

**DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION**

SR 20,066

In re: 1100 Seventh Street, N.E., Unit 13

**GEORGE AND RENEE FOUNTAIN**  
Housing Providers/Appellants

v.

**CHERYL SMITH**  
Tenant/Appellee

**DECISION AND ORDER**

January 31, 2003

**LONG, COMMISSIONER.** This case is before the District of Columbia Rental Housing Commission (Commission) pursuant to the Rental Housing Act of 1985 (Act), D.C. OFFICIAL CODE §§ 42-3501.01-3509.07 (2001). The applicable provisions of the Act, D.C. OFFICIAL CODE §§ 42-3501.01-3509.07 (2001), the District of Columbia Administrative Procedure Act (DCAPA), D.C. OFFICIAL CODE §§ 2-501-510 (2001), and the District of Columbia Municipal Regulations (DCMR), 14 DCMR §§ 3800-4399 (1991) govern the proceedings.

**I. PROCEDURAL HISTORY**

The housing providers, George and Renee Fountain, filed Substantial Rehabilitation Petition (SR) 20,066 with the Rent Administrator's Office on June 1, 2001. The petition concerned unit 13, which the housing provider, George Fountain, identified as vacant when he filed the petition. On September 27, 2001, the Office of Adjudication (OAD) mailed the notices for the hearing, which it scheduled for October

30, 2001. George Fountain, who had not yet received the agency's notice for the hearing scheduled for October 30, 2001, appeared for a hearing on September 28, 2001.

Administrative Law Judge (ALJ) Rohulamin Quander convened the hearing on September 28, 2001. When the ALJ began the hearing, he posed several questions to Mr. Fountain in an effort to ensure that the agency had not violated the notice provisions of the Act, by holding the hearing on September 28, 2001. Mr. Fountain stated that he appeared on the day in question, because the Rent Administrator advised his office that the hearing was scheduled for September 28, 2001. When asked if there was a tenant in unit 13, the housing provider stated that his resident manager's friend occupied the unit during the month of September 2001. The housing provider indicated that the resident manager's friend was in the process of vacating the unit, because she was terminally ill. The housing provider assured the ALJ that he did not have a tenant who was entitled to notice of the hearing. Based on the housing provider's representations, the ALJ proceeded with the hearing.

On Monday, October 1, 2001, the OAD received a call from a woman who identified herself as Cheryl Smith, the tenant of unit 13. An OAD staff member testified that she received the call from Ms. Smith, who stated that she received a hearing notice from OAD and called to inquire about the nature of the hearing scheduled for October 30, 2001. As a result of the call, the OAD reconvened the hearing on October 30, 2001. The housing provider, George Fountain, appeared; however, no tenant appeared. The ALJ questioned Mr. Fountain concerning his previous statements that the unit was vacant. Mr. Fountain testified that the tenant was in the process of vacating the unit on September

28, 2001. However, her health improved and she elected to sign a lease for a month-to-month tenancy, which began in October 2001.

On March 13, 2002, the ALJ convened a final hearing in order to receive testimony from OAD staff concerning their contact with Cheryl Smith, to receive testimony from the housing provider regarding the monthly rent that the tenant in unit 13 paid while the petition was pending in the agency, and to receive testimony from Cheryl Smith concerning the monthly rent that she paid. The housing provider appeared on March 13, 2002; however, Ms. Smith failed to appear. The ALJ received testimony from OAD staff and Mr. Fountain.

On May 13, 2002, the ALJ denied the housing provider's substantial rehabilitation petition. The ALJ dismissed the petition with prejudice, because the housing provider violated the requirements of 14 DCMR § 4212.3 (1991) when he completed the rehabilitation without the prior approval of the Rent Administrator. In addition, the ALJ ordered the housing provider to refund \$1395.53 to Cheryl Smith, for all rents that she paid in excess of the "\$130.00 per month rent, the last approved rent of record."<sup>1</sup> Fountain v. Smith, SR 20,066 (OAD May 13, 2002) at 9 (emphasis added).

