

# Homes and Community Renewal Office of Rent Administration

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## Collection of Fines Related to Tenant Complaints

Report 2018-S-58 | December 2019

OFFICE OF THE NEW YORK STATE COMPTROLLER  
Thomas P. DiNapoli, State Comptroller

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Division of State Government Accountability



# Audit Highlights

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## Objective

To determine whether Homes and Community Renewal's Office of Rent Administration is appropriately accounting for and collecting fines (civil penalties) for non-compliance and harassment cases. Our audit focused on complaints that were filed or had outstanding fines between January 1, 2016 and September 30, 2018.

## About the Program

Homes and Community Renewal consists of New York 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 nearly 1 million regulated apartments in the State. Between January 1, 2016 and September 30, 2018, 22,761 complaints from rent-regulated tenants were filed by ORA.

Our audit focused on harassment and non-compliance complaints, which are handled by ORA's Enforcement Unit. There were 684 harassment and 895 non-compliance cases filed during our audit scope. Non-compliance and harassment cases that cannot be resolved by settlement, mediation, or conference are heard before an Administrative Law Judge. 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. For non-compliance complaints, owners are given an opportunity to avoid a hearing and pay settlements of \$100 or \$250, provided the conditions are corrected within 60 days. Between January 1, 2016 and September 30, 2018, ORA collected \$673,215 in fines and settlements.

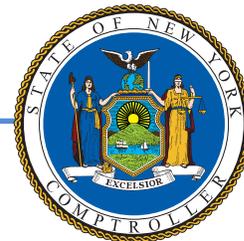
## Key Findings

- ORA lacks proper fiscal controls over fines and settlements. We have limited assurance that all monies due the State are received and accounted for because of system, process, and policy weaknesses.
- ORA does not exercise its full authority to collect outstanding fines more timely. As of April 2019, there were at least \$346,000 in outstanding fines.
- Harassment fines were imposed in only 12 out of the 684 harassment cases (2 percent) filed during our scope.
- State harassment laws and regulations are different for rent-controlled units inside and outside of New York City. As a result, tenants living outside New York City face greater challenges in resolving harassment complaints.

## Key Recommendations

- Develop policies and create a system that accurately tracks fines and settlements.

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- Exercise full authority to collect outstanding fines.
  - Consider whether the current settlement amounts are sufficient, particularly for owners who repeatedly fail to provide essential services.
  - Enhance protections for rent-controlled tenants outside New York City.



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## Office of the State New York Comptroller Division of State Government Accountability

December 11, 2019

Ms. RuthAnne Visnauskas  
Commissioner/Chief Executive Officer  
Homes and Community Renewal  
25 Beaver Street  
New York, NY 10004

Dear Ms. Visnauskas:

The Office of the State Comptroller is committed to helping State agencies, public authorities, and local government agencies manage government resources efficiently and, by so doing, providing accountability for tax dollars spent to support government-funded services and operations. The Comptroller oversees the fiscal affairs of State agencies, public authorities, and local government agencies, as well as their compliance with relevant statutes and their observance of good business practices. This fiscal oversight is accomplished, in part, through our audits, which identify opportunities for improving operations. Audits can also identify strategies for reducing costs and strengthening controls that are intended to safeguard assets.

Following is a report entitled *Collection of Fines Related to Tenant Complaints*. The audit was performed 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.

This audit's results and recommendations are resources for you to use in effectively managing your operations and in meeting the expectations of taxpayers. If you have any questions about this report, please feel free to contact us.

Respectfully submitted,

*Division of State Government Accountability*

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# Glossary of Terms

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<b>Term</b>	<b>Description</b>	<b>Identifier</b>
ALJ	Administrative Law Judge	<i>Key Term</i>
DHCR	Division of Housing and Community Renewal	<i>Division</i>
Finance	DHCR Finance Department	<i>Department</i>
HUTS	Historical Update Tracking System	<i>System</i>
ORA	Office of Rent Administration	<i>Auditee</i>
RTS	Revenue Tracking System	<i>System</i>

# Background

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Homes and Community Renewal 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.

