Apartment Improvement" (IAI) rent increase for rent-stabilized apartment, it was for court to decide whether issues presented triggered doctrine of primary jurisdiction, so as to warrant court's deference to expertise of Division of Housing and Community Renewal (DHCR) in first instance.

[5] Landlord and Tenant ⚿200.71
233k200.71 Most Cited Cases
Civil Court, in which tenant brought challenge to landlord's allegedly excessive "Individual Apartment Improvement" (IAI) rent increase for rent-stabilized apartment, would decide case on merits rather than invoking doctrine
of primary jurisdiction and deferring to expertise of Division of Housing and Community Renewal (DHCR) in first instance; court could utilize DH-

CR's prescribed criteria for determining IAI increases and challenges to them, which did not require expertise or resources beyond court's competence. New York City Administrative Code, § 26-511(c)(13); 9 NYCRR 2522.4(a)(1, 4).

****483** Seth **Miller** Esq., **Collins, Dobkin & Miller** LLP, New York, for Plaintiff.

Edward Baer Esq., Belkin, Wenig & Goldman, LLP, New York, for Defendant.

LUCY BILLINGS, J.

***605** I. *BACKGROUND*

Plaintiff tenant sues to recover a rent overcharge. He challenges his landlord's "Individual Apartment Improvement" (IAI) increase in the rent level. Defendant landlord moves to dismiss the complaint, ****484** based on the court's lack of subject matter jurisdiction to determine plaintiff's claim. C.P.L.R. § 3211(a)(2). For the reasons explained below, the court denies defendant's motion and determines that the Civil Court, as well as the Supreme Court from which this action was removed, C.P.L.R. § 325(d), has jurisdiction to determine an action for a rent overcharge based on the tenant's challenge to an IAI increase.

II. *THE JURISDICTIONAL ISSUE*

Plaintiff rents a rent stabilized apartment, No. 3B, at 343 West 21st Street, in New York County. Defendant claims that the New York State Division of Housing and Community Renewal (DHCR) has exclusive jurisdiction to determine the regulated rent for this apartment and hence to determine whether the rent increase charged by the landlord, based on improvements to plaintiff's individual apartment before he moved in, is excessive. While plaintiff does not dispute that DHCR has jurisdiction to determine a challenge to an IAI increase, he maintains that the court has concurrent jurisdiction to determine this challenge, which he is entitled to invoke.

The court, whether the Supreme Court where this action originated or the Civil Court where the action was removed, has concurrent jurisdiction with DHCR to decide tenants' actions to recover rent overcharges. *Jenkins v. State of New York Div. of Hous. & Community Renewal,* 264 A.D.2d 681, 695 N.Y.S.2d 563 (1st Dep't 1999); *Crimmins v. Handler & Co.,* 249 A.D.2d 89, 91, 671 N.Y.S.2d 469 (1st Dep't 1998); *Wolfisch v. Mailman,* 182 A.D.2d 533, 582 N.Y.S.2d 704 (1st Dep't 1992); *Cvetichanin v. Trapezoid Land Co.,* 180 A.D.2d 503, 504, 580 N.Y.S.2d 23 (1st Dep't 1992). *See Draper v. Georgia Props. Inc.,* 230 A.D.2d 455, 459, 660 N.Y.S.2d 556 (1st Dep't 1997), *aff'd,* 94 N.Y.2d 809, 701 N.Y.S.2d 322, 723 N.E.2d 71 (1999). This jurisdiction necessarily entails deciding whatever issues bear on the rent level. Here, that issue is the value of improvements to the apartment.

***606** A. *DHCR's Exclusive Jurisdiction*

[1] New York City Administrative Code § 26-516(a) governing rent stabilized apartments provides that:

> [A]ny owner of housing accommodations who, upon complaint of a tenant, ... is found by the state division of housing and community renewal ... to have collected an overcharge above the rent authorized ... shall be liable to the tenant for a penalty equal to three times the amount of such overcharge.

