DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION

TP 24,991

In re: 1336 Missouri Avenue, N.W., Unit 419

Ward Four (4)

SAWYER PROPERTY MANAGEMENT
Housing Provider/Appellant

v.

BRENDA MITCHELL
Tenant/Appellee

DECISION AND ORDER

May 29, 2002

BANKS, CHAIRPERSON. This case is on appeal before the District of Columbia Rental Housing Commission (Commission) from the decision and order issued by the Office of Adjudication (OAD). The applicable provisions of the Rental Housing Act of 1985 (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

On June 14, 1999, Brenda G. Mitchell, Tenant, entered a lease to rent unit 419 at the housing accommodation. On June 7, 2000, she filed in the Rental Accommodations and Conversions Division (RACD) Tenant Petition (TP) 24,991 contesting rent increases for her rental unit at 1336 Missouri Avenue, N.W. The petition alleged: 1) the housing accommodation was not properly registered with the RACD, and 2) the rent increases

were larger than the amount of increases allowed by the applicable provisions of the Act. On August 30, 2000, the Tenant filed an amendment to the petition which stated, "[t]his is to state no ceiling is quoted in original lease. (See lease). Complaints have not been fixed since Oct. 1999." Record (R.) 26. On November 13, 2000, Hearing Examiner Gerald Roper presided at the hearing in the OAD. On August 28, 2001, the hearing examiner issued the OAD decision and order. The hearing examiner concluded that the Housing Provider violated the Act by charging rent on unperfected rent ceiling increases and failed to give proper notice of rent charged increases. The hearing examiner rolled back the Tenant's rent to $625.00 per month, ordered a rent refund, and fined the Housing Provider $500.00.

The Housing Provider, Sawyer Property Management, appealed the decision and order to the Commission on September 17, 2001. The Commission held its hearing on November 14, 2001.

II. ISSUES ON APPEAL

The Housing Provider alleged the decision and order was arbitrary, capricious, an abuse of discretion, not in accordance with the Rental Housing Act, unsupported by substantial evidence on the record of the proceedings, and raised the following issues:

1. Whether the hearing examiner erred when he disallowed a July 2000 rent increase, based on a Certificate of Election of Adjustment of General Applicability, for tenant petitioner Brenda Mitchell on the ground that the notice of the rent increase did not identify the specific rent ceiling adjustment that the housing provider was implementing.

2. Whether the hearing examiner erred when he disallowed the 1.8% annual rent ceiling adjustment of general applicability authorized by this Commission in 1998 under D.C. CODE § 42-3502.6(b) (2001).

3. Whether the hearing examiner erred when he disallowed a substantially identical unit rent ceiling adjustment on the ground that the Amended

Registration Form for the adjustment was filed in April 1999, more than 30 days after the vacancy.

4. Whether the hearing examiner erred, when he disallowed a 1999 12% vacant unit rent ceiling adjustment, because he relied upon the Amended Registration Form used as the base or starting point for the increase in the rent ceiling, that was the result of the previous rent ceiling adjustments, which the examiner disallowed.

5. Whether the hearing examiner erred, when he disallowed the 1.0% annual rent ceiling adjustment of general applicability authorized by this Commission in 1999, because the certificate of election used as the base or starting point for the increase of the rent ceiling was the result of previous rent ceiling adjustments, which the examiner had disallowed.

6. Whether the hearing examiner erred, when he ruled that the housing accommodation was not properly registered, because the housing provider did not prove that an Amended Registration Form had been filed to reflect a change in the management of the housing accommodation.

III. DISCUSSION OF THE ISSUES

Appeal issues, one (1), two (2), and five (5) involve the Unitary Rent Ceiling Adjustment Amendment Act of 1992, D.C. OFFICIAL CODE § 42-3502.08(h)(1)-(2) (2001), and its interpretation by the Commission for rent ceiling increases based on the annual adjustment of general applicability, D.C. OFFICIAL CODE § 42-3502.06(b) (2001). Issues three (3) and four (4) relate to whether the Housing Provider properly perfected rent ceiling vacancy adjustments before they were implemented as an increase in the rent charged the Tenant. Finally, issue six (6) relates to whether the housing accommodation was properly registered at the times the rent ceilings and rents were adjusted in this case.

The Commission concludes that the housing accommodation was not properly registered at the time the rent ceiling increases were implemented and charged the Tenant, because an Amended Registration Form was not filed to reflect the change in management from Winn Management to Sawyer Management, as required by D.C.

OFFICIAL CODE § 42-3502.08 (2001).[1] Therefore, all rent ceiling and rent charged increases are denied for that reason and other reasons explained in each issue. Moreover, none of the rent ceiling increases were properly perfected prior to implementation as an increase in the rent charged the Tenant. Therefore, all rent ceilings and rent increases in issues two (2), three (3), four (4) and five (5) are vacated.