According to ORA's records, between January 1, 2016 and September 30, 2018, 22,761 complaints from rent-regulated tenants were filed by ORA regarding, for example, tenant harassment, rent overcharges, lease renewals, and non-compliance. 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 his/her 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 failed 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 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 (ALJ). Depending on how they are resolved, harassment and non-compliance cases may result in financial settlements or substantial fines and penalties against the owner. For example, when cases advance to a formal hearing before an ALJ, owners found to be in violation face fines of at least \$1,000 for each first non-compliance offense and at least \$2,000 for each first harassment offense. Whether the case is closed with a hearing or a settlement, DHCR issues a Commissioner's Order that indicates the amount due. ORA uses its Historical Update Tracking System (HUTS) to track and record complaint information. DHCR also has a Revenue Tracking System

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(RTS) to record fines received based on these complaints. For the audit period January 1, 2016 through September 30, 2018, ORA received a total of 1,579 complaints for harassment (684) and non-compliance (895), resolving 1,187 (75 percent) of them.

According to RTS, during our scope period, ORA collected \$673,215 in fines and settlements, which was deposited into the State General Fund. In addition, ORA officials said that their actions have resulted in rent savings to tenants, including approximately \$170,000 to tenants in two buildings in the Bronx, whose owner installed new bathrooms and kitchens while tenants were still living there, leaving residents unable to use them for more than a month.

# Audit Findings and Recommendations

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We found ORA lacks proper fiscal controls over fines and settlements. We have limited assurance that all monies due to the State are received and accounted for because of system, process, and policy weaknesses. Furthermore, ORA is not exercising its full authority to collect outstanding fines more timely. While most owners have paid their fines, there were several fines outstanding – totaling at least \$346,000 – as of April 10, 2019, including \$206,000 in fines and interest dating back to 1995. Actively ensuring that owners pay all imposed fines can be an added deterrent against future improper actions. In addition, ORA should consider whether settlement amounts are sufficient, particularly for owners who repeatedly fail to provide essential services.

## Inadequate Systems and Processes for Tracking Fines and Settlements

### Unreliable System Data

According to ORA officials, they use HUTS to track fines and settlements. However, HUTS is a case management system and lacks the functionality of an actual accounts receivable system. Further, HUTS requires manual data entry, which increases the risk of error, impacting the reliability and accuracy of HUTS-generated reports. For example, ORA staff are required to enter fines and settlements as notations in four different event codes (fields) in HUTS. However, we found that ORA staff does not consistently use these fields. As a result, the reports that ORA provided in response to our request for fine and settlement data had payment information that was either missing, duplicative, or incorrect. For example:

- Twenty-two imposed fines totaling \$47,050 were missing from the report because ORA staff entered the information in an incorrect field in HUTS.
- For one case, a comment in HUTS stated the owner paid a \$100 settlement, while the documentation in the case file showed no such payment was made.
- In another case, a comment in HUTS stated the owner made a payment of \$250, while the case file showed a payment of \$100.

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ORA officials informed us that, in addition to HUTS, the Enforcement Unit also maintained informal internal documents listing fines imposed based on Commissioner's Orders. According to these documents, \$896,000 was imposed from 2016 through 2018. However, this list was also deficient because it was missing fines and did not note when payments were received. For example, we found two cases with fines totaling \$4,300 that were missing from this internal listing.

## Non-Integrated Systems

ORA relies on two systems – HUTS and RTS – for different but interrelated functions. However, the two systems are not integrated and information cannot be shared between them, creating inefficiencies and potential miscommunication between the DHCR entities that use the information from both.