Governing New York State regulations, at 9 N.Y.C.R.R. § 2526.1(a)(1), provide similarly, that "[a]ny owner who is found by the DHCR" to have collected an overcharge is liable to the tenant for three times the excess charge.

[2] Defendant relies on these provisions as barring the court's jurisdiction over a tenant's overcharge complaint. Nowhere does the plain language of the statute and regulation exclude a body other than DHCR from finding that a housing owner has collected a rent overcharge. Were these laws given that effect, the court would have no jurisdiction over

any overcharge complaints, as these provisions are not limited to overcharges based on IAI increases. At most, the plain language of the statute and regulation authorize the imposition of the treble damages penalty only where the complaint is before DHCR rather than the court. Yet even this penalty provision is applied in actions initiated in court. *Draper v. Georgia Props. Inc.,* 230 A.D.2d at 459-60, 660 N.Y.S.2d 556, *aff'd,* 94 N.Y.2d 809, 701 N.Y.S.2d 322, 723 N.E.2d 71; ****485***Wolfisch v. Mailman,* 182 A.D.2d 533, 582 N.Y.S.2d 704; *Cvetichanin v. Trapezoid Land Co.,* 180 A.D.2d at 504, 580 N.Y.S.2d 23. More significantly, neither a city statute nor a state regulation may deprive the court of jurisdiction conferred by the State Constitution and state statutes. N.Y. Const. art. VI, §§ 1, 7(a), 15; N.Y. Jud. Law § 140-b; N.Y.C. Civ.Ct. Act (CCA) §§ 201-202. *See, e.g.,* N.Y. Const. art. IX, § 2(c); N.Y. Mun. Home Rule Law § 11(1)(e); *Hausser v. Giunta,* 88 N.Y.2d 449, 454, 646 N.Y.S.2d 490, 669 N.E.2d 470 (1996); *Incorporated Vil. of Hempstead v. Jablonsky,* 270 A.D.2d 310, 704 N.Y.S.2d 299 (2d Dep't 2000); *Bd. of Educ. of City School Dist. of City of N.Y. v. Mills,* 250 A.D.2d 122, 126, 680 N.Y.S.2d 683 (3d Dep't 1998).

[3] Under N.Y. Const. art. VI, § 7(a), the Supreme Court and hence the Civil Court in this action only for damages, removed pursuant to and within the scope of C.P.L.R. § 325(d), have jurisdiction over "all causes of action unless its jurisdiction has been specifically proscribed." *Sohn v. Calderon,* 78 N.Y.2d 755, 766, 579 N.Y.S.2d 940, 587 N.E.2d 807 (1991). This constitutionally protected jurisdiction ***607** thus does not prohibit the State Legislature from conferring exclusive original jurisdiction on an administrative agency to adjudicate disputes under a regulatory program authorized by statute. The Legislature must specifically make that choice, however, to provide for the agency's adjudication of a type of regulatory dispute in the first instance, subject to judicial review. *Id.* at 766-67, 579 N.Y.S.2d 940, 587 N.E.2d 807; *Capers v. Giuliani,* 253 A.D.2d 630, 632- 33, 677 N.Y.S.2d 353 (1st Dep't 1998); *Pocantico Home & Land Co., LLC v. Union Free School Dist. of Tarrytowns,* 20 A.D.3d 458, 461-62, 799 N.Y.S.2d 235 (2d Dep't 2005).

