DISTRICT THE OF COLUMBIA
OFFICE OF ADMINISTRATIVE HEARINGS
One Judiciary Square
441 Fourth Street, NW
Washington, DC 20001-2714
TEL: (202) 442-9094
FAX: 442-4789

CHRISTINE SENTENO, Tenant/Petitioner , v. MICHAEL DEMINO, Housing Provider/Respondent.	Case No.: RH-TP-09-29505 *In re:* 710 Q Street NW

FINAL ORDER

This tenant petition alleges violations of the Rental Housing Act of 1985 ("Rental Housing Act" or "Act") at the Housing Accommodation, 710 Q Street NW. Housing Provider failed to appear at the hearing of this matter on June 15, 2009. For reasons I discuss below, I find that Tenant has proven that Housing Provider substantially reduced services and facilities at the Housing Accommodation. I award Tenant $10,868 in rent refunds, including interest.

I. Procedural Background

On December 30, 2008, Tenant Christine Sentano filed Tenant Petition ("TP") 29,505 with the Rental Accommodations Division of the Department of Housing and Community Development. The tenant petition asserted that: (1) the building in which the rental unit is located is not properly registered; (2) a rent increase was taken while the unit was not in substantial compliance with the District of Columbia Housing Regulations; (3) services and/or facilities provided in connection with the rental of the unit have been permanently eliminated; (4) services and/or facilities provided in

connection with the rental of the unit had been substantially reduced; and (5) retaliatory action had been directed against Tenant by Housing Provider for exercising Tenant's rights in violation of Section 502 of the Rental Housing Act. Tenant named David Hylton, the property owner, and Michael DeMino, property manager, as Housing Providers, noting that Mr. Hylton was deceased. The petition proceeded against Mr. DeMino, who executed the lease with Tenant and collected rent from Tenant.[1]

On April 14, 2009, after Housing Provider failed to appear at a scheduled status conference, this administrative court issued a Scheduling Order directing the parties to appear for a hearing on June 15, 2009, at 9:30 a.m. The Scheduling Order warned that: "If Housing Provider fails to attend the hearing without a showing of good cause, this administrative court may enter a decision and award based on the opposing party's evidence." The Scheduling Order was sent by Priority Mail/Delivery Confirmation to Housing Provider at the address given in the tenant petition and in the lease, 843 J Quince Orchard Blvd., Gaithersburg, MD 20878. It was confirmed by the United States Postal Service to have been delivered to that address on April 15, 2009.

The hearing was called at 9:50 a.m. on June 15, 2009. Tenant appeared and testified, represented by counsel Dominic Vorv. Housing Provider did not appear. I received Petitioner's Exhibits ("PX") 100 through 104 in evidence.[2] Following are my

[1] The Rental Housing Act defines a "Housing Provider" to include a "lessor, sublessor, assignee, or their agent, or any other person receiving or entitled to receive rents or benefits for the use or occupancy of any rental unit within a housing accommodation within the District.

[2] A list of the exhibits is in the Appendix to this Final Order.

Findings of Fact and Conclusions of Law, based on the testimony of the witness, the exhibits in evidence, and the entire record in this case.

II. Findings of Fact

On January 4, 2008, Tenant leased the Housing Accommodation, 710 Q Street NW, from Housing Provider Michael DeMino at a rent of $1,850 per month. PX 103. The lease did not prescribe a specific term. *Id.* The lease contained boxes to assign responsibility for specific utilities to Tenant or to the landlord, including gas, water, electric, refuse collection, telephone, and cable TV. None of the boxes were checked. Because the house contained a washer and dryer that had not been connected, Housing Provider orally agreed to reduce the rent to $1,600 per month until the appliances were available for use.

Tenant occupied the Housing Accommodation together with her two sons. From February through November 2008 she shared the Housing Accommodation with another tenant, Nina Berkowsky, who occupied the basement under a separate lease with Housing Provider.

When she moved into the Housing Accommodation, Tenant complained about its condition. The interior needed painting, there were holes in many of the walls, the porch was in a state of disrepair, the windows would not open, and the house was infested with rodents. Housing Provider promised to make appropriate repairs, but did not follow up. Utility service was also problematic. In February the water was shut off for two days. In April the electricity was shut off for three days. On each of these occasions, Housing Provider paid to restore service. Cable TV/internet service was cut off at least three times

prior to June 2008, and then restored by Housing Provider. In June 2008, Tenant transferred the service into her own name.