Payments received by ORA are processed by different channels depending on payment type: DHCR's Finance Department (Finance) receives fine payments, enters the information into RTS, and deposits the amounts into the State's General Fund. Settlement payments of \$100 or \$250, on the other hand, are received by ORA's Queens Office, where they are entered into RTS and then sent to Finance for deposit. According to RTS, \$673,215 in fines and settlements were received between January 1, 2016 and September 30, 2018. Although ORA is aware of the amounts due, this information is not communicated to Finance and RTS does not contain the fines that are imposed, so there is no way for Finance to reconcile the fines received. Also, Finance does not communicate to ORA when payments are received, and ORA thus does not know whether the amount received was the actual amount due. Furthermore, because RTS and HUTS are not integrated, payment amounts must be manually entered into HUTS, presenting another opportunity for data entry errors.

## Payment Tracking in ORA's Queens Office

We also found a lack of internal controls over the monies received (usually \$100 or \$250 settlements related to non-compliance cases) at ORA's Queens Office, as it had no log to track incoming payments. According to RTS, about \$42,800 in settlements were received during our audit scope. Where payments are not anticipated and have no associated Commissioner's Orders – as with the \$100 and \$250 non-compliance settlements – they are at risk of being undetected if lost or misappropriated. ORA should have proper internal controls for these payments.

During the course of our audit, we identified one \$250 payment received by

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ORA in 2017 that was misplaced and never deposited. Even though ORA later received another check, as of May 2019, RTS still showed the original payment as “pending.” Following up on this issue, we asked for a report of all other payments listed as pending in RTS to determine the actual status of those payments. Finance officials informed us that RTS cannot produce a report that lists checks that were entered by ORA but not processed as received by Finance.

ORA officials agreed that they need a new system to track fines and penalties and said they have been trying to replace HUTS since 2013. Officials also agreed that they should improve communication between the Enforcement Unit and Finance concerning fine and collection procedures, and stated they will designate a specific individual as a contact for Finance to consult when fine payment questions arise. ORA officials indicated that they will set up a designated lockbox for fines and then have the bank issue weekly reports to the Enforcement Unit to accurately track fines that are paid or outstanding.

## **Collection of Fines**

### **Deficiencies in the Fine Collection Process**

Owners are required to pay fines within 60 days of the date of the Commissioner’s Order, provided they do not appeal. If an owner does not comply, ORA’s policy is to docket a judgment in court to place a lien on the property, while the fine accrues interest at 9 percent annually.

Fines assessed by ORA are generally paid timely. However, in cases where fines are not paid, ORA’s collection efforts are deficient, and it has no system in place to accurately track and report the total outstanding fines. For our scope period, HUTS showed 85 cases docketed with outstanding fines totaling \$369,100. However, as previously mentioned, HUTS information is not reliable due to inaccuracies and system limitations. Consequently, after we analyzed and compared HUTS and RTS information, there were actually only 12 cases with outstanding fines of \$82,000.

In addition to HUTS, the Director of the Enforcement Unit maintains a list of outstanding fines, which showed \$227,250 outstanding as of April 2019 (from cases that were decided between January 1, 2016 and December 31, 2018). Of this amount, \$87,000 for two harassment cases was being appealed, leaving \$140,250 outstanding. ORA officials explained that, while they have the authority to seize assets, they are not a collection agency and do not have the staff to follow through on collections; rather, their goal is to modify owner behavior. Since ORA does not aggressively collect fines, it is limited to docketing case judgments in court; the outstanding fines would only be

recouped upon the sale of the property. While placing a lien on the property is an important step, we believe more action should be taken to collect outstanding fines more timely, especially given that a \$73,000 fine for tenant harassment has been outstanding since 2016. For example, ORA could seize other assets, since it may take many years before a building is sold.

ORA used to refer outstanding fines to the Office of the Attorney General’s Civil Recoveries Bureau; however, the last referral was in 2001. According to April 2016 records, there was \$206,580, including \$134,376 in interest, outstanding for 12 cases dating back to 1995. ORA officials stated that they are evaluating their current collection practices to determine if there are areas where they can make process improvements and increase their efforts.