Nothing in the state rent stabilization statutes indicates the State Legislature's intention that DHCR be the exclusive initial arbiter of challenges to IAI rent increases specifically or rent overcharges more generally, as opposed to being an available forum for administrative redress. *Sohn v. Calderon,* 78 N.Y.2d at 767, 579 N.Y.S.2d 940, 587 N.E.2d 807; *Capers v. Giuliani,* 253 A.D.2d at 632, 677 N.Y.S.2d 353; *County Dollar Corp. v. Douglas,* 160 A.D.2d 537, 538, 556 N.Y.S.2d 533 (1st Dep't 1990). Although Administrative Code § 26-516, a *New York City* statute, and 9 N.Y.C.R.R. § 2526.1(a)(1), a state *regulation,* provide for a treble damages penalty when DHCR has found an overcharge, these provisions, even if they could supersede state statutes or constitutional guarantees, do not make an overcharge dependent on a DHCR finding. *County Dollar Corp. v. Douglas,* 160 A.D.2d at 538, 556 N.Y.S.2d 533; *Missionary Sisters of Sacred Heart v. Meer,* 131 A.D.2d 393, 395-96, 517 N.Y.S.2d 504 (1st Dep't 1987); *State of New York v. Winter,* 121 A.D.2d 287, 289, 503 N.Y.S.2d 384 (1st Dep't 1986). *See Sohn v. Calderon,* 78 N.Y.2d at 767, 579 N.Y.S.2d 940, 587 N.E.2d 807. The city statute and state regulation simply make DHCR's imposition of the penalty dependent on the agency finding an overcharge, *County Dollar Corp. v. Douglas,* 160 A.D.2d at 538, 556 N.Y.S.2d 533, while the court also may impose the penalty when the court finds an overcharge. *Draper v. Georgia Props. Inc.,* 230 A.D.2d at 459-60, 660 N.Y.S.2d 556, *aff'd,* 94 N.Y.2d 809, 701 N.Y.S.2d 322, 723 N.E.2d 71; *Wolfisch v. Mailman,* 182 A.D.2d 533, 582 N.Y.S.2d 704; *Cvetichanin v. Trapezoid Land Co.,* 180 A.D.2d at 504, 580 N.Y.S.2d 23.

Defendant further relies on 9 N.Y.C.R.R. § 2526.1(a)(2), which provides that: "A complaint pursuant to this section must be filed with the DHCR within four months of the first overcharge alleged...." ****486** Again, this regulation pertains only to complaints before DHCR, rather than the court, and, in any event, sets only a time limitation, rather than a jurisdictional bar that may not be accomplished by a regulation. *E.g.,* N.Y. Const. art. IX, § 2(c); *Incorporated Vil. of Hempstead v. Jablonsky,* 270 A.D.2d 310, 704 N.Y.S.2d 299; *Bd. of Educ. of City School Dist. of City of N.Y. v. Mills,* 250 A.D.2d at 126, 680 N.Y.S.2d 683. In fact C.P.L.R. § 213-a sets a comparable ***608** time limitation for overcharge complaints in court. *Crimmins v. Handler & Co.,* 249 A.D.2d at 91, 671 N.Y.S.2d 469.

9 N.Y.C.R.R. § 2522.4(a)(6), another state regulation, is equally inadequate to carve out DHCR's "exclusive original jurisdiction to hear challenges to IAI increases." *Rockaway One Co., LLC v. Wiggins,* 9 Misc.3d 12, 15, 801 N.Y.S.2d 471 (App. Term 2d Dep't 2004). As discussed above, only the State Legislature may accomplish that result. Yet none of the rent stabilization laws, state or city, statutes or regulations, draws any distinction between categories of overcharge claims that may be commenced in court, without DHCR's prior determination, and categories of overcharge claims, like challenges to IAI increases, that must be initiated in an administrative proceeding and first determined by the agency. *County Dollar Corp. v. Douglas,* 160 A.D.2d at 538, 556 N.Y.S.2d 533. The rent stabilization laws nowhere mandate that any judicial determination of any category of overcharge claim be solely a judicial review of the agency's determination, via C.P.L.R. art. 78 for example. *Pocantico Home & Land Co., LLC v. Union Free School Dist. of Tarrytowns,* 20 A.D.3d at 462-63, 799 N.Y.S.2d 235. The statutory scheme thus contains none of the indicia evincing a legislative intent to give DHCR exclusive original jurisdiction over controversies involving IAI increases. *Sohn v. Calderon,* 78 N.Y.2d at 767, 579 N.Y.S.2d 940, 587 N.E.2d 807; *County Dollar Corp. v. Douglas,* 160 A.D.2d at 538, 556 N.Y.S.2d 533.