At the end of April 2008 Tenant prepared a list of repairs and maintenance that the Housing Accommodation required and arranged a meeting with Housing Provider to discuss them. The meeting ended in a "shouting match" after Housing Provider accused Tenant of being hypercritical. Following the argument, Housing Provider telephoned Tenant, apologized, and told her he would make the repairs. Two weeks later, in mid-May 2008, Housing Provider telephoned Tenant, told her he could not afford to make the repairs, that the property was going to be foreclosed, and that he was no longer her landlord.

Tenant interpreted this conversation to be a directive to her to assume responsibility for maintaining the property. Beginning in June, 2008, Tenant stopped paying rent and began to pay for repairs to the Housing Accommodation. Between June 2008 and May 2009 Tenant testified that she paid for the following repairs and maintenance:

Repair	**Date(s)**	**Cost**
Window Repair	June 2008	$1,500
Tree Trimming	June 08, March 09	$400
Paint Porch	June –Dec. 2008	$500
Carpet Cleaning	June 2008	$1,400
Pest Control	September 2008	$150
Paint Interior	July 2008	$2,500
Repair Holes in Walls	June 2008	$1,500
Bathroom Plumbing Repair	November 2008	$1,500
Total		**$8,250**

PX 101.

Tenant did not submit invoices for any of these items. Although she submitted receipts for a few materials that she purchased, PX 102, there was no testimony to connect these receipts to any specific repairs.

Following his announcement that he would no longer be Tenant's landlord, Housing Provider stopped paying for any of the utilities. In November 2008, the utility providers began to cut off service. To restore service Tenant had to pay the arrears from May 2008. Tenant testified that her utility payments from May 2008 to May 2009 were as follows:

Service	**Cost**
Water	$2,600
Cable	$2,100
Gas	$2,600
Electricity	$4,600
Total	**$11,100**

PX 102.

Tenant did not submit invoices to substantiate any of these expenses, except for one electric bill from PEPCO, a water bill from WASA, and a bill from Comcast Cable. The PEPCO bill, dated June 11, 2009, showed a prior balance of $2,821.01, but current charges for May 7, 2009 through June 6, 2009, of only $57.25. PX 102. The water bill, dated December 10, 2008, showed a past due balance of $179.91, but gave no information about the monthly charge. *Id.* The cable bill, dated May 19, 2009, showed a

past due balance of $331.90, including $100 for non-returned equipment. *Id.* It gave no information concerning Tenant's monthly rate or any of the past charges.

Tenant had no communications with Housing Provider until November 2008, when Ms. Berkowsky vacated. Housing Provider then entered the Housing Accommodation when Tenant was absent and moved personal items of Tenant that were in the basement up to the first floor. Housing Provider told Tenant she had no right to use the basement. Tenant then spent $500 to have new locks installed in the house so that Housing Provider could not enter.

In early May 2009, Housing Provider contacted Tenant, telling her that he again wanted to charge rent and proposed that they discuss some kind of compromise. When Tenant asked Housing Provider what his proposal was, Housing Provider told her he needed to think about it. Housing Provider did not follow up with any specific demand. Instead, he filed a complaint for possession in the Superior Court of the District of Columbia Landlord and Tenant Branch, demanding rent from May 2008 through May 2009 at a rate of $1,600 per month. PX 104.

As of the date of the hearing, the Housing Accommodation had a number of conditions that required further maintenance. These included replacement of the refrigerator, repair of the porch, treatment for termites, removal of mold in the kitchen, and repair of water damage in the basement.

III. Conclusions of Law

A. Jurisdiction

This matter is governed by the District of Columbia Administrative Procedure Act (D.C. Official Code §§ 2-501 *et seq.*) ("DCAPA"); the Rental Housing Act of 1985 (D.C. Official Code §§ 42-3501.01 *et seq.*); substantive rules implementing the Rental Housing Act at 14 District of Columbia Municipal Regulations ("DCMR") 4100 - 4399; the Office of Administrative Hearings Establishment Act at D.C. Official Code § 2-1831.03(b-1)(1), which authorizes OAH to adjudicate rental housing cases; and OAH procedural rules at 1 DCMR 2800 *et seq.* and 1 DCMR 2920 *et seq.*

B. Notice to Housing Provider

Housing Provider/Respondent was properly served by mail with the Scheduling Order of April 14, 2009, which gave notice of the hearing on June 15, 2009, at 9:30 a.m. Because the Scheduling Order setting the hearing date was mailed to Housing Provider's last known address, Housing Provider/Respondent received proper notice of the hearing date. D.C. Official Code § 42-3502.16(c); *Kidd Int'l Home Care, Inc. v. Prince,* 917 A.2d 1083, 1086 (D.C. 2007) (notice is adequate if properly mailed and not returned to sender); *see also Jones v. Flowers,* 547 U.S. 220, 226 (2006) ("due process requires the government to provide 'notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action'" (quoting *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950))).