## Effectiveness of Settlement Amounts

Upon receipt of a non-compliance complaint, ORA sends a copy of the complaint to the owner requesting one of the following responses: (1) complied with the previous order; (2) the tenant denied access to the apartment (for service-related cases); or (3) not compliant with the previous order. If the owner responds with non-compliance, they may request an additional 60 days to correct the matter and pay a settlement of \$100. If the owner does not respond or states compliance with the previous order, then ORA officials will investigate the case. If the investigation finds that repairs were not done or not completed in a workmanlike manner, the owner can pay a settlement of \$250 and correct the condition within 60 days to avoid additional penalties.

Further, according to Sections 23 and 27 of the Rent Act of 2015, in the case of a violation of an order, ORA may impose a civil penalty by administrative order after a hearing. The table below shows the fine amounts to be imposed for non-compliance and harassment cases.

### Non-Compliance and Harassment Fine Amounts

	Non-Compliance	Harassment
First offense	\$1,000 to \$2,000	\$2,000 to \$3,000
Subsequent offense	\$2,000 to \$3,000	\$10,000 to \$11,000
Conduct directed at more than one tenant	–	\$10,000 to \$11,000 per tenant

Despite paying several settlements, some owners still do not comply with ORA’s orders within the required time frame. For example, between November 2016 and November 2017, one Bronx landlord made two

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settlement payments of \$100 and \$250 to ORA because he did not comply with ORA's initial orders to provide or restore services to tenants living in his buildings. Owners who make settlement payments are given an opportunity to avoid a hearing and greater penalties by correcting the condition within 60 days. Regardless, this landlord still did not take corrective action to fully resolve the issues within the 60-day time frame and was eventually assessed a fine of \$3,000 on May 7, 2018. Even though this landlord paid the \$3,000 fine on May 8, 2018, during this period, tenants had to live with substantial deficiencies, such as a defective intercom system, water damage to a ceiling and wall, and a wall with unfinished plaster and sheetrock. We note that this owner was at the top of the 2015 New York City Public Advocate's Worst Landlords Watchlist.

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

## **Few Harassment Cases Result in Fines**

Harassment cases can be initiated by tenants or by ORA directly. ORA generally initiates harassment complaints when it becomes aware of widespread issues affecting several tenants. Of the 684 harassment complaints filed within our scope, 9 were initiated by ORA and the remainder were filed by tenants.

ORA officials explained that when they receive tenant harassment cases, they try to resolve them quickly through a conference with the tenant and owner. The purpose of the conference is to investigate the tenant's complaint of harassment by hearing from both the tenant and the owner and to attempt to resolve outstanding issues. The conference may result in agreements, agency directives, or any other action that is necessary and appropriate under the circumstances, including continued case monitoring to ensure any harassing behavior has ceased or to ensure repairs are completed. ORA officials explained that they sometimes keep harassment cases open in their system so they can continue to monitor the situation in case of new allegations. If an owner continues to engage in an unlawful behavior or fails to follow agency directives, the Enforcement Unit will commence a formal hearing before an ALJ seeking fines against the owner. We note that ORA has not imposed and collected any significant penalties for harassment cases. For example, of the \$673,215 in fines and settlements ORA collected between January 1, 2016 and September 30, 2018, \$136,000 (20 percent) was related to harassment cases.

As of September 30, 2018, 505 of the 684 harassment cases were either voided or closed; the remaining 179 were open. According to HUTS data,

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\$138,000 in harassment fines were imposed against four owners (12 cases) out of the 684 harassment cases. Three of these fines totaling \$83,000 were paid while the remaining \$55,000 in fines were being appealed.

ORA officials explained that their goal is to resolve harassment complaints as quickly as possible through the conference process. However, ORA should track repeat offenders and consider opening harassment cases against these owners, if warranted. Imposing higher harassment fine amounts can be a deterrent against future poor behavior against tenants.

## Harassment Cases for Rent-Controlled Units Outside New York City

One non-compliance case in our scope with a fine of \$6,000 was docketed in Westchester in November 2018. However, this fine, along with another \$14,000 (\$10,000 docketed in May 2018 and \$4,000 docketed in July 2016) in fines against the owner, remained outstanding as of June 2019. The unit related to this complaint is rent controlled. We found that 34 complaints were filed within the last five years against the owner of this building, 9 of which were non-compliance cases; none were harassment related. Despite the number of cases, only \$38,000 in fines have been imposed on the owner for the non-compliance cases. The owner has not paid any of the fines, and the tenant continues to complain that the conditions have not been corrected.