The housing provider filed a notice of appeal with the Commission on May 30, 2002. On July 16, 2002, the Commission held the appellate hearing. The housing provider, George Fountain, appeared; however, the tenant did not appear for the Commission's hearing.

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<sup>1</sup> The Act prohibits housing providers from charging or collecting rent that exceeds the legally calculated rent ceiling. D.C. OFFICIAL CODE § 42-3502.06(a) (2001). Rent refunds are not properly awarded for rent that exceeds "the last approved rent of record."

## II. ISSUES ON APPEAL

The housing provider filed a lengthy notice of appeal, which contained numerous issues, subissues, and comments. See Notice of Appeal at 1-5. The housing provider stated the following in the initial paragraphs of the notice of appeal.

I am appealing the decision and order rendered on May 13, 2002  
... for the following reasons.

1. Technical errors
2. The decisions contains clear error that is evident on its fact [sic] and
3. Newly discovered evidence exists. (Certified rent ceiling, lease, additional witnesses)

**Primary basis for appeal is technical error in rendering the decision. The court cannot order a rent refund in a substantial rehab [sic] petition filed by the landlord/owner. This is not a tenant petition, moreover, there is and was no illegal rent ceiling.**

In addition the petition [sic] is filing the following comments concerning the courts ruling logic and the substantial rehab process.

Notice of Appeal at 1. Thereafter, the housing provider made numerous comments and arguments concerning each finding of fact and conclusion of law, and the housing provider raised questions concerning the arduous process that he underwent from the inception of the petition through the issuance of the ALJ's decision.

From the written text of the notice of appeal, the Commission extracted the following additional issues.

Whether the ALJ erred when he ordered a rent refund in a substantial rehabilitation petition filed by the housing provider/owner.

Whether the appearance of Cheryl Smith is even remotely relevant to granting this petition (since no tenants were displaced or relocated during the rehabilitation).

Whether the rent charged exceeded the certified rent ceiling.

During oral argument before the Commission, the housing provider stated that he only wished to appeal the ALJ's award of a rent refund.

### III. DISCUSSION

#### **A. Whether the ALJ erred when he ordered a rent refund in a substantial rehabilitation petition filed by the housing provider/owner.**

The housing provider argues that the ALJ erred when he ordered a rent refund in a substantial rehabilitation petition,<sup>2</sup> which the housing provider filed. The housing provider maintains that the ALJ erred when he ordered the rent refund, since the tenant did not initiate the petition. The Commission agrees.

A predecessor Commission confronted a similar issue in a hardship petition that a housing provider filed pursuant to the Rental Housing Act of 1980. In Epstein v. McCampbell, HP 10,165 (RHC Feb. 12, 1985), the Rent Administrator determined the rent ceiling, which was a mandatory step in evaluating the hardship petition. However, the Rent Administrator went beyond the bounds of the hardship petition by finding a violation and awarding a rent refund. The Commission held that the Rent Administrator should have limited his findings to a determination of the rent ceiling and the percentage increase needed to earn the statutory rate of return. In support of its holding the Commission stated the following holding:

It is appropriate and mandatory that the rent ceiling be ascertained in all petitions seeking an upward adjustment of a rent ceiling. However,

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<sup>2</sup> The provision of the Act, which governs substantial rehabilitation petitions, provides:

If the Rent Administrator determines that (1) a rental unit is to be substantially rehabilitated, and (2) the rehabilitation is in the interest of the tenants of the unit and the housing accommodation in which the unit is located, the Rent Administrator may approve, contingent upon completion of the substantial rehabilitation, an increase in the rent ceiling for the rental unit, if the rent increase is no greater than the equivalent of 125% of the rent ceiling applicable to the rental unit prior to substantial rehabilitation.

D.C. OFFICIAL CODE § 42-3502.14(a) (2001).

having determined the rent ceiling, the question remains whether it is appropriate to award a refund to tenants for past violations.

In the usual case we think not. A landlord who files a hardship petition does not contemplate resulting liability for past overcharges. We think it appropriate for the Rent Administrator to establish the rent ceiling. Should the tenant wish to file a tenant petition he may do so. Under that procedure all parties will be aware of their potential liability at the commencement of the appropriate action.