OAH Rule 2818.3, 1 DCMR 2818.3, provides, in part:

> Unless otherwise required by statute, these Rules or an order of this administrative court, where counsel, an authorized representative, or an unrepresented party fails, without good cause, to appear at a hearing, or a pretrial, settlement or status conference, the presiding Administrative Law Judge may dismiss the case or enter an order of default in accordance with D.C. Superior Court Civil Rule 39-I.

D.C. Superior Court Civil Rule 39-I(c) provides that:

> When an action is called for trial and a party against whom affirmative relief is sought fails to respond, in person or through counsel, an adversary may where appropriate proceed directly to trial. When an adversary is entitled to a finding in the adversary's favor on the merits, without trial, the adversary may proceed directly to proof of damages.

Because Housing Provider/Respondent failed to appear at the hearing after receiving proper notice, it was appropriate to proceed to take evidence in Housing Provider's absence and to render a decision based on the evidence that Tenant presented. D.C. Superior Court Civil Rule 39-I(c).

C. Tenant's Claim that the Building Was Not Properly Registered

The tenant petition asserts that the Housing Accommodation was not properly registered with the Rent Administrator. The Rental Housing Act requires that any Housing Provider who leases a rental unit must file a registration statement with the Rent Administrator. D.C. Official Code § 42-3502.05(f). A willful failure to register may justify imposition of a fine for violation of the Rental Housing Act. D.C. Official Code § 42-3509.01(b). A housing provider may not impose any rent increase unless the housing accommodation is so registered. D.C. Official Code § 42-3502.08(a)(1)(B).

Here, Tenant offered no proof as to whether the Housing Accommodation was registered or not. Under the DCAPA "the proponent of a rule or order shall have the burden of proof." D.C. Official Code § 2-509(b); *Cf. Parreco v. D.C. Rental Hous. Comm'n*, 885 A.2d 327, 334 n.9 (D.C. 2005) (noting that a tenant's burden of proof under the Rental Housing Act can be overcome by Housing Provider's admissions). Tenant failed to meet her burden to establish that the Housing Provider was not registered.[3]

D. Tenant's Claim that Housing Provider Implemented a Rent Increase when the Rental Unit Was Not in Substantial Compliance with the Housing Regulations

The tenant petition asserts that Housing Provider implemented a rent increase when the Housing Accommodation was not in substantial compliance with the housing regulations. Under the Rental Housing Act, a housing provider is prohibited from increasing rent unless the rental unit and the common areas of the housing accommodation are in "substantial compliance" with the housing regulations. The rental housing regulations, in turn, list specific conditions that constitute substantial housing violations. 14 DCMR 4216.2. Tenant proved that at least some of these conditions existed at the Housing Accommodation here. E.g., 4216.2(d) (curtailment of utility service such as gas or electricity); 4216.2(i) (infestation of insects or rodents); 4216.2(p) (floor, walls, or ceiling with substantial holes).

[3] The tenant petition attached a certificate from the Rent Administrator dated December 15, 2008, certifying that Housing Provider filed a claim of exemption on November 25, 2008. But Tenant's counsel did not offer the certificate or the claim of exemption into evidence, so they are not part of the official record. *See* OAH Rule 2934.1 ("Any party that wishes an Administrative Law Judge to consider a document concerning a rental housing accommodation that is on file with the RAD must introduce a copy of the document into evidence").

But Tenant failed to prove the second element of this claim. The evidence shows that Housing Provider did not implement any rent increase during the period of Tenant's occupancy. Indeed, Housing Provider reduced his rent demand to $1,600 to compensate for the absence of a functioning washer and dryer. Housing Provider's suit for possession, in May 2009, based its computation of rent owed on this $1,600 monthly figure. PX 104. Because there is no proof of any rent increase, I must dismiss this claim.