According to ORA officials, under Title 9, Section 2106.1 of the New York Codes, Rules and Regulations, a rent-controlled tenant living outside of New York City may file a complaint of harassment; however, ORA cannot prosecute an owner for harassment at a hearing unless the tenant has vacated. However, ORA officials indicated that they will still hold mediation conferences to attempt to resolve harassment complaints. In addition, ORA can seek injunctive relief in court as warranted. If the governing law and regulation did not require the tenant to vacate, it is likely that some of these cases would have been prosecuted as harassment cases, which have greater civil penalties if the owner is found guilty. According to ORA officials, they believe that rent protections for tenants outside of New York City should be aligned with those within the City; however, no changes have been made to the harassment or compliance sections of the governing law and regulation. According to ORA officials, there are an estimated 182 rent-controlled units outside of the City. We note that, in addition to the enactment of the Housing Stability and Tenant Protection Act of 2019, the State Senate and Assembly passed new legislation to make it easier to bring criminal charges against owners who harass tenants.

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## Recommendations

1. Develop policies and establish a system that accurately tracks fines and settlements.
2. Improve communication between ORA and Finance concerning fines imposed and collected.
3. Exercise full authority to collect outstanding fines.
4. Consider whether the current settlement amounts are sufficient, particularly for owners who repeatedly fail to provide essential services.
5. Track repeat offenders and consider opening harassment cases against these owners, if warranted.
6. Enhance protections for rent-controlled tenants outside New York City.

# Audit Scope, Objective, and Methodology

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We conducted this audit to determine if ORA is appropriately monitoring and collecting fines (civil penalties) related to tenant complaints for non-compliance and harassment cases. Our audit focused on complaints that were filed or had outstanding fines between January 1, 2016 and September 30, 2018.

To accomplish our objective and evaluate the relevant internal controls, we reviewed State rent laws, ORA's policies, procedures, and fact sheets related to processing complaints and collecting fines, and the HUTS and RTS systems. We reviewed a sample of complaint case files, interviewed ORA and Finance officials, and attended conferences and hearings to obtain an understanding of the complaint resolution and fine imposition process.

We sent letters to a judgmental sample of 100 owners to confirm whether payments were made. The owners were selected based on the risk of their payments being lost or misappropriated. The results of our sample cannot be projected to the whole population. We also reviewed and reconciled bank statements to confirm that money received was deposited.

# Statutory Requirements

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## Authority

The audit was performed 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 conducted our performance audit in accordance with generally accepted government auditing standards. These standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective. We believe that the evidence obtained during our audit provides a reasonable basis for our findings and conclusions based on our audit objective.

In addition to being the State Auditor, the Comptroller performs certain other constitutionally and statutorily mandated duties as the chief fiscal officer of New York State. These include operating the State's accounting system; preparing the State's financial statements; and approving State contracts, refunds, and other payments. In addition, the Comptroller appoints members to certain boards, commissions, and public authorities, some of whom have minority voting rights. These duties may be considered management functions for purposes of evaluating organizational independence under generally accepted government auditing standards. In our opinion, these management functions do not affect our ability to conduct independent audits of program performance.

## Reporting Requirements

We provided a draft copy of this report to ORA officials for their review and formal comment. Their comments were considered in preparing this final report and are included at the end of it. While ORA officials disagreed with some of our findings and conclusions, they indicated they are taking actions to address the issues we identified.

Within 180 days of the final release of this report, as required by Section 170 of the Executive Law, the Commissioner of Homes and Community Renewal shall report to the Governor, the State Comptroller, and the leaders of the Legislature and fiscal committees, advising what steps were taken to implement the recommendations contained herein, and if recommendations were not implemented, the reasons why.