1. **Whether the hearing examiner erred when he disallowed a July 2000 rent increase, based on a Certificate of Election of Adjustment of General Applicability, for tenant petitioner Brenda Mitchell on the ground that the notice of the rent increase did not identify the specific rent ceiling adjustment that the housing provider was implementing.**

On May 30, 2000, notice was served on the Tenant (Tenant Exhibit (T. Exh.) 1) that her rent ceiling would be increased from $1267 to $1294 per month, and her rent would be increased from $625 to $750 per month. The rent increase was effective July 1, 2000, and implemented the 2.1% annual adjustment of general applicability based on the rate of change in the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W) for 1999. R. 3. D.C. OFFICIAL CODE § 42-3502.06(b) (2001). (See further discussion of CPI-W in issue 2, infra.)

The hearing examiner made the following findings of fact:

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[1] D.C. OFFICIAL CODE § 42-3502.08 states:

> Notwithstanding any provision of this chapter, the rent for any rental unit shall not be increased above the base rent unless:
>
> ...
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> (B) The housing accommodation is registered in accordance with § 42-3502.05.
>
> ...
>
> (G) An amended registration statement shall be filed by each housing provider whose rental units are subject to registration under this chapter within 30 days of any event which changes...including ...management of any rental unit in a registered housing accommodation. (emphasis added.)

See also discussion of issue six (6), p. 20, infra.

1. On May 30, 2000, Petitioner [Tenant] received a notice of a rent increase, increasing the rent charged by $120.00 [sic] from $625.00 to $750.00 per month, effective July 1, 2000.[2]

2. The May 30, 2000 rent increase notice adjusted the rent ceiling 2.1% from $1,267.00 to $1,294.00 based upon the Consumer Price Index for Urban Wage Earners and Clerical workers (hereinafter the CPI-W) for the year 2000.

3. The May 30, 2000 rent charged increase equals a 20% increase above the previous rent charge.

4. The May 30, 2000 rent increase notice did not identify a rent charge increase based upon a previous perfected but unimplemented rent ceiling adjustment.

Decision at 4-5.

On this issue the hearing examiner held in the decision and order:

> [T]he May 30, 2000 rent increase notice increasing the rent charged did <u>not identify</u> an unauthorized [sic] but previously unimplemented rent ceiling adjustment. The regulations provided that each adjustment in the rent charged may not exceed the amount of one rent ceiling adjustment perfected but not implemented. See, [sic] 14 DCMR 4205.7.[3] (emphasis added).

Decision at 9.

The relevant conclusion of law, number 1, stated:

> Respondent has violated D.C. Code [sic] 45-2518(h)(1)-(2),[4] 14 DCMR 4205.4, and 4205.7 by charging a rent during the period July 1, 2000 through August 2000 that was not authorized nor a previously

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[2] Pursuant to 14 DCMR § 3807.4, the Commission noted plain error by the hearing examiner. The rent charged increase was $125.00 not $120.00, because the new rent charged was $750.00 and the prior rent was $625.00; the difference is $125 not $120.00, as stated in finding of fact number 2.

[3] 14 DCMR § 4205.7 provides:

> Unless otherwise ordered by the Rent Administrator, each adjustment in rent charged may not exceed the amount of one (1) rent ceiling increase <u>perfected</u> but not implemented by the housing provider. (emphasis added.)

D.C. Reg. (Feb. 6, 1998).

[4] Currently, D.C. OFFICIAL CODE § 42-3502.08(h)(1)-(2) (2001).

> unimplemented rent ceiling adjustment and Respondent failed to give proper notice of a [sic] unperfected [sic] rent ceiling adjustment. (emphasis added).

Decision at 16.

In the Housing Provider's Brief In Support of Appeal (Brief), it asserted the hearing examiner erred when he:

> ruled that the notice of the July 2000 rent increase was defective because it failed to identify the 'authorized but previously unimplemented rent ceiling adjustment that was being implemented' and disallowed the rent increase solely on that ground. **This ruling was incorrect because neither the Act nor the Regulations requires that such information be included in a rent increase notice.** (underline emphasis added.)

Brief at 2, 4-5.

The Brief also states:

> The regulations, 14 DCMR 4205 et seq. which delineate the actions a housing provider must take before implementing a previously unimplemented rent ceiling adjustment, do not require the housing provider to identify the unimplemented rent ceiling adjustment that is being implemented in the new rent charged.

Brief at 4, citing Lincoln Property Mgmt. v. Chibambo, TP 24,861 (RHC Nov. 29, 2000) at 15.

In Lincoln, the Commission held "the Housing Provider offered evidence that it increased the tenant's rent by implementing a previously unimplemented vacancy rent ceiling adjustment in accordance with D.C. Code § 45-2518(h)."[5] Id. at 5.

Based on the Commission's holding in Lincoln Property, cited above, there is no requirement under the Act that the Housing Provider identify the type of rent increase charged in the notice of rent or rent ceiling increase served on the

[5] Currently, D.C. OFFICIAL CODE § 42-3502.16 (2001).

