DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION

TP 25,093

In re: 6101 16th Street, N.W., Unit 915

Ward Four (4)

THE RITTENHOUSE, LLC
Housing Provider/Appellant

v.

CLARENCE CAMPBELL
Tenant/Appellee

DECISION AND ORDER

December 17, 2002

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 District of Columbia Administrative Procedure Act (DCAPA), D.C. OFFICIAL CODE §§ 2-501-510 (2001) and the District of Columbia Municipal Regulations, 14 DCMR §§ 3800-4399 (1991), also govern the proceedings.

I. PROCEDURAL HISTORY

Clarence Campbell initiated this matter when he filed Tenant Petition (TP) 25,093 with the Rental Accommodations and Conversion Division (RACD) on September 20, 2000. The tenant alleged that the housing provider violated the provisions of the Act when the housing provider did the following: 1) imposed a rent increase that was larger than the amount of increase allowed by any provision of the Act; 2) failed to file the proper rent increase forms with the RACD; 3) charged a rent that exceeded the legally

calculated rent ceiling; 4) filed improper rent ceilings with the RACD; 5) increased the rent when the unit was not in substantial compliance with the housing regulations; 6) increased the rent, while a lease prohibiting rent increases was in effect; and 7) failed to properly register the housing accommodation with the RACD.

Hearing Examiner Thomas Word held the evidentiary hearing on December 5, 2000. The tenant appeared and presented his case without the assistance of counsel.[1] Attorney Eric Von Salzen represented the housing provider and appeared with the housing provider's witness, Sherry Burks. On March 12, 2002, Hearing Examiner Henry McCoy issued the decision and order,[2] which contained the following conclusions of law:

1. The September 1, 2000 rent increase for apartment 915 was larger than the amount of increase allowed by any applicable provision of the Rental Housing Emergency [sic] Act of 1985.

2. The rent being charged does not exceed the legally calculated rent ceiling for Petitioner's unit.

3. The rent ceiling filed with the Rental Accommodations and Conversion Division for Petitioner's unit is proper.

4. Respondent violated D.C. [Official] Code § 42-3502.05(h) [2001] by failing to either post in a public place or to mail to the Petitioner a copy of the registration statement for the housing accommodation.

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[1] When the tenant presented his case in chief, he only offered evidence of his complaint concerning the rent charged. The record reflects that the housing provider's attorney asked the tenant if he had additional evidence, before the tenant rested his case. The tenant responded no. After the housing provider presented its evidence, the tenant attempted to offer evidence on the additional claims raised in the petition. The housing provider objected and argued that the hearing examiner should not allow the tenant to present additional evidence. The hearing examiner agreed, and he did not permit the tenant to present evidence on the remaining claims.

[2] Hearing Examiner Word retired from the agency after he held the evidentiary hearing. Since Hearing Examiner McCoy did not preside at the hearing, he issued a proposed decision and order pursuant to D.C. OFFICIAL CODE § 2-509(d) (2001) and invited the parties to file exceptions. Since neither party filed exceptions, the proposed decision and order became the final decision and order.

Campbell v. The Rittenhouse, LLC, TP 25,093 (OAD Mar. 12, 2002) at 8. The housing provider filed a motion for reconsideration, which Hearing Examiner McCoy denied on April 25, 2002.

The housing provider filed a timely notice of appeal and motion for summary reversal with the Commission on May 10, 2002. The Commission held the appellate hearing on July 3, 2002. The housing provider appeared through its attorney, Eric Von Salzen, and the tenant appeared pro se. On December 11, 2002, the Commission denied the housing provider's motion for summary reversal.

II. ISSUE ON APPEAL

On appeal, the housing provider challenges the hearing examiner's decision to limit the rent increase to the rent ceiling adjustment of general applicability that the housing provider noticed when it increased the tenant's rent. The housing provider argues that the hearing examiner's decision to disallow a portion of the rent increase and limit the increase to the noticed annual adjustment of general applicability was contrary to D.C. OFFICIAL CODE § 42-3502.08(h) (2001) and Lincoln Property Mgmt. v. Chibambo, TP 24,861 (RHC Nov. 29, 2000).

III. DISCUSSION OF THE ISSUE

Whether the hearing examiner erred when he disallowed, in part, the rent increase that the housing provider implemented on September 1, 2000.