# Agency Comments and State Comptroller's Comments

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ANDREW M. CUOMO  
Governor

## Homes and Community Renewal

RUTHANNE VISNAUSKAS  
Commissioner/CEO

### Response from Office of Rent Administration (ORA) to Office of the State Comptroller (OSC) Audit 2018 5-58 Draft Audit Report

Response is made to the four key findings and the six recommendations outlined in OSC's report.

#### **Finding # 1**

*ORA lacks proper fiscal controls over fines and settlements. We have limited assurance that all monies due the State are received and accounted for because of system, process, and policy weaknesses.*

Recommendation by OSC: 1) *Develop policies and create a system that accurately tracks fines and settlements;* 2) *Improve communication between ORA and Finance concerning fines imposed and collected.*

#### **ORA Response to Finding #1**

ORA disagrees with this finding. ORA approaches its responsibility for the collection of fines and settlements seriously and works diligently to ensure the collection and proper accounting for each dollar. The suggestion that ORA "lacks proper fiscal controls" is misleading, and it should not be equated with malfeasance or misappropriation of funds.

**Recommendation #1:** ORA has existing policies and systems that accurately track fines and settlements. All monies that were received, either at the Gertz Plaza location in Queens or the P.O. Box in Albany, have been properly accounted for in the Revenue Tracking System (RTS). However, OSC identified one check that was received at the Gertz Plaza office and mailed to Finance that was not properly entered into RTS. This check was subsequently replaced by the owner and properly accounted for in RTS. Once entered in RTS it is the responsibility of the case processor to obtain the entry information, continue processing the matter and logging it into Historical Update and Tracking System (HUTS). It is acknowledged that these fines were not properly entered into the agency's HUTS system. ORA is in the process of building a replacement to HUTS which should address many of the issues outlined in OSC's report. As such, ORA will take steps to strengthen controls to provide more accurate reporting.

**State Comptroller's Comment** - During the audit, ORA officials could not provide policies pertinent to the recording and collecting of fines. Officials indicated they will memorialize procedures for recording and collecting fines. In addition to the check not entered into the Revenue Tracking System, we found that ORA's systems for tracking fines and their collection were deficient.

**Recommendation #2:** The ORA Enforcement Unit and Finance are working to improve communications relating to the fine and collection procedure. The Enforcement Unit will designate a specific individual that Finance may

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contact if they have any questions concerning a fine payment. ORA is also in process of setting up a lock box with a bank to receive payments on fines levied in Enforcement and Compliance cases. Such bank will then issue weekly reports to the Enforcement Unit so that payments of fines and non-payments can both be more accurately tracked.

**State Comptroller's Comment** - We applaud the steps ORA officials indicate they will take to replace HUTS and set up a lockbox to address many of the fiscal control deficiencies we identified.

### **Finding #2**

*ORA does not exercise its full authority to collect outstanding fines more timely. As of April 2019, there were at least \$346,000 in outstanding fines.*

*Recommendation by OSC: Exercise full authority to collect outstanding fines.*

### **ORA Response to Finding #2**

ORA disagrees with this finding. ORA does fully exercise its authority to collect penalties, and ORA periodically reviews its practices to identify ways in which it can improve outcomes. The OSC report acknowledges that the Enforcement Unit takes action to collect unpaid fines by docketing the judgment in court.

To clarify OSC's finding, we note that the majority of the funds identified by OSC as outstanding relate to interest on unpaid fines dating back as far as the 1980s. The dollar amount is not indicative of ORA's inability to collect fines. The interest due from these fines dwarfs the actual amount of the fines themselves. For example, in the last AG report, which was sent in April 2016 (see attached\*), the total fines outstanding were \$75,452.74; including interest, the amount is \$222,208.52.

**State Comptroller's Comment** - While ORA requests specific additional action they could take to strengthen collecting fines, two paragraphs later in their response, officials indicate that they will continue to evaluate improvements, including referring certain fines to the Attorney General. This evaluation is the goal of our recommendation.