E. Tenant's Services and Facilities Claims

Two of Tenant's key claims relate to Housing Provider's reduction or elimination of services and facilities that were to be provided by law or under the terms of the lease. The Rental Housing Act provides that where "related services or related facilities supplied by a housing provider for a housing accommodation . . . are substantially increased or decreased, the Rent Administrator [now the Administrative Law Judge] may increase or decrease the rent charged, as applicable, to reflect proportionally the value of the change in services or facilities." D.C. Official Code § 42-3502.11. In turn, an Administrative Law Judge may award a rent refund to a housing provider who "substantially reduces or eliminated related services previously provided for a rental unit." D.C. Official Code § 42-3509.01(a).

"Related services" under the Act are defined as:

> Services provided by a housing provider, required by law or by the terms of a rental agreement, to a tenant in connection with the use and occupancy of a rental unit, including repairs, decorating and maintenance, the provision of light, heat, hot and cold water, air conditioning, telephone answering or elevator services, janitorial services, or the removal of trash and refuse.

D.C. Official Code § 42-3501.03(27).

"Related facility" is defined as:

> any facility, furnishing, or equipment made available to a tenant by a housing provider, the use of which is authorized by the payment of the rent charged for a rental unit, including any use of a kitchen, bath, laundry facility, parking facility, or the common use of any common room, yard, or other common area.

D.C. Official Code § 42-3501.03(26).

The key difference between the two definitions is that services are related only when they are required by law or agreement, while related facilities may include any equipment that is made available to a tenant under the lease. The majority of Tenant's complaints here relate to repair and maintenance services required by law, or utility services provided under the terms of the lease. Although the lease did not expressly state whether utilities were included, Housing Provider initially paid for the utilities and, when he prepared the lease, did not check the boxes that were provided to indicate that Tenant would be responsible for them. I conclude, then, that gas, water, electricity, and cable TV were to be provided under the lease.

To establish a claim for reductions in services and facilities, Tenant "must present competent evidence of the existence, duration, and severity of the reduced services." *Jonathan Woodner Co. v. Enobakhare,* TP 27,730 (RHC Feb. 3, 2005) at 11 (citations omitted). The fact finder should "make separate findings as to the impact of individual violations . . . and as to the duration and severity of each violation." *Hiatt Place P'ship v. Hyatt Place Tenants' Assoc.*, TP 21,249 (RHC May 1, 1991) at 24. This may take the

form of specific dollar reductions for specific service reductions, *e.g., Kemp v. Marshall Heights Cmty. Dev.*, TP 24,786 (RHC Aug. 1, 2000) at 81, or percentage reductions. Where percentage reductions are employed, the Commission has held that the fact finder must "assign appropriate percentages for each reduction in service." *Cascade Park Apts. v. Walker*, TP 26,197 (RHC Jan. 14, 2005) at 33. "Further, if the reduced service is within the tenant's unit, she must show that she notified the housing provider that service was required." *Woodner Co. v. Enobakhare,* TP 27,730 at 11; *Accord, Hudley v. McNair*, TP 24,040 (RHC June 30, 1999) at 11.

The paradigm established by these cases assumes circumstances where the housing provider continues to assume responsibility for maintenance. The approach is problematic where, as here, Housing Provider flatly renounced his repair, maintenance, and other service obligations, leaving Tenant to fend for herself. Although the evidence in the record patently established that Housing Provider reduced and eliminated the services at the Housing Accommodation, evidence concerning the condition and duration of specific defects is largely lacking.

Because Tenant's testimony concerning the nature, duration, and severity of specific services and facilities reductions was vague, and not supported by photographic or documentary evidence, I conclude that she has not sustained her burden of proof with respect to claims arising before Housing Provider abandoned the property in May 2008. Although she described problems with rodent infestation, windows not opening, holes in the walls, and a defective porch, her description of these problems was cursory, with no details that would allow me to assess the severity of the conditions or whether Housing Provider was given adequate notice of the problems.

The record is clear, though, that in mid or late May 2008, Housing Provider told Tenant that he was not going to make any repairs or otherwise maintain the property. One reason that clear evidence concerning specific defects is lacking is that Tenant accepted Housing Provider's representation that he was abandoning her as a tenant and leaving her to maintain the property on her own. Tenant, in turn, assumed responsibility for maintenance, making repairs at her own expense and paying for utilities directly. Because she had assumed the maintenance, at Housing Provider's invitation, Tenant stopped giving Housing Provider notice of repairs that were needed and made direct arrangements with contractors to maintain the property.