Id. at 3-4.

In Tenants of 2301 E St., N.W. v. Columbia Plaza Ltd. P'ship, CI 20,074 (RHC May 8, 1989), the Commission confronted a similar issue in a capital improvement petition, which a housing provider filed under the current Act, the Rental Housing Act of 1985. Relying upon its decision in Epstein, the Commission held that the Rent Administrator did not err when he declined to rule upon any issues concerning the tenants' allegations of a reduction in services and facilities, because those issues were outside of the scope of the housing provider's capital improvement petition. The Commission held that the rationale pronounced in Epstein, in the context of a hardship petition, applied equally to capital improvement petitions. The Commission noted that the housing provider is not put on notice of any issues that are not presented in the capital improvement petition. "Since the tenants can easily file a tenant petition with allegations of rent overcharges or, as in this case, reductions in services and facilities, no prejudice attaches to these issues by the failure of the hearing examiner to rule upon them in a capital improvement petition." Tenants of 2301 E St., N.W. v. Columbia Plaza Ltd. P'ship, CI 20,074 (RHC May 8, 1989) at 3-4.

The District of Columbia Court of Appeals, citing Epstein v. McCampbell, HP 10,165 (RHC Feb. 12, 1985), affirmed the Commission's decision in Tenants of 2301 E

St., N.W. In Tenants of 2301 E Street, N.W. v. District of Columbia Rental Hous. Comm'n, 580 A.2d 622 (D.C. 1990), the Court stated, “[A] party must be given notice of any action pending against him before he can be made to defend it. Therefore, the Examiner will not consider any issues other than the one raised in the petition for capital improvements.” Id. at 624. In addition, the Court stated that the tenant’s right to recover penalties against the housing provider was not related to any contested issue properly before the Rent Administrator in a petition initiated by the housing provider.

The same rationale, which the Court and the Commission employed in the context of hardship and capital improvement petitions, is equally applicable in substantial rehabilitation petitions. In the instant case, the housing provider filed SR 20,066 and requested the Rent Administrator to approve an increase in the rent ceiling for one unit in the housing accommodation. In contravention of the holdings in Epstein and Tenants of 2301 E St., N.W., the ALJ ordered a rent refund in the context of the substantial rehabilitation petition, which the housing provider initiated. “[T]here is nothing in the Rental Housing Act, in the regulations promulgated pursuant to it, ..., or in the Notice of Hearing served upon the parties in connection with the [substantial rehabilitation] petition, which gave the landlord any notice that the hearing would address [a] possible [rent refund], rather than the increase which the landlord ... was requesting.” Tenants of 2301 E Street, N.W., 580 A.2d at 625.

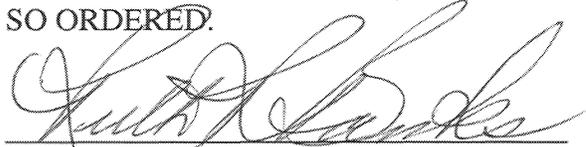
Accordingly, the Commission reverses the award of the rent refund.

**IV. CONCLUSION**

For the foregoing reasons, the Commission reverses and vacates the rent refund awarded by the ALJ.

The remaining issues raised in the notice of appeal are dismissed as moot.

SO ORDERED.



RUTH R. BANKS, CHAIRPERSON



RONALD A. YOUNG, COMMISSIONER



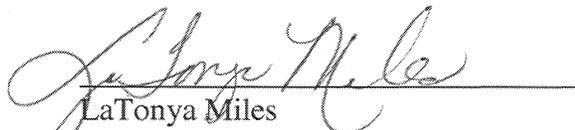
JENNIFER M. LONG, COMMISSIONER

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing Decision and Order in SR 20,066 was sent by priority mail with delivery confirmation, postage prepaid, this 31st day of January 2003 to:

George and Renee Fountain  
2505 North Gate Terrace  
Silver Spring, MD 20906

Cheryl Smith  
1100 Seventh Street, N.E.  
Apartment 13  
Washington, DC 20002

  
LaTonya Miles  
Contact Representative