Nor do the rent stabilization laws anywhere indicate that the State Legislature intended courts to "opt out" of their jurisdiction over overcharge complaints and rely exclusively on DHCR's determinations regarding overcharges based on IAI increases. *Ling Ling Yung v. County of Nassau,* 77 N.Y.2d 568, 572, 569 N.Y.S.2d 361, 571 N.E.2d 669 (1991). Such a result would place parties in these controversies at a disadvantage, compared to parties who have alternative forums for overcharge complaints, and undermine regularization, predictability, and uniformity of procedures, without an express intent to tolerate an anomaly in a specified instance. *Id.*

While nothing in the rent stabilization statutes or regulations expressly authorizes a tenant's rent overcharge action "in a court of competent jurisdiction," as do the rent control statutes, N.Y. Unconsol. Laws § 8632(a)(1)(f), the absence of such an authorization in the rent stabilization laws has not barred overcharge actions in court. In fact, the First Department applies N.Y. Unconsol. Laws § 8632(a)(1)(f)'s authorization to rent stabilized apartments. *Wolfisch v. Mailman,* 182 A.D.2d 533, 582 N.Y.S.2d 704; ***609***Smitten v. 56 MacDougal St. Co.,* 167 A.D.2d 205, 206, 561 N.Y.S.2d 585 (1st Dep't 1990). *See Crimmins v. Handler & Co.,* 249 A.D.2d at 91, 671 N.Y.S.2d 469; *Wolfisch v. Mailman,* 196 A.D.2d 466, 601 N.Y.S.2d 300 (1st Dep't 1993).

Even where these actions are through counterclaims in summary proceedings commenced by landlords, these counterclaims must have been within the court's subject matter jurisdiction had they been "sued upon separately," CCA § 208(a), or ****487** within that jurisdiction except for the amount claimed. CCA § 208(b). *See Jenkins v. State of New York Div. of Hous. & Community Renewal,* 264

A.D.2d 681, 695 N.Y.S.2d 563; *Missionary Sisters of Sacred Heart v. Meer,* 131 A.D.2d at 396-97, 517 N.Y.S.2d 504; *1460 Grand Concourse Associates v. Martinez,* N.Y.L.J., May 6, 1994, at 29 (App. Term 1st Dep't); *310 West End Owners Corp. v. Rosenberg,* N.Y.L.J., Aug. 28, 1991, at 21 (App. Term 1st Dep't). When a tenant incurs an expense, by paying excessive rent or otherwise, due to the landlord's noncompliance with legal requirements, such as the formulae for calculating rent increases, the tenant may sue to recover that expense either in an independent action, as here, or by a counterclaim in an action or proceeding for rent. *Missionary Sisters of Sacred Heart v. Meer,* 131 A.D.2d at 397, 517 N.Y.S.2d 504.

Furthermore, the rent stabilization statutes do expressly confer on tenants the right to pursue any remedy provided by other laws in addition to remedies provided by the rent stabilization laws. N.Y.C. Admin. Code §§ 26- 511(b), 26-514; *Missionary Sisters of Sacred Heart v. Meer,* 131 A.D.2d at 396, 517 N.Y.S.2d 504. CCA § 110(c) grants the Civil Court broad power to employ "any remedy ... or sanction authorized by law for the enforcement of housing standards." One such standard is the formula for calculating an IAI increase, which plaintiff seeks for enforce in this action. This court has the express power to enforce that standard by determining whether defendant has complied with the formula in arriving at plaintiff's rent level and by awarding plaintiff a refund if the level dictated by the formula has been exceeded.