Although evidence of the nature, duration, and severity of the individual deficiencies is absent, it is clear that Housing Provider failed to maintain the property or provide utility services from the beginning of May 2009 through June 15, 2009, the date of the hearing. It remains to determine how to assess the value of this reduction.

One approach would be to pro rate the cost of Tenant's expenses for repair and maintenance of the property. Tenant testified that she spent $8,250 on repairs and other maintenance and $11,100 on utilities, a total of $19,350. Pro-rated over 13 months, the value of the maintenance service that Housing Provider failed to provide is $1,488.46, or approximately $1,500 per month.

I find this figure excessive as a measure of services and facilities reductions. If employed as an offset to Tenant's rent, it would reduce the rent on the house to $100 per month, or less than the cost of renting a garage or parking place in much of the District of Columbia. Moreover, the evidence of Tenant's costs is very imprecise. The sole

evidence for most of the costs is Tenant's testimony and a handwritten list of expenses that she prepared. PX 101. The expenses, in turn, are all in round numbers, generally amounts of $100. Two of the items, for painting and repair of holes, are designated as "budget," with no indication or testimony as to whether the amount budgeted was actually spent. *Id.* Tenant did not submit any documents giving the name of the persons who performed the repairs or any invoices for them.

Although Tenant did submit bills for three of her utility expenses, electricity, water, and cable, these documents provide only modest support for her testimony. Thus, Tenant testified that she paid $4,600 for electricity from May 9, 2008, through May 9, 2009. But the June 11, 2009, electric bill shows a past due balance of $2,821.01 still unpaid as of four days before the hearing. PX 102. It also shows that the charges for May 7, 2009, through June 6, 2009, were only $57.25, while Tenant's claim of $4,600 for the twelve month period from May 2008 through May 2009, averages $383.33 per month. Thus, Tenant's documented usage of electricity in May – June 2009, was less than 15% of the average monthly charges she claimed.

Similarly, Tenant testified that she paid $2,600 for water usage from May 2008 through May 2009, or $216 per month. But the only water bill she offered in evidence, in December 2008, reflects a past due balance of $179.91, with no indication of how many months charges are included in the balance. PX 102. The cable bill shows a past due balance of $331.90 as of May 19, 2009, with no indication of what the monthly charge was or how much of the past due balance was attributable to late fees or other special

charges.[4] *Id.* These documents, and the absence of any other evidence to support the cost of Tenant's repairs and maintenance, raise serious questions about the accuracy of Tenant's testimony.

Despite the deficiencies of Tenant's evidence, it is clear that Housing Provider eliminated all repair and maintenances services and utilities from mid-May 2008 through the date of the hearing, June 15, 2009. In the absence of reliable evidence as to the value of these services, I will be guided by the Rental Housing Commission's decision in *Harris v. Wilson*, TP 28,197 (RHC July 12, 2005). The Commission observed in that case that: "Typically, one third of the monthly rent is said to be for the shelter itself while the remaining two thirds are to pay for related services and facilities." *Id.* at 12 (citing *George I. Borgner, Inc. v. Woodson*, TP 11,848 (RHC June 10 1987). Here, Housing Provider provided no services at all and provided, but did not maintain, the appliances and other facilities that came with the Housing Accommodation. I will reduce Tenant's rent by 50%, or $800, to adjust for this reduction, bearing in mind that, despite Housing Provider's omissions, Tenant continued to have the use of the shelter and the appliances and equipment that came with it.

I will apply this reduction from May 15, 2008, the approximate date when Housing Provider announced that he would no longer maintain the property, through June 15, 2009, the date of the hearing. As discussed above, I will apply no reduction prior to May 15, 2008, because Tenant failed to present adequate evidence of the nature, duration, and severity of the services and facilities reductions.

[4] The cable bill did reflect a $100 charge for failure to return equipment. PX 102.

I also will not award Tenant the $500 she claims for changing the locks after Housing Provider moved her belongings out of the basement. These expenses did not relate to the repair and maintenance of the Housing Accommodation. Even if the expense were justified, the Rental Housing Act does not provide for the award of out-of-pocket expenses. *See Taylor et. al. v. Chase Manhattan Mortgage,* TP 24,303 & TP 24,420 (RHC Sept. 9, 1999) at 13 (denying reimbursement for out-of-pocket expenses); *Budd v. Haendel,* TP 27,598 (RHC Dec. 16, 2004) (holding that the Act does not confer jurisdiction to order reimbursement for claims related to damages of loss of property); *Terrell v. Estrada,* TP 22,077 (RHC May 30, 1991) (denying reimbursement for out-of-pocket expense to repair refrigerator as not covered by the Act).