Finally, the report suggests that "more action should be taken to collect outstanding fines...(f)or example, ORA could seize other assets..." OSC does not outline or detail what additional action it proposes ORA take. Nor does OSC make any suggestions about how ORA should find or allocate resources to engage in this additional action. There are a myriad of debtor protection laws exempting most assets from seizure in these types of enforcement actions and different rules apply depending on whether the debtor is an individual or a corporation. The full-time mission of the Enforcement Unit is to protect tenants from conduct that violates the rent regulatory laws. ORA strongly disagrees that staff attention should be diverted from this work to bad debt collection practices. Besides this being an entirely different and unrelated field, ORA is committed to dedicating to fulfilling its mission that tenants be safe from harassment and illegal conduct.

**Recommendation:** ORA agrees with OSC's statement that, "[f]ines assessed by ORA are generally paid timely." The Enforcement Unit secured 242 orders from the Hearings Unit based on prosecutions initiated by the Enforcement Unit from 2016-2018, the period covering the audit. Of these 242 orders, two are being appealed,

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\*This report is on file at the Office of the State Comptroller.

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resulting in 240 final orders. Of those final orders, fines were paid in 225 cases (93.75%). ORA is in compliance with OSC's recommendation in this area as this figure demonstrates considerable success.

Rent regulations specifically authorizes the Enforcement Unit to docket judgments when outstanding fines are not paid; Section 26-516(c) of the Rent Stabilization Law and Section 2526.2(c)(2) of the Rent Stabilization Code. While the rent laws do not have any provisions concerning the seizure of assets for unpaid fines, ORA will continue to evaluate possible improvements in this area, including referring certain fines to the Civil Recoveries Bureau of the NY State Attorney General's Office.

### **Finding #3**

*Harassment fines were imposed in only 12 out of the 684 harassment cases (2 percent) filed during our scope.*

Recommendation by OSC: 1) Consider whether the current settlement amounts are sufficient, particularly for owners that repeatedly fail to provide essential services; and 2) Track repeat offenders and consider opening harassment cases against these owners, if warranted.

### **ORA Response to Finding #3**

ORA disagrees with this finding. As ORA has explained to OSC during the exit conference, the report is incorrect. Fines were imposed in 19 harassment cases, not 12 cases as stated, during the audit period.

Moreover, the statistics cited by OSC are misleading and underplay the positive impact of the Harassment Unit. Harassment cases are unique. Unlike other matters, every harassment case processed by ORA involves a conference between the parties. Conferencing a harassment case frequently enables the parties to reach a resolution simply by speaking directly to one another. It is only when a resolution cannot be reached, and the allegation of harassment must be substantiated that fines can be imposed.

Beyond the statistics cited by OSC, the report fails to take into account that the Enforcement Unit has imposed and collected significant penalties based on harassment prosecutions (HI or HL dockets) during the three-year period in question. Of the 19 dockets resulting in penalties, fines were imposed payable to DHCR totaled \$324,500, and monies and rent credits payable to tenants totaled over \$206,000. Through ORA's intervention, all of the credits and monies owed to the tenants have been paid or credited. Of the money owed to the state, \$164,500 has been paid. Two penalties totaling \$87,000 are being appealed, and one penalty of \$73,000 was not paid and a judgment has been docketed.

**State Comptroller's Comment** - The HUTS data provided during our audit period indicated that fines were imposed in just 12 harassment cases. Subsequently, in response to the audit's draft report, ORA officials indicated that fines were imposed in 19 rather than 12 cases. This highlights the deficiencies in ORA's systems for tracking fines.

When a harassment complaint is received, a conference is held as soon as practical afterwards, and is attended by both the owner and the tenant, along with their respective attorney or representative. The purpose of the conference is to investigate the complaint and to attempt to resolve any outstanding issues. Following the conference, a letter is mailed to the parties summarizing what was discussed at the conference and specifying any agreements reached or directives given going forward. If required, further investigation will take place. In almost

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each of the 684 cases referenced, a conference was quickly held in an effort to defuse a potentially volatile situation. In a substantial majority of those cases, agreements were reached, and directives given, which allowed the tenants to live peacefully after ORA's intervention. And in some cases, it was found that the tenants had not proven that they were harassed.