Tenant. However, when challenged through a tenant petition, as in this case, the Housing Provider must offer evidence that it was "implementing a previously unimplemented ... rent ceiling adjustment." Id.

In this case, a review of conclusion of law number one (1) (p. 6 supra.) shows that the hearing examiner did not base the denial of the July 2000 rent ceiling adjustment of general applicability solely on the failure of the Housing Provider to identify the authorized but previously unimplemented rent ceiling adjustment. Conclusion of law number one (1) states three reasons for the denial of the adjustment. They are: 1) the adjustment was not authorized; 2) the adjustment was not previously unimplemented; and 3) the Housing Provider failed to give proper notice. Based on those reasons, the hearing examiner concluded that the Housing Provider demanded and collected rent in excess of the maximum allowable rent. He fined the Housing Provider $500. The Housing Provider did not challenge the conclusion that it failed to give proper notice of the July 2000 rent ceiling adjustment.

Therefore, this issue is denied, and the July 2000 CPI-W rent ceiling adjustment is vacated. See Afshar v. District of Columbia Rental Hous. Comm'n, 504 A.2d 1105, 1107 (D.C. 1986) (where the court stated "no landlord of any rental unit subject to this subchapter may charge or collect rent for such rental unit in excess of [the applicable rent ceiling]"). Here, the hearing examiner is affirmed, because the hearing examiner held the Housing Provider's filing for the perfection of the applicable CPI-W rent ceiling adjustment was not authorized, and it was not properly served on the Tenant. Accordingly, the July 2000 CPI-W

rent ceiling adjustment and consequently the Tenant's increased rent charged were not in accordance with the terms of the Act. D.C. OFFICIAL CODE § 42-3502.16(h) (2001).

2. Whether the hearing examiner erred when he disallowed the 1.8% annual rent ceiling adjustment of general applicability authorized by this Commission in 1998 under D.C. OFFICIAL CODE § 42-3502.06(b) (2001).

The Housing Provider argues error by the hearing examiner and that the Commission reverse the hearing examiner, because the hearing examiner disallowed the 1.8% annual rent ceiling increase for 1998 on the ground that the Certificate of Election of Adjustment of General Applicability, Respondent's Exhibit (R. Exh.) 2, was filed on April 6, 1999. The hearing examiner ruled that the period for perfecting the 1998 annual adjustment expired almost a year earlier on April 30, 1998. Decision at 5-6 & 7-8.

The Housing Provider stated the earliest it could have implemented the adjustment was May 1, 1998, citing 45 D.C. Reg. 1861 (Mar. 27, 1998). The Housing Provider also asserted, "there is no deadline within which a housing provider must 'perfect' a rent ceiling adjustment of general applicability. D.C. OFFICIAL CODE § 42-3502.08(h) (2001) clearly provides that a housing provider may 'delay[] the implementation of any rent ceiling adjustment' and that an adjustment 'which remains unimplemented shall not expire and shall not be deemed forfeited." Brief at 6. Pursuant to the provisions of the Unitary Rent Ceiling Adjustment Amendment Act that state the unimplemented adjustment shall not expire, the Housing Provider on July 1, 2000 implemented the 1.8% CPI-W increase published in the D.C. Register on February 27, 1998, and amended on March 27, 1998.

The Commission holds the Housing Provider's actions did not comply with the Act and regulations that require *perfection* of the rent ceiling adjustments before they are *preserved* for implementation at a later time, because *perfected* rent ceiling adjustments do not expire.

The law and regulations related specifically to CPI-W increases, and implementation of rent increases generally follow.

D.C. OFFICIAL CODE § 42-3502.06(b) (2001) provides:

> On an annual basis, the Rental Housing Commission shall determine an adjustment of general applicability in the rent ceiling established by subsection (a) of this section. This adjustment of general applicability shall be equal to the change during the previous calendar year, ending each December 31, in the Washington, D.C., Standard Metropolitan Statistical Area Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W) for all items during the preceding calendar year. No adjustment of general applicability shall exceed 10%. A housing provider may not implement an adjustment of general applicability, or instead, an adjustment permitted by subsection (c) of this section in the rent ceiling for that unit within 12 months of the effective date of the previous adjustment of general applicability, or instead, an adjustment permitted by subsection (c) of this section in the rent ceiling for that unit.

D.C. OFFICIAL CODE § 42-3502.08(h)(1)&(2) (2001) provides:

> One year from March 16, 1993, unless otherwise ordered by the Rent Administrator, each adjustment in rent charged permitted by this section may implement not more than 1 <u>authorized</u> and <u>previously unimplemented</u> rent ceiling adjustment. ... (emphasis added.)
>
> Nothing in this subsection shall be construed to prevent a housing provider, at his or her election, from delaying the implementation of any rent ceiling adjustment, or from implementing less than the full amount of any rent ceiling adjustment. A rent ceiling adjustment, or portion thereof, which remains unimplemented shall not expire and shall not be deemed forfeited or otherwise diminished.

