

State Division of Housing and Community Renewal at the time of its enactment, as this case was (see Matter of Gilman v New York State Div. of Hous. & Community Renewal, 99 NY2d 144, 149 [2002]). Moreover, there was ample basis on this record for the Division to conclude that, in arguing for a higher base rent, the owner had relied on an illusory tenancy. It was therefore appropriate for the agency to apply the default formula to set the base rent since no reliable rent records were available (see Thornton v Baron, 5 NY3d 175, 181 [2005]).

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On review of submissions pursuant to section 500.11 of the Rules, order affirmed, with costs, in a memorandum. Chief Judge Kaye and Judges Ciparick, Graffeo, Read, Smith, Pigott and Jones concur.

Decided December 2, 2008