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Meaning of 'Regina' Decision Debated

There is simply no good reasoning to allow a landlord to use the rent from an unlawfully deregulated lease.

By **Darryl M. Vernon** | November 09, 2018

As the authors note in "First Department Splits on Four Year Rule."

(https://www.law.com/newyorklawjournal/2018/11/06/first-department-splits-on-four-year-rule/)there were two dissents in the case of *Regina Metropolitan v. DHCR,* 164 AD 3d 420 (1st.dept.2018). The dissent essentially followed a unanimous previous decision of the same court with which the three-judge court majority in *Regina* disagreed. We

represent the tenants in *Regina*. As a result of the two-justice dissent, the tenants simply filed their appeal directly to the Court of Appeals, without any motion for leave as the article states. However, the article correctly noted that the DHCR moved in the First Department for leave to appeal and that motion is pending.

As for any inference, that the three justices of the Appellate Division have now shown the DHCR that they will approve a methodology allowing the use of the rent from an unlawfully deregulated lease, we strongly disagree. There is simply no good reasoning to allow a landlord to use the rent from an unlawfully deregulated lease. Such a methodology would reward the landlord who unlawfully deregulated an apartment with what the landlord wanted most – a higher rent. Also, as Justice Gische pointed out in both her dissent in *Regina*, as well as the unanimous decision in *Taylor v. 72 Realty*, in order to properly give retroactive effect to the rule in the Court of Appeals in Roberts, the courts must lawfully determine what the rent should have been had the landlord properly kept the apartment in rent regulation. The use of a rent that is simply lifted from an illegally-deregulated lease would entirely run afoul of this principle.

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