9 N.Y.C.R.R. § 2522.4(a)(6), on which the one court relied for DHCR's exclusive jurisdiction, requires that a determination regarding *any* adjustment in the regulated rent, not just an IAI increase, include equitable considerations: whether it will cause a tenant's dislocation or undue hardship, provide the landlord a return of costs invested, and increase the housing's rental value. *Rockaway One Co., LLC v. Wiggins,* 9 Misc.3d at 15- 16, 801 N.Y.S.2d 471. Again, this regulation, even were it adequate to encroach on the courts' constitutional and statutory jurisdiction, applies to *all* rent ***610** adjustments, such as for major capital improvements, or for building-wide improvements or increased services required by law or with the tenants' express consent. 9 N.Y.C.R.R. § 2522.4(a)(1)-(3). This articulated basis for distinguishing IAI increases from other rent adjustments claimed to produce rent overcharges does not in fact distinguish the IAI category of overcharge claims. *County Dollar Corp. v. Douglas,* 160 A.D.2d at 538, 556 N.Y.S.2d 533.

The specified equitable considerations, in any event, do not inhibit the courts' exercise of jurisdiction. Not only is the Supreme Court fully empowered to provide equitable relief, but so is the Civil Court in the enforcement of these housing standards. CCA § 110(c); *Missionary Sisters of Sacred Heart v. Meer,* 131 A.D.2d at 396, 517 N.Y.S.2d 504. This regulation, moreover, does not dictate equitable *relief,* but dictates only that specified factors be considered and balanced in arriving at monetary relief: the types of factors the courts regularly weigh, even when exercising only monetary jurisdiction, in arriving at an assessment of value or disposition of property.

For all these reasons, in a dispute involving a challenge to an IAI increase, administrative proceedings before DHCR are not the tenant's exclusive remedy. The courts have concurrent jurisdiction over the dispute. *E.g.,* ***488Acosta v. Loews Corp.,* 276 A.D.2d 214, 218-19, 717 N.Y.S.2d 47 (1st Dep't 2000); *Cox v. J.D. Realty Assocs.,* 217 A.D.2d 179, 181, 637 N.Y.S.2d 27 (1st Dep't 1995). The absence of any state statute carving out an exception to the courts' constitutional and statutory jurisdiction and the principles of exclusive jurisdiction dictated by the Court of Appeals and Appellate Division, First Department, compel this conclusion. It pertains even though none of those courts has ruled specifically on their jurisdiction to determine overcharges based on IAI increases, as opposed to over-

charges on other bases. The Appellate Term, First Department, nonetheless, has exercised these jurisdictional principles seamlessly. *PWV Acquisition, LLC v. Toscano,* 2003 N.Y. Slip Op. 51048(U), 2003 WL 21499283 at *1 (App. Term 1st Dep't June 18, 2003); *30 West 70th St. Corp. v. Sylvor,* N.Y.L.J., Mar. 12, 1999, at 26 (App. Term 1st Dep't); *E & W Rlty. Co. v. Fettner,* N.Y.L.J., Aug. 22, 1997, at 21 (App. Term 1st Dep't); *Roker Realty Corp. v. Gross,* 163 Misc.2d 766, 767-68, 624 N.Y.S.2d 736 (App. Term 1st Dep't 1995).