The regulations provide:

> Each housing provider who files a Registration/Claim of Exemption Form under the Act shall, prior to or simultaneously with the filing, post a true

copy of the Registration/Claim of Exemption form in a conspicuous place at the rental unit or housing accommodation to which it applies, or shall mail a true copy to each tenant of the rental unit or housing accommodation.

14 DCMR § 4101.6.

The relevant regulations for implementing a rent ceiling adjustment under the Unitary Rent Ceiling Act of 1992 follow:

> Unless otherwise ordered by the Rent Administrator, each adjustment in rent charged may not exceed the amount of one (1) rent ceiling increase perfected but not implemented by the housing provider. (emphasis added.)

14 DCMR § 4205.7.[6]

> Nothing in the Act or these rules shall be construed to prevent a housing provider, at the housing provider's election, from delaying for any period of time the implementation of any rent ceiling adjustment or from implementing less than the full amount of any rent ceiling adjustment.

14 DCMR § 4205.9.[7]

The regulations for the annual adjustment of general applicability provide:

> Except as provided in §4204.10, any rent ceiling adjustment authorized by the Act and this chapter shall be taken and *perfected* within the time provided in this chapter, and shall be considered taken and *perfected* only if the housing provider has filed with the Rent Administrator a properly executed amended Registration/Claim of Exemption Form as required by §4103.1, and met the notice requirements of §4101.6. (emphasis added.)

14 DCMR § 4204.9.

> Notwithstanding §4204.9, a housing provider shall take and perfect a rent ceiling increase authorized by §206(b) of the Act (an adjustment of general applicability) by filing with the Rent Administrator and serving on the affected tenant or tenants in the manner prescribed in §4101.6 a Certificate of Election of Adjustment of General Applicability which shall do the following:

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[6] D.C. Reg. (Feb. 6, 1998).

[7] Id.

(a) Identify each rental unit to which the election applies;

(b) Set forth the amount of the adjustment elected to be taken, and the prior and new rent ceiling for each unit; and

(c) Be filed and served within *thirty (30) days* following the date when the housing provider is first eligible to take the adjustment. (emphasis added.)

14 DCMR § 4204.10.

In the decision the hearing examiner made the following finding of fact:

7. Respondent filed a Certificate of Election of Adjustment of General Applicability RACD officially dated April 6, 1999 adjusting the rent ceiling to $796.00 for apartment 419 by 1.8% based [] the CPI-W for 1998.

Decision at 5.

The hearing examiner held:

Respondent's Exhibit #2 shows Respondent filed a Certificate of Election of Adjustment of General Applicability, RACD officially date stamped April 6, 1999 for the purpose of perfecting the 1.8% CPI-W rent ceiling adjustment for 1998. The period for perfecting this adjustment expired April 30, 1998. Therefore, Respondent was neither eligible nor entitled to this rent ceiling adjustment. Thus the rent ceiling adjustment was not perfected and the rent ceiling remained at $782.00.

Decision at 5-6.

On March 27, 1998, the Commission published an Amended Certification and Notice of Rent Adjustment of General Applicability. See 45 D.C. Reg. 1861 (Mar. 27, 1998). It stated the annual adjustment of 1.8% was to become effective on May 1, 1998. Previously, the Commission on February 28, 1998 published in the D.C. Register the Certification and Notice of Rent Adjustment of General Applicability, which stated the same adjustment of 1.8%, the same effective date, May 1, 1998, but referred to the

previous rent ceilings in effect on April 30, 1997 rather than April 30, 1998, as the amended notice did. See 45 D.C. Reg. 1142 (Feb. 27, 1998).

Under the Act, regulations, and the two notices in the D.C. Register, the Housing Provider first became eligible on May 1, 1998 to perfect (as distinquished from implement) the 1.8% change in the CPI-W. See D.C. OFFICIAL CODE § 42-3502,06 (2001). Pursuant to 14 DCMR § 4204.10, the Housing Provider had 30 days, ending June 1, 1998, to perfect the CPI-W rent ceiling adjustment. Instead, the record shows the Housing Provider waited almost a year later, until April 6, 1999, to file the Certificate of Election of Adjustment of General Applicability, based on the 1998 authorized adjustment of 1.8%. (See Finding of Fact numbered 7, cited above.) Accordingly, pursuant to 14 DCMR § 4204.10, the Housing Provider did not properly perfect the 1.8% annual rent ceiling adjustment for 1998 within 30 days of first being eligible on May 1, 1998. Therefore, it did not properly implement the 1.8% CPI-W increase in the Tenant's rent in 1999. The Housing Provider waited more than 30 days after first becoming eligible to perfect the CPI-W increase by filing in 1999 rather than in 1998, the Certificate of Election of Adjustment of General Applicability to perfect the 1998 rent ceiling increase.