F. Tenant's Claim of Retaliation

Tenant asserts in the tenant petition that "The landlord (housing provider), manager, or other agent has taken retaliatory action against me/us in violation of section 502 of the [Rental Housing Act]." The Act provides:

> No housing provider shall take any retaliatory action against any tenant who exercises any right conferred upon the tenant by this chapter . . . . Retaliatory action may include any action or proceeding not otherwise permitted by law which seeks to recover possession of a rental unit, action which would unlawfully increase rent, decrease services, increase the obligation of a tenant, or constitute undue or unavoidable inconvenience, violate the privacy of the tenant, harass, reduce the quality or quantity of service, any refusal to honor a lease or rental agreement or any provision of a lease or rental agreement, refusal to renew a lease or rental agreement, termination of a tenancy without cause, or any other form of threat or coercion.

D.C. Official Code § 42-3505.02(a).

The Act creates a presumption of retaliation in situations where a housing provider engages in certain activities within six months of when a tenant exercises rights under the Act.

> (b) In determining whether an action taken by a housing provider against a tenant is retaliatory action, the trier of fact shall presume retaliatory action has been taken, and shall enter judgment in the tenant's favor unless the housing provider comes forward with clear and convincing evidence to rebut this presumption, if within the 6 months preceding the housing provider's action the tenant:
>
> (1) Has made a witnessed oral or written request to the housing provider to make repairs which are necessary to bring the housing accommodation or the rental unit into compliance with the housing regulations;
> (2) Contacted appropriate officials of the District government, either orally in the presence of a witness or in writing, concerning existing violations of the housing regulations in the rental unit the tenant occupies or pertaining to the housing accommodation in which the rental unit is located, or reported to the officials suspected violations which, if confirmed, would render the rental unit or housing accommodation in noncompliance with the housing regulations;
> (3) Legally withheld all or part of the tenant's rent after having given a reasonable notice to the housing provider, either orally in the presence of a witness or in writing, of a violation of the housing regulations;
> (4) Organized, been a member of, or been involved in any lawful activities pertaining to a tenant organization;
> (5) Made an effort to secure or enforce any of the tenant's rights under the tenant's lease or contract with the housing provider; or
> (6) Brought legal action against the housing provider.

D.C. Official Code § 42-3505.02(b). *See also* 14 DCMR 4303.4.

The presumption does not apply here. Although Housing Provider's removal of Tenant's stored items in November 2008 might qualify as an act that subjected Tenant to

harassment and violation of privacy within the meaning of "retaliation" under the Act, Tenant has not proven any of the conditions that would trigger the presumption. Because Tenant's complaints about services and facilities and proposal to withhold rent were oral and not witnessed, they do not trigger the presumption. There is no evidence that Tenant engaged in any of the other acts that might trigger the presumption.

Housing Provider's filing of the complaint for possession in June 2009 could constitute retaliation subject to the presumption, since it occurred within six months of the date that Tenant filed her tenant petition. But Tenant did not seek to amend her tenant petition to allege the complaint as an act of retaliation, and therefore the issue was not properly before this administrative court. *See Hawkins v. Jackson*, TP 29,201 (RHC Aug. 31, 2009). (Approving Administrative Law Judge's dismissal of a claim for retaliation that arose after the tenant petition was filed).

Because the presumption does not apply, it is Tenant's burden to prove that Housing Provider engaged in an act in retaliation for Tenant's exercise of "any right conferred upon the tenant by [the Rental Housing Act]." Tenant has not shown that Housing Provider's removal of her belongings from the basement to the first floor was in retaliation for Tenant's failure to pay rent or her complaints about services and facilities. Tenant testified that the basement was occupied by Ms. Berkowsky under a separate lease. The removal of Tenant's belongings, after Ms. Berkowsky vacated the space, was more likely a response to Tenant's use of space she was not entitled to use than to her exercise of any rights under the Rental Housing Act. Although Housing Provider did not use legal procedures to remove Tenant's belongings, this omission does not make the act retaliatory.

I conclude that Tenant has not proven her claim of retaliation.