B. *DHCR's Primary Jurisdiction*

[4] Defendant's ground for dismissal is limited to claiming that DHCR has exclusive jurisdiction to determine a rent overcharge action based on a challenge to an IAI increase, depriving the ***611** court of subject matter jurisdiction over the complaint. C.P.L.R. § 3211(a)(2). *See, e.g., Pocantico Home & Land Co., LLC v. Union Free School Dist. of Tarrytowns,* 20 A.D.3d at 463, 799 N.Y.S.2d 235. Nevertheless, the doctrine of primary jurisdiction, while not preempting the court's jurisdiction, might compel the court to defer to DHCR's expertise for an adjudication in the first instance. *Davis v. Waterside Hous. Co.,* 274 A.D.2d 318, 319, 711 N.Y.S.2d 4 (1st Dep't 2000); *Nasaw v. Jemrock Realty Co.,* 225 A.D.2d 385, 386, 639 N.Y.S.2d 37 (1st Dep't 1996); *Missionary Sisters of Sacred Heart v. Meer,* 131 A.D.2d at 394-95, 517 N.Y.S.2d 504; *State of New York v. Winter,* 121 A.D.2d at 289, 503 N.Y.S.2d 384. *See Uniformed Firefighters Assn. of Greater N.Y. v. City of New York,* 79 N.Y.2d 236, 241-42, 581 N.Y.S.2d 734, 590 N.E.2d 719 (1992); *Sohn v. Calderon,* 78 N.Y.2d at 768, 579 N.Y.S.2d 940, 587 N.E.2d 807; *Staatsburg Water Co. v. Staatsburg Fire Dist.,* 72 N.Y.2d 147, 156, 531 N.Y.S.2d 876, 527 N.E.2d 754 (1988); *Capital Tel. Co. v. Pattersonville Tel. Co.,* 56 N.Y.2d 11, 22, 451 N.Y.S.2d 11, 436 N.E.2d 461 (1982). The court may have concurrent jurisdiction over the issues pertaining to a rent overcharge based on a challenged IAI increase, presented here, but that jurisdiction is to be exercised with an eye toward uniform evaluation of the relevant factors and avoidance of divergent determinations. *Davis v. Waterside Hous. Co.,* 274 A.D.2d at 318-19, 711 N.Y.S.2d 4; *Missionary Sisters of Sacred Heart v. Meer,* 131 A.D.2d at 395, 517 N.Y.S.2d 504; *Eli Haddad Corp. v. Redmond Studio,* 102 A.D.2d 730, 476 N.Y.S.2d 864 (1st Dep't 1984). *See Capital Tel. Co. v. Pattersonville Tel. Co.,* 56 N.Y.2d at 22, 451 N.Y.S.2d 11, 436 N.E.2d 461; *Wong v. Gouverneur Gardens Hous. Corp.,* 308 A.D.2d 301, 303, 764 N.Y.S.2d 53 (1st Dep't 2003); *Heller v. Coca-Cola Co.,* 230 A.D.2d 768, 770, 646 N.Y.S.2d 524 (2d Dep't 1996).

It is for the court to determine whether the issues presented by plaintiff's complaint trigger the doctrine of primary jurisdiction. *Staatsburg Water Co. v. Staatsburg Fire Dist.,* 72 N.Y.2d at 156, 531 N.Y.S.2d 876, 527 N.E.2d 754; *Capital Tel. Co. v. Pattersonville Tel. Co.,* 56 N.Y.2d at 22-23, 451 N.Y.S.2d 11, 436 N.E.2d 461. For the reasons explained below, the considerations dictating primary jurisdiction do not require DHCR action on the issues involved here. *Id.;* ****489** *Rabouin v. Metropolitan Life Ins. Co.,* 307 A.D.2d 843, 844, 763 N.Y.S.2d 576 (1st Dep't 2003).

III. *CLAIMS REGARDING IAI INCREASES*

[5] Calculation of plaintiff's rent increase based on improvements to his apartment requires an evaluation of those improvements. DHCR unquestionably has prescribed criteria for determining IAI increases and challenges to them, but the promulgation of such regulations does not render the court powerless to apply those regulatory criteria to determine a challenge to an IAI increase; to the contrary, they enhance the court's tools to do so. The standards the court will use to evaluate IAIs and determine the rent increase based on that value are the same ***612** standards DHCR would use. *Missionary Sisters of Sacred Heart v. Meer,* 131 A.D.2d at 396-97, 517 N.Y.S.2d 504. The court is bound to

apply those governing statutory and regulatory standards. Application of statutory or regulatory standards and determination of whether they have been followed are regularly within the court's province. *Missionary Sisters of Sacred Heart v. Meer,* 131 A.D.2d at 395-96, 517 N.Y.S.2d 504; *State of New York v. Winter,* 121 A.D.2d at 289, 503 N.Y.S.2d 384.