The Commission first discussed the Unitary Rent Ceiling Adjustment Amendment Act of 1992 in Carter v. Davis, TP 23,535 & TP 23,553 (RHC June 30, 1998) at 9, and held that the Housing Provider failed to perfect the rent ceiling increases by failure to file a Certificate of Election of Adjustment of General Applicability and failure to serve the tenants proper notice of the rent ceiling adjustments. The same is true in this case. The Housing Provider did not properly perfect and give the Tenant notice of

the perfected rent ceiling increase based on the 1998 CPI-W by the proper filing of a Certificate of Election of Adjustment of General Applicability in RACD in compliance with 14 DCMR §§ 4101.6 (requiring service on the tenant of a rent ceiling adjustment); 4205.7 (requiring perfection of a rent ceiling increase); and 4202.10 (requiring the filing of a certificate of election within 30 days of first becoming eligible).

The Housing Provider also asserted that it believed the hearing examiner based his decision on a regulation under the Rental Housing Act of 1980, that is no longer in effect that provided for perfection of the CPI-W increase within 12 months. However, the finding of fact and the record shows the hearing examiner relied on the current Act and regulations, and correctly applied the 30-day rule for perfection of the CPI-W increase pursuant to 14 DCMR § 4204.10, cited above. The Housing Provider conceded the 30-day deadline to perfect the CPI-W increase, as evinced by its statement in footnote 2 of its Brief (p. 7) where it stated:

> § 4202.10 deals only with increases of general applicability. The 30–day deadline in that Section means that the housing provider must file the certificate of election within 30 days after the effective date of the rent ceiling adjustment of general applicability, but it does not impose a deadline on when the rent ceiling adjustment can be made effective. (emphasis added).

In this case, the Housing Provider did not comply with the 30-day rule to perfect the CPI-W increase "within 30 days after the effective date of the rent ceiling adjustment of general applicability," as stated by the Housing Provider in the above quotation in its Brief. The Housing Provider did not timely file within 30 days the Certificate of Election of Adjustment of General Applicability, before implementing, by charging, the rent ceiling increase in the Tenant's rent, in accordance with the terms of the Unitary Rent Ceiling Adjustment Act of 1992, cited supra at 6. See D.C. OFFICIAL CODE § 42-

3502.08(h)(1) & (2) (2001) and applicable regulations, cited at pp. 6 & 7, that allow a *perfected* rent ceiling increase to be implemented at any time, because it does not expire after it is perfected. The 1998 CPI-W adjustment was effective May 1, 1998. See 45 D.C. Reg. 1142 (Feb. 28, 1998) & 45 D.C. Reg. 1861 (Mar. 27, 1998). Thirty (30) days later on June 1, 1998, the period for perfecting the CPI-W rent ceiling increase expired. However, the housing provider did not perfect, by filing the Certificate of Election of Adjustment of General Applicability, until almost a year later on April 6, 1999, which was beyond the 30-day period to perfect the rent ceiling increase. Accordingly, the rent ceiling increase was not authorized.[8] The 1.8% CPI-W rent ceiling increase is denied and vacated, because it was not perfected in accordance with the regulations, as discussed herein. Consequently, the rent increase charged the Tenant was illegal, because it was not based on a valid rent ceiling, and therefore, the rent increase charged the Tenant is denied. In addition, the Housing Provider was not properly registered, when the rent ceiling was increased. See discussion of failure to properly register in issue 6, infra, and Temple v. District of Columbia Rental Hous. Comm'n, 536 A.2d 1024, 1034 (D.C. 1987) (where the court held the Act prohibits implementing automatic increases based on the CPI-W, if a housing accommodation is not properly registered.)[9] The hearing examiner is affirmed on this issue.

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[8] See D.C. OFFICIAL CODE § 42-3502.05(a) (2001), which states in pertinent part:

> Except to the extent provided in subsections (b) and (c) of this section, no housing provider of any rental unit subject to this chapter may charge or collect rent for the rental unit in excess of the amount computed by adding to the base rent not more than all rent increases authorized after April 30, 1985, for the rental unit by the chapter, by prior rent control laws and any administrative decision under those laws, and by a court of competent jurisdiction. (emphasis added.)

[9] Temple is based on the 1980 Act provision at D.C. CODE § 45-1519(a)(1)(B) (1981), which is identical and reenacted in D.C. OFFICIAL CODE § 42-3502.08 (a)(1)(B) (2001). Id. 536 A.2d at 1029, 1031, 1034.

3. **Whether the hearing examiner erred when he disallowed a substantially identical unit rent ceiling adjustment on the ground that the Amended Registration Form for the adjustment was filed in April 1999, more than 30 days after the vacancy.**

Finding of fact eight (8) in the decision states:

> Respondent filed an Amended Registration Form RACD officially dated [sic] stamped on April 6, 1999 adjusting the rent ceiling for apartment 419 to $1,120.00 based upon a substantial [sic] identical vacant unit that occurred on December 12, 1998.