G. Bad Faith

The Rental Housing Act provides for an award of treble damages in circumstances where a housing provider has acted in "bad faith." D.C. Official Code § 42-3509.01(a). A finding of bad faith requires inquiry into the "intent or state of mind of the actor." *Third Jones Corp. v. Young*, TP 20,300 (RHC Mar. 22, 1990) at 9. It requires a finding that Housing Provider acted out of "some interested or sinister motive" involving "the conscious doing of a wrong because of dishonest motive or moral obliquity." *Id.* Although the standard of misconduct required for bad faith has been described as "egregious," *Id.* at 8, it is sufficient that Housing Provider's action reflect a "deliberate refusal to perform without just or reasonable cause or excuse," *Id.* at 10, or "a continuing, heedless disregard of a duty," *Cascade Park Apartments v. Walker* at 35.

It is arguable here that Housing Provider's refusal to maintain the property constituted a "deliberate refusal to perform," and a "continuing, heedless disregard of duty." *Id.* But the evidence does not support the conclusion that Housing Provider acted out of a "sinister" or "dishonest" motive, was guilty of "moral obliquity," or even that his behavior was "egregious." Housing Provider was not the owner of the property and he apparently believed that the Housing Accommodation would be subject to foreclosure following the owner's death. After he abandoned the property in May 2008, there is no evidence that he made any demand for rent until he filed the suit for possession in June 2009. Tenant, in turn, seems to have acquiesced in this arrangement. She stopped paying rent, arranged for repairs herself, rather than demanding that Housing Provider make the

repairs, and took no steps to enforce her legal rights until she filed this tenant petition on December 30, 2008. Moreover, she acknowledged that the tenant petition was provoked not by Housing Provider's failure to make repairs, but by his intrusion and removal of her personal belongings from the basement. In view of Tenant's reluctance to demand that Housing Provider live up to his obligations, I cannot conclude that Housing Provider's failure to maintain the property justifies a finding of bad faith.

H. Rent Refund

The Rental Housing Act provides that "[I]f the Rent Administrator determines that the related services or related facilities supplied by a housing provider for a housing accommodation or for any rental unit in the housing accommodation are substantially increased or decreased, the Rent Administrator may increase or decrease the rent charged, as applicable, to reflect proportionally the value of the change in services or facilities." D.C. Official Code § 42-3502.11.[5] The Administrative Law Judge may then award Tenant a rent refund for the cumulative amount of these reductions. D.C. Official Code § 42-3509.01(a). It is well-established that a tenant who is entitled to a rent refund may receive an award notwithstanding that the rent is not paid. *See* D.C. Official Code § 42-3501.03 (28) (defining "rent" as money "demanded" by a housing provider); *Kapusta v. D.C. Rental Hous. Comm'n*, 704 A.2d 286, 287 (D.C. 1997) (affirming award of rent refund where rent was demanded but not paid); *Schauer v. Assalaam*, TP 27,084 (RHC Dec. 31, 2002) at 6 (holding that the tenant's rent refund was based on the amount

[5] The Rent Administrator's adjudicatory functions were assumed by OAH as of October 1, 2006. D.C. Official Code § 2-1831.03(b-1)(1).

demanded rather than the amount paid under a court protective order).[6] Tenant is entitled to the award for reduction in services and facilities irrespective of whether she paid the rent that was demanded. I have valued the reduction in Tenant's rent at $800 per month from June 2008 through June 2009. Table 1 below computes Tenant's rent refund.

The Rental Housing Commission Rules implementing the Rental Housing Act provide for the award of interest on rent refunds at the interest rate used by the Superior Court of the District of Columbia on the date of the decision from the date of the violation to the date of issuance of the decision. 14 DCMR 3826.1 – 3826.3; *Marshall v. D.C. Rental Hous. Comm'n*, 533 A.2d 1271, 1278 (D.C. 1987). Interest at the current 3% per annum rate is reflected in Table 1 below through the date of this decision.