Prosecuting landlords is not the mission of the Enforcement Unit. The Enforcement Unit exists to seek the resolution of harassing conduct. Thus, OSC misleads by focusing only on the number of cases resulting in fines in this category, and presents a narrow view of the good work done by the agency. ORA encourages OSC to look both at the totality of cases processed, the generally successful settlement process, and at the Enforcement Unit's ability to impose and collect a substantial amount of money in fines.

**State Comptroller's Comment** - We maintain that ORA should track repeat offenders and consider opening additional harassment cases, if warranted.

Recommendation #1: The report asks the agency to "consider" whether the current settlement amounts are sufficient, particularly for owners who repeatedly fail to provide essential services. It is the New York State Legislature, not ORA, that sets the value of fines that ORA is able to impose.

The amounts of the fines are listed on page 11 of the OSC Report. Settlement amounts of \$100 and \$250 are imposed against first-time offenders for violating a particular order. Within the current system there exists a progression in fine amounts for repeat offenders. For compliance cases, the owner can initially settle for \$100 or \$250. Once having paid that amount, if there is subsequent non-compliance, the fine jumps to \$1,000 minimum, \$2,000 maximum. If another prosecution is required for violation of the same order, the amount increases to \$2,000 minimum, and \$3,000 maximum. Each item from the order that has not been complied with can result in a separate fine. Thus, a services order requiring an owner to correct 10 items could result in a fine of up to \$20,000 if each item was not corrected following ORA's investigation. Similarly, for harassment cases, the initial fine for a single harassing course of conduct is \$2,000 minimum, \$3,000 maximum. For a continuing course of conduct, or conduct directed at more than one tenant, the amount increases to \$10,000 minimum, \$11,000 maximum. A given case can involve numerous courses of conduct that can be penalized.

**State Comptroller's Comment** - We acknowledge that fines are based on the law. Our recommendation, which is within ORA's discretion, was to consider whether the \$100 and \$250 settlement amounts are sufficient.

The most recent two times that the rent laws were renewed (prior to 2019), the penalties for harassment and non-compliance of agency orders were increased. The Enforcement Unit will continue to seek penalties, either by way of settlement or at a hearing, consistent with the penalties that are outlined in the rent laws.

Recommendation #2: ORA currently opens Harassment Investigation (HI) cases where appropriate against bad actors or repeat offenders. The following are examples where ORA has opened HI cases: where an owner was ripping out kitchens and bathrooms at multiple buildings, ORA opened two HI dockets, where an owner (who was arrested) was known to ORA from actions in other buildings, an HI docket was opened after the owner ripped out a boiler from his building; and regarding a tenant who had filed 34 complaints with the agency during the review period referenced in the last section of OSC's report, ORA opened an HI docket against such landlord,

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which has resulted in agreements for repairs to be performed.

Additionally, the Tenant Protection Unit (TPU) was formed specifically to perform this function. For example, TPU, in conjunction with the Attorney General's office, has filed a court action against a repeat offender who was also fined by ORA.

**Finding #4**

*State harassment laws and regulations are different for rent-controlled units inside and outside of New York City. As a result, tenants living outside New York City face greater challenges in resolving harassment complaints.*

*Recommendation by OSC: Enhance protections for rent-controlled tenants outside New York City.*

**ORA Response to Finding #4**

ORA agrees that state harassment laws and regulations differ for rent-controlled units inside and outside of New York City, but the agency cannot exceed the scope of its powers as authorized by such laws.

Recommendation: ORA will fully enforce New York State rent regulations and is committed to protecting the rights of rent regulated tenants by enforcing and administering the laws within its powers. The Enforcement Unit will continue holding mediation conferences following harassment complaints, opening harassment investigations where necessary, and seeking injunctive relief in court as warranted to protect the rights of tenants.

Sincerely,



Woody Pascal  
Deputy Commissioner  
Office of Rent Administration

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