The decision also stated that the hearing examiner disallowed the vacancy rent ceiling increase, because the filing on April 6, 1999 of the Amended Registration Form occurred 114 days after the vacancy. Decision at 8.

The Act states:

> When a tenant vacates a rental unit ...the rent ceiling may, at the election of the housing provider, be adjusted to:
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> ...
>
> (2) The rent ceiling of a substantially identical rental unit in the same housing accommodation, except that no increase under this section shall be permitted unless the housing accommodation has been registered under § 42-3502.05(d).

D.C. OFFICIAL CODE § 42-3502.13 (2001).

The relevant regulations state:

> Each housing provider of a rental unit or units covered by the Act shall file an amendment to the Registration/Claim of Exemption form provided by the Rent Administrator, in the following circumstances:
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> ...
>
> (e) Within thirty days after the implementation of any vacant accommodation rent increase pursuant to §213 of the Act.

14 DCMR § 4103.1(e).

> A vacancy rent ceiling adjustment, authorized by §213(a) of the Act, is an increase in the rent ceiling for a previously registered rental unit which <u>may be taken and perfected</u> by a housing provider for a rental unit which

> became vacant under the conditions set forth in §213(a) of the Act, but subject to the limitations of §4207.3 (related to hardship petitions). (emphasis added.)

14 DCMR § 4207.1.

> A housing provider who so elects shall take and perfect a vacancy rent ceiling adjustment in the manner set forth in §4204.10, (cited above, and requiring the Tenant be served notice within 30-days) and the date of perfection shall be the date on which the housing provider satisfies the notice requirements of §4101.6 (service of notice on the tenant of the Registration/Claim of Exemption Form). (emphasis added.)

14 DCMR § 4207.5.

The Housing Provider had 30 days after implementation of the vacancy rent ceiling increase to file the Amended Registration Form. 14 DCMR § 4103.1(e). The Housing Provider's Exhibit (Exh.) 3 is the Amended Registration Form, which was filed on April 6, 1999, and listed, among others, the change of the rent ceiling for unit 419 on December 12, 1998 from $796 to $1120. This form also has the typed notation, "CORRECTIONS: Missed Filings Due To Computer Errors," followed by a list of 29 rental units whose rent ceilings and rents were increased, including the Tenant's rent ceiling and rent. Thus, Exhibit 3 is substantial evidence in the record that the Housing Provider violated the Act by failure to file the Amended Registration Form within 30 days after implementation of the vacancy increase on December 12, 1998, which is the date on the Amended Registration Form. More than 30 days lapsed between December 12, 1998, and April 6, 1999, when the Housing Provider filed the Amended Registration Form to reflect the increases in rent ceiling and rent charged based on a vacancy.

The hearing examiner was correct in finding of fact numbered eight (8), p. 14 supra, when he found the Amended Registration Form was filed beyond the 30-day period allowed in the regulations by being filed 114 days after the vacancy increase was

implemented on December 12, 1998. Accordingly, this appeal issue is denied, the hearing examiner is affirmed, and the rent ceiling increase is vacated. See Charles E. Smith Management, Inc. v. District of Columbia Rental Hous. Comm'n, 492 A.2d 875 (D.C. 1985) (where the court disallowed a vacancy rent ceiling adjustment for failure to timely file the Amended Registration Form based on a vacancy). See also Temple v. District of Columbia Renta Hous. Comm'n, 536 A.2d 1024 (D.C. 1987) (where the court held the Commission properly set the rent ceilings of all rental units in the housing provider's building at the base rent level, as the remedy for increasing the rent when the building was not properly registered.) See issue six (6), infra, where the Commission made a similar ruling in this appeal.

4. Whether the hearing examiner erred, when he disallowed a 12% vacant unit rent ceiling adjustment, because he relied upon the Amended Registration Form used as the base or starting point for the increase in the rent ceiling, that was the result of the previous rent ceiling adjustments, which the examiner disallowed.

The relevant finding of fact by the hearing examiner on issue 4 is:

9. Respondent [Housing Provider] filed an Amended Registration Form [that] RACD officially dated [sic] stamped on July 2, 1999 adjusting the rent ceiling based upon a 12 % vacant unit rent increase to $$ [sic] 1,254.00.

Decision at 5.

The hearing examiner stated in the decision and order that the evidence in R. Exh. 4 showed that the Housing Provider filed on July 2, 1999 an Amended Registration Form for a vacant unit rent ceiling adjustment increase. The form adjusted the Tenant's rent ceiling by 12% from $1120 to $1254. The hearing examiner held, "[s]ince Respondent [Housing Provider] was ineligible to take the April 6, 1999 rent ceiling adjustment and it was not perfected, the July 2, 1999 rent ceiling adjustment was based upon a previous

unperfected rent ceiling. Thus the 12% vacant unit rent ceiling adjustment was not perfected and the rent ceiling remained at $782.00." Decision at 8.