The formula is not complicated. Ascertaining and applying it do not require expertise or resources beyond the court's competence. *Madison-Oneida Bd. of Coop. Educ. Servs. v. Mills,* 4 N.Y.3d 51, 59, 790 N.Y.S.2d 619, 823 N.E.2d 1265 (2004); *Missionary Sisters of Sacred Heart v. Meer,* 131 A.D.2d at 395, 517 N.Y.S.2d 504. Administrative Code § 26-511(c)(13) requires a determination of (1) the landlord's improvements to the apartment at the interval in question, (2) the total costs incurred for those improvements, (3) one fortieth of those costs, and (4) the sum of one fortieth of the costs plus the monthly rent level after any vacancy and Rent Guidelines Board increases. *Elisofon v. New York State Div. of Hous. & Community Renewal,* 262 A.D.2d 40, 691 N.Y.S.2d 434 (1st Dep't 1999); *30 West 70th St. Corp. v. Sylvor,* N.Y.L.J., Mar. 12, 1999, at 26; *E & W Rlty. Co. v. Fettner,* N.Y.L.J., Aug. 22, 1997, at 21; *Roker Realty Corp. v. Gross,* 163 Misc.2d at 767-68, 624 N.Y.S.2d 736. Both the statute and 9 N.Y.C.R.R. § 2522.4(a)(1) and (4) set forth criteria for determining what qualifies as an IAI and permissible costs for such an improvement, as well as how to calculate the rent increase from those costs. *PWV Acquisition, LLC v. Toscano,* 2003 WL 21499283 at *1; *30 West 70th St. Corp. v. Sylvor,* N.Y.L.J., Mar. 12, 1999, at 26; *E & W Rlty. Co. v. Fettner,* N.Y.L.J., Aug. 22, 1997, at 21; *Roker Realty Corp. v. Gross,* 163 Misc.2d at 767, 624 N.Y.S.2d 736. *See 201 E. 81st St. Assocs. v. New York State Div. of Hous. & Community Renewal,* 288 A.D.2d 89, 733 N.Y.S.2d 23 (1st Dep't 2001); *BN Realty Assocs. v. State of New York Div. of Hous. & Community Renewal,* 254 A.D.2d 7, 8, 677 N.Y.S.2d 791 (1st Dep't 1998); *Linden v. New York State Div. of Hous. & Community Renewal,* 217 A.D.2d 407, 629 N.Y.S.2d 32 (1st Dep't 1995); *Charles Birdoff & Co. v. New York State Div. of Hous. & Community Renewal,* 204 A.D.2d 630, 631, 612 N.Y.S.2d 418 (2d Dep't 1994). Compliance with these criteria as well as 9 N.Y.C.R.R. § 2522.4(a)(6), as discussed above, and calculation of costs, rent, and any damages due to an overcharge are within the court's conventional expertise. *Missionary Sisters of Sacred Heart v. Meer,* 131 A.D.2d at 396-97, 517 N.Y.S.2d 504; *PWV Acquisition, LLC v. Toscano,* 2003 WL 21499283 at *1; *30 West 70th St. Corp. v. Sylvor,* N.Y.L.J., Mar. 12, 1999, at 26; ****490***Roker Realty Corp. v. Gross,* 163 Misc.2d at 767-68, 624 N.Y.S.2d 736.

***613** IV. *CONCLUSION*

Consequently, the court denies defendant's motion to dismiss the complaint on subject matter jurisdiction grounds, C.P.L.R. § 3211(a)(2), and retains jurisdiction over plaintiff's claim for a rent overcharge based on defendant's IAI increase, to be determined at trial under the governing statutes and DHCR regulations.

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