



STATE OF NEW YORK
OFFICE OF THE STATE COMPTROLLER

August 10, 2023

RuthAnne Visnauskas
Commissioner/Chief Executive Officer
Homes and Community Renewal
38-40 State Street
Albany, NY 12207

Re: Collection of Fines Related to Tenant
Complaints
Report 2023-F-9

Dear Commissioner Visnauskas:

Pursuant to the State Comptroller's authority as set forth in Article V, Section 1 of the State Constitution and Article II, Section 8 of the State Finance Law, we have followed up on the actions taken by officials of Homes and Community Renewal to implement the recommendations contained in our initial audit report, *Collection of Fines Related to Tenant Complaints* (Report [2018-S-58](#)).

Background, Scope, and Objective

Homes and Community Renewal (HCR) consists of the State's major housing and community renewal agencies, including the Division of Housing and Community Renewal (DHCR). DHCR is responsible for the supervision, maintenance, and development of affordable low- and moderate-income housing in the State. Within DHCR, the Office of Rent Administration (ORA) administers the State's rent laws and regulations related to both owners and tenants. As the administrator of the laws and custodian of all rent registration records, ORA responds to owner and tenant applications, inquiries, and complaints regarding the nearly 1 million regulated apartments in New York State.

Our audit focused on harassment and non-compliance complaints, which are handled by ORA's Enforcement Unit. These are defined as follows:

- Harassment is a course of conduct intended to force a tenant out of their apartment. This includes interfering with a tenant's privacy, comfort, or quiet enjoyment of the premises by reducing services or engaging in baseless court proceedings.
- Non-compliance is when an owner fails to comply with an order by not taking corrective action to resolve a previous case.

For non-compliance complaints, owners are given an opportunity to avoid a hearing and greater penalties by correcting the condition within 60 days and paying settlements of \$100 or \$250. The \$100 and \$250 are settlement offers for non-compliance cases only and are not available for harassment cases. Harassment cases are scheduled for mediation conferences

for resolution after the harassment complaint is docketed. Non-compliance and harassment cases that cannot be resolved by settlement, mediation, or conference are heard before an Administrative Law Judge. Depending on how they are resolved, harassment and non-compliance cases may result in financial settlements or substantial fines and penalties against the owner. If owners are found to be in violation, they could face fines of at least \$1,000 for each first non-compliance offense and at least \$2,000 for each first harassment offense.

The objective of our initial audit, issued December 11, 2019, was to determine whether ORA was appropriately accounting for and collecting fines (civil penalties) for non-compliance and harassment cases. The audit covered complaints that were filed or had outstanding fines between January 1, 2016 and September 30, 2018. Specifically, the audit found that ORA lacked proper fiscal controls over fines and settlements. We also had limited assurance that all monies due to the State were received and accounted for because of system, process, and policy weaknesses. Furthermore, the audit found ORA did not exercise its full authority to collect outstanding fines in a timely manner.

The objective of our follow-up was to assess the extent of implementation, as of July 24, 2023, of the six recommendations included in our initial audit report.

Summary Conclusions and Status of Audit Recommendations

ORA officials have made some progress in addressing the problems we identified in the initial audit report. Of the initial report's six audit recommendations, three were implemented, one was partially implemented, and two were not implemented.

Follow-Up Observations

Recommendation 1

Develop policies and establish a system that accurately tracks fines and settlements.

Status – Implemented

Agency Action – ORA officials have established a system that accurately tracks fines and settlements. Beginning in August 2020, ORA streamlined its fines collection system by implementing a lockbox with JPMorgan Chase. This lockbox now receives all fines and settlements for ORA, providing a resource for tracking all collections. ORA also improved its record-keeping system by creating two spreadsheets: one that tracks the issued orders and unpaid fines balance and another that tracks all deposits into the lockbox. We selected and reviewed a sample of 11 docketed fines issued between January 2021 and February 2023 and found that ORA's records accurately tracked the fines and settlement amounts.

ORA officials also developed a policy that defined procedures for tracking fines, settlements, and unpaid balances.

Recommendation 2

Improve communication between ORA and Finance concerning fines imposed and collected.

Status – Implemented

Agency Action – ORA officials' restructuring of their fines and settlement collection process

and the use of the new spreadsheets allows for less reliance on DHCR's Finance Department (Finance) and streamlines the collection of all fines and settlements through the lockbox. Moreover, officials hired a manager to oversee the tracking of all fines and settlements for ORA and act as a liaison between ORA and Finance. The manager monitors ORA's records of fines and also updates records of settlements collected, including reconciling ORA's records with the balances maintained by Finance.

Recommendation 3

Exercise full authority to collect outstanding fines.

Status – Implemented

Agency Action – In June 2022, ORA reinstated its process for referring unpaid docketed judgments to the New York State Attorney General's Civil Recoveries Bureau for collection. In addition, the Civil Recoveries Bureau provides ORA with a monthly report on all uncollected balances as well as the associated accrued interest on each case.

Recommendation 4

Consider whether the current settlement amounts are sufficient, particularly for owners who repeatedly fail to provide essential services.

Status – Not Implemented

Agency Action – ORA officials stated that they have not implemented this recommendation as there are safeguards to prevent exploitation by unscrupulous landlords, including not offering the \$100 settlement in cases involving emergency conditions and not offering any informal settlement to respondents who have previously settled with ORA but have not complied with the issued order. Officials also advised us that ORA does not maintain a formal list for the purpose of identifying and monitoring owners who repeatedly fail to provide essential services.

Recommendation 5

Track repeat offenders and consider opening harassment cases against these owners, if warranted.

Status – Partially Implemented

Agency Action – According to ORA officials, their office is primarily driven by tenant-initiated complaints rather than by agency-initiated cases. Officials added that, although they continue to open Harassment Investigation cases as appropriate against repeat offenders, ORA does not track repeat offenders. Instead, a separate unit – the Tenant Protection Unit – within HCR performs this function. Nevertheless, officials advised us that ORA provides case reviewers with a comprehensive history of the building (ownership, registration, and agency case history) within ORA's Historical Update Tracking System (HUTS). This includes a history of the applicable investigation or complaints related to that building. We selected and reviewed a sample of 11 cases opened between January 2021 and February 2023 and found that ORA maintained case history records in HUTS for all of them. ORA officials noted that it would be difficult to track individual owners since owners can have multiple buildings under different business names.

Recommendation 6

Enhance protections for rent-controlled tenants outside New York City.

Status – Not Implemented

Agency Action – According to ORA officials, they were unable to implement this recommendation because ORA is constrained by laws that do not provide it with the authority to conduct administrative prosecutions of landlords for rent-controlled apartments outside New York City. Instead, ORA officials stated that changes to the laws are under the purview of the State Legislature. However, ORA officials also stated that, despite lacking this additional authority, they continue to open both harassment and non-compliance cases where appropriate to investigate and resolve issues raised by rent-controlled tenants outside New York City.

Major contributors to this report were Adefemi Akingbade and Natalie Sherman.

We would appreciate your response to this report within 30 days, indicating any actions planned to address the unresolved issues discussed in this report. We thank the management and staff of HCR for the courtesies and cooperation extended to our auditors during this follow-up.

Sincerely,

Diane Gustard
Audit Manager

cc: Sean Fitzgerald, Homes and Community Renewal
Woody Pascal, Homes and Community Renewal