The Tenant entered into her lease on June 14, 1999. On July 2, 1999, the Housing Provider filed an Amended Registration Form based on a vacancy, which is stated on the form to have occurred on May 1, 1999. Therefore, the thirty (30) days to file the Amended Registration Form expired on June 1, 1999, before the Tenant commenced her tenancy. However, the Housing Provider did not file the Amended Registration Form until July 2, 1999, which was one month later than the regulations allowed. 14 DCMR § 4103.1(e).

Since the Tenant commenced her tenancy in and leased the unit on June 14, 1999, which was two weeks before the Amended Registration Form was filed on July 2, 1999, and two weeks after the period expired on June 1, 1999 to perfect a vacancy rent ceiling increase, there was no valid vacancy stated on the Amended Registration Form. See Guerra v. District of Columbia Rental Hous. Comm'n, 501 A.2d 786 (D.C. 1985); Guerra v. Shannon & Luchs Co.. TP 10,939 (Apr. 2, 1986) at 6.

Since the Housing Provider did not *perfect* the vacancy rent ceiling adjustment by filing the Amended Registration Form (as distinquished from implementing the increase in the rent ceiling by increasing the rent charged the Tenant) before the expiration of the time period in the regulations, the rent ceiling adjustment was not properly perfected before it was implemented as an increase in the rent charged the Tenant. It is settled law that a vacancy must exist before the Housing Provider is eligible to perfect a rent ceiling adjustment based on a vacancy, and that notice of the vacancy rent ceiling adjustment must be filed on an Amended Registration Form in RACD within 30 days of the vacancy.

Smith v. District of Columbia Rental Hous. Comm'n, 492 A.2d 875 (D.C. 1985); 14 DCMR § 4101.1(3) cited above.

In Smith, as in this case, the vacancy rent ceiling adjustment was not perfected with the timely filing of an Amended Registration Form. The Court in Smith rejected the housing provider's attempt to implement a vacancy adjustment after the tenant rented the unit. Accordingly, in this case, the Housing Provider in error assumed that the vacancy adjustment was valid and that the hearing examiner's decision was error, because the hearing examiner relied on the fact that the calculation of the vacancy rent ceiling adjustment was based on a prior erroneous rent ceiling. In fact, the Housing Provider was not entitled to the July 2, 1999, vacancy adjustment, because it did not file to perfect that adjustment prior to the expiration of the 30 days after the vacancy occurred. Id., See 14 DCMR § 4103.1(e). Accordingly, the hearing examiner's conclusion that the Housing Provider was not entitled to implement the vacancy adjustment is affirmed, and the vacancy adjustment based on the July 2, 1999 filing is vacated.

5. **Whether the hearing examiner erred, when he disallowed the 1.0% annual rent ceiling adjustment of general applicability authorized by this Commission in 1999, because the certificate of election used as the base or starting point for the increase of the rent ceiling was the result of previous rent ceiling adjustments, which the examiner had disallowed.**

The hearing examiner wrote in the decision:

> Respondent's Exhibit #5, shows a Certificate of Election of Adjustment of General Applicability filed by Respondent for the purpose of perfecting the 1999, CPI-W, annual automatic rent adjustment was *not perfected* because it to [sic] was implemented on a previous unperfected rent ceiling adjustment. Thus the 1% rent ceiling adjustments [sic] was unperfected and the rent ceiling remained at $782.00. (emphasis added.)

Decision at 8.

On July 2, 1999, the Housing Provider filed a Certificate of Election of Adjustment of General Applicability for 1999. The Certificate stated that the CPI-W rent ceiling increase was 1% and that the Tenant was served on January 1, 2000. The regulations provide that the Certificate be filed within 30 days of the date the housing provider first became eligible for the adjustment. 14 DCMR § 4204.9(c). In this instance, the Housing Provider became first eligible on May 1, 1999. See 46 D.C. Reg. 2263 (Feb. 26, 1999) (where the Commission published the CPI-W rate of 1%, effective May 1, 1999.) The thirty (30) days expired on June 1, 1999. Therefore, the Housing Provider filed the Certificate 31 days too late counting from June 1, 1999 to July 2, 1999, to comply with the 30-day filing requirements after becoming first eligible on May 1, 1999.

Moreover, service on the Tenant did not occur timely under 14 DCMR § 4101.6, which requires notice to the Tenant prior to or simultaneously with the filing of the Certificate. In this case, the Certificate is substantial evidence in the record that the filing occurred on July 2, 1999 and the Tenant was not served until five (5) months later on January 1, 2000, which was not prior to or simultaneously with the filing of the Certificate, as required by 14 DCMR § 4101.6.

Thus the hearing examiner's conclusion, "the 1% rent ceiling adjustments [sic] was unperfected and the rent ceiling remained at $782.00" was the correct conclusion, because it was based on the failure of the Housing Provider to properly perfect and serve the Tenant with proper notice of the 1999 CPI-W adjustment.