Table 1
Computation of Tenant's Rent Refund

Month	Rent Refund	Months Held	Interest
Jun 08	$ 800.00	24	$ 48.00
Jul 08	$ 800.00	23	$ 46.00
Aug 08	$ 800.00	22	$ 44.00
Sep 08	$ 800.00	21	$ 42.00
Oct 08	$ 800.00	20	$ 40.00
Nov 08	$ 800.00	19	$ 38.00
Dec 08	$ 800.00	18	$ 36.00
Jan 09	$ 800.00	17	$ 34.00
Feb 09	$ 800.00	16	$ 32.00
Mar 09	$ 800.00	15	$ 30.00
Apr 09	$ 800.00	14	$ 28.00
May 09	$ 800.00	13	$ 26.00
Jun 09	$ 800.00	12	$ 24.00
Total	$ 10,400.00		$ 468.00
Total Refund and Interest			$ 10,868.00

[6] Although there is no evidence that Housing Provider demanded rent between May 2008, when he effectively abandoned the property, and May 2009, when he filed the complaint for possession, the complaint for possession demanded back rent from May 2008.

Tenant's award is $10,868.00, including interest.

IV. Order

Accordingly, it is this **20th** day of **May 2010**,

ORDERED, that Tenant's claims that the Housing Accommodation was not properly registered, that a rent increase was implemented when the Housing Accommodation was not in substantial compliance with the housing regulations, and that Housing Provider retaliated against Tenant for exercising her rights under the Rental Housing Act are **DISMISSED WITH PREJUDICE**; and it is further

ORDERED, that Tenant has proven her claims that Housing Provider substantially reduced or eliminated services and facilities associated with the Rental Unit; and it is further

ORDERED, that Housing Provider Michael DeMino pay Tenant Christine Senteno the sum of **TEN THOUSAND, EIGHT HUNDRED, AND SIXTY-EIGHT DOLLARS ($10,868.00),** and it is further

ORDERED, that the appeal rights of any party aggrieved by this Final Order are set forth below.

Nicholas H. Cobbs
Administrative Law Judge

APPENDIX

Exhibits in Evidence

Exhibit No.	Pages	Description
Petitioner		
100	3	Deed dated 2/28/2007
101	1	Handwritten list: "Senteno Expenses"
102	5	Receipts and Utility Bills
103	8	Residential lease dated 1/2/2008
104	1	Complaint for Possession, L&T No. 0018699-09, subscribed 5/6/09

MOTIONS FOR RECONSIDERATION

Any party served with a final order may file a motion for reconsideration within ten (10) days of service of the final order in accordance with 1 DCMR 2937. When the final order is served by mail, five (5) days are added to the 10 day period in accordance with 1 DCMR 2811.5.

A motion for reconsideration shall be granted only if there has been an intervening change in the law; if new evidence has been discovered that previously was not reasonably available to the party seeking reconsideration; if there is a clear error of law in the final order; if the final order contains typographical, numerical, or technical errors; or if a party shows that there was a good reason for not attending the hearing.

The Administrative Law Judge has thirty (30) days to decide a motion for reconsideration. If a timely motion for reconsideration of a final order is filed, the time to appeal shall not begin to run until the motion for reconsideration is decided or denied by operation of law. If the Judge has not ruled on the motion for reconsideration and 30 days have passed, the motion is automatically denied and the 10 day period for filing an appeal to the Rental Housing Commission begins to run.

APPEAL RIGHTS

Pursuant to D.C. Official Code §§ 2-1831.16(b) and 42-3502.16(h), any party aggrieved by a Final Order issued by the Office of Administrative Hearings may appeal the Final Order to the District of Columbia Rental Housing Commission within ten (10) business days after service of the final order, in accordance with the Commission's rule, 14 DCMR 3802. If the Final Order is served on the parties by mail, an additional three (3) days shall be allowed, in accordance with 14 DCMR 3802.2.

Additional important information about appeals to the Rental Housing Commission may be found in the Commission's rules, 14 DCMR 3800 et seq., or you may contact the Commission at the following address:

District of Columbia Rental Housing Commission
441 4th Street NW
Suite 1140
Washington, DC 20001
(202) 442-8949

Certificate of Service:

By First Class Mail (Postage Pre-paid)

Christine Senteno
710 Q Street NW
Washington, DC 20001

Michael DeMino
843 J Quince Orchard Blvd.
Gaithersburg, MD 20878

I hereby certify that on 5-20, 2010, this document was caused to be served upon the above-named parties at the addresses and by the means stated.

Bernadette Rhames

Clerk / Deputy Clerk

By Inter-Agency Mail:

District of Columbia Rental Housing Commission
441 4th Street NW
Suite 1140
Washington, DC 20001

Keith Anderson, Acting Rent Administrator
District of Columbia Department of Housing and Community Development
Housing Regulation Administration
1800 Martin Luther King Jr. Avenue SE
Washington, DC 20020