The Housing Provider argued that the previous rent ceiling adjustment should not have been disallowed by the hearing examiner. However, the rent ceiling adjustments in

issues two (2), three (3), four (4), and five (5) of this appeal were properly disallowed, because they were not properly and timely perfected. Accordingly, this issue is denied and the hearing examiner is affirmed. The 1999 CPI-W adjustment is vacated.

6. Whether the hearing examiner erred, when he ruled that the housing accommodation was not properly registered, because the housing provider did not prove that an Amended Registration Form had been filed to reflect a change in the management of the housing accommodation.

The Tenant testified that when she checked the registration file for the housing accommodation, it did not contain an Amended Registration Form reflecting Sawyer Management as the manager for the housing accommodation.

The hearing examiner found as a fact:

> 10. The Amended Registration Form offered in evidence by the Respondent showing the Respondent as the property management company was signed by the agent on August 20, 2000 but does not reflect a RACD official stamp date.

Decision at 5.

D.C. OFFICIAL CODE § 42-3502.05(g) (2001) provides:

> An amended registration statement shall be filed by each housing provider whose rental units are subject to registration under this chapter <u>within 30 days of any event which changes or substantially affects the rents including vacant unit rent increases</u> ...or <u>management</u> of any rental unit in a registered housing accommodation. (emphasis added).

D.C. OFFICIAL CODE § 42-3502.08(a)(1)(B) (2001) provides:

> Notwithstanding any provision of this chapter, the rent for any rental unit shall not be increased above the base rent unless:
>
> ...
>
> The housing accommodation is registered in accordance with § 42-3502.05.

The hearing examiner held Sawyer did not file an Amended Registration Form within 30 days of becoming the manager of the housing accommodation. Decision at 12.

That caused the housing accommodation not to be properly registered when all the rent ceiling and rent charged adjustments were implemented in this case.

The Housing Provider argued that the failure to file an Amended Registration Form with RACD stating the change in management was a defect that should not affect the validity of the rent ceilings.

The Commission holds a defect cannot exist in a document that was not filed in RACD. In the instant case, the Housing Provider failed to file an Amended Registration Form, which could not be examined for a defect. Under 14 DCMR § 4104.2, the housing provider can be notified of a defective registration. That was impossible under the facts of this case, because there was no Amended Registration Form filed for RACD to issue a notice with the identity of the defect in the notice.

If the Commission held a housing provider could file a required amended registration at any time, the effect would be to "remove[] any effective enforcement sanction behind the requirements and eviscerate[] the meaning and force of the statutes and regulations." Smith, citing Tenants Council of Tiber Island-Carrollsburg Square v. District of Columbia Rental Accommodations Comm'n, 426 A.2d 868 (D.C. 1981). See also 14 DCMR § 4101.1(c) requiring the filing of an Amended Registration Form reflecting the change in the management of a housing accommodation within 30 days of the change.

The Housing Provider did not file the Amended Registration Form, and therefore, the hearing examiner is affirmed on this issue.

IV. CONCLUSION

The Housing Provider requested that the rent refund and rollback be reversed. The Commission denied issue one (1). The Commission also affirmed the hearing examiner's findings and conclusions not to allow the rent ceiling increases appealed in issues 2, 3, 4, and 5, because they were not properly and timely perfected prior to implementation as increases in the rent charged the Tenant. In the absence of valid rent ceilings, the rent increases charged were not valid. The failure of the Housing Provider to file the Amended Registration Form to reflect the change in management, as stated in issue six (6) caused the increases in the rent charged the Tenant to be invalid. See n.1. Accordingly, the request to reverse the rent refunds and rollbacks is denied.

This case involved whether the Housing Provider was required to comply with 30-day filing requirements before implementing rent ceiling and rent charged increases. In each instance of denial of a rent ceiling increase in this case, except *issue one (1)*, the Housing Provider failed to timely file either a Certificate of Election of General Applicability or failed to timely file an Amended Registration Form. The failure to file timely an Amended Registration Form resulted in the invalidity of the rent ceiling adjustments. See Temple v. District of Columbia Rental Hous. Comm'n, 536 A.2d 1024, 1033-34 (1967) (where the court affirmed the hearing examiner and Commission's disallowance of rent ceiling increases when the housing accommodation was not properly registered). In this case, the Housing Provider was not properly registered when it increased the Tenant's rent ceilings and rents, because there was no Amended

Registration Form to reflect the change in management when each adjustment in the rent ceilings and rents charged occurred. Therefore, those rent ceilings and rents charged increases are denied.

SO ORDERED.

RUTH R. BANKS, CHAIRPERSON

RONALD A. YOUNG, COMMISSIONER

DISSENTING WITHOUT OPINION.

JENNIFER M. LONG, COMMISSIONER.

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Decision and Order in TP 24,991 was served by priority mail with confirmation of delivery on the **29th day of May, 2002** to:

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