On July 26, 2000, the housing provider executed a Tenant Notice of Increase of General Applicability, which reflected the housing provider's intent to increase the rent and rent ceiling for the tenant's unit on September 1, 2000. The notice reflected a 1%

increase in the rent ceiling based upon the annual adjustment of general applicability,[3] which increased the tenant's rent ceiling from $1239.00 to $1251.00. The notice also reflected an increase in the rent from $820.00 to $915.00. The tenant challenged the propriety of the rent and rent ceiling adjustments that the housing provider implemented on September 1, 2000.

Following the evidentiary hearing, the hearing examiner determined that the rent charged the tenant was improper, because it exceeded the 1% increase in the rent ceiling. The hearing examiner held that the increase in the rent charged was limited to 1%, because the rent ceiling adjustment of general applicability was 1%.[4] Consequently, the hearing examiner held that the housing provider could only increase the tenant's rent, which was $820.00, by 1% or $8.00. The hearing examiner rolled the tenant's rent back from $915.00 to $828.00 to reflect a 1% or $8.00 increase. The hearing examiner

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[3] 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 previous calendar year. No adjustment of general applicability shall exceed 10%. A housing provider may not implement an adjustment of general applicability, or an adjustment permitted by subsection (c) [hardship petition] of this section for a rental 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.

[4] The Tenant Notice of Increase of General Applicability, which the housing provider issued on July 26, 2000, indicates that the CPI-W (annual adjustment of general applicability) was 1% for calendar year 1998. The Certificate of Election of Adjustment of General Applicability, R. Exh. 2, reflects that the CPI-W was 1% in 1999. The Commission consulted the D.C. Register and takes official notice of the fact that the CPI-W was 1% for calendar year 1999. 46 D.C. Reg. 2263 (Feb. 26, 1999). The Commission takes this action pursuant to the District of Columbia Administrative Procedure Act (DCAPA), D.C. OFFICIAL CODE § 2-509(b) (2001), which provides that where the decision of an agency in a contested case rests upon official notice of a material fact not appearing in the evidence in the record, any party to such a case, upon timely request, shall be afforded an opportunity to show the contrary. In accordance with § 2-509(b), the parties have fifteen (15) days from the date of this decision to show facts contrary to those found in the D.C. Register. See Carey v. District Unemployment Compensation Bd., 304 A.2d 18, 20 (D.C. 1973).

ordered the housing provider to refund the tenant $87.00 per month for the nineteen month period that the housing provider demanded $915.00, instead of $828.00.

On appeal, the housing provider argues that the hearing examiner's decision is contrary to the Unitary Rent Ceiling Adjustment Act, which is codified at D.C. OFFICIAL CODE § 42-3502.08(h) (2001).[5] The housing provider argues that the Act compels the Commission to reverse the hearing examiner, because the Act does not provide that a housing provider may only increase the rent by the percent of the adjustment of general applicability. The housing provider maintains that § 42-3502.08(h) allows the housing provider to increase the rent based upon a previously unimplemented rent ceiling adjustment. In support of its position, the housing provider cites Lincoln Property Mgmt. v. Chibambo, TP 24,861 (RHC Nov. 29, 2000). The housing provider argues that Lincoln is controlling, because the Commission reversed the hearing examiner's decision to disallow a rent increase that exceeded the rent ceiling adjustment of general applicability, which the housing provider noticed when it increased the tenant's rent in Lincoln. While the housing provider's position, as stated, may appear to enjoy the support of the law, the housing provider fails to mention those salient facts that distinguish the instant case from Lincoln.

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

> (1) One year from March 16, 1993, unless otherwise ordered by the Rent Administrator, each adjustment in rent charged permitted by this section may implement no more than 1 authorized and previously unimplemented rent ceiling adjustment. If the difference between the rent ceiling and the rent charged for the rental unit consists of all or a portion of 1 previously unimplemented rent ceiling adjustment, the housing provider may elect to implement all or a portion of the difference.
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> (2) Nothing in this subchapter 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.

In Cafritz v. District of Columbia Rental Hous. Comm'n, 615 A.2d 222, 228 (D.C. 1992), the Court admonished parties to be mindful of the fact that "opinions must be read in the context of the facts ... of the order under discussion. To keep opinions within reasonable bounds precludes writing into them every limitation or variation which might be suggested by the circumstances of cases not before the Court. General expressions transposed to other facts are often misleading." The housing provider's effort to bring the case at bar within the Commission's holding in Lincoln is an example of the danger of transposing the holding in one case, to another case, which has a different factual and legal basis. In the instant case, unlike Lincoln, there is no record evidence that the housing provider utilized a previously perfected, but unimplemented rent ceiling adjustment to increase the tenant's rent in the amount of $95.00.

In Lincoln Property Mgmt. v. Chibambo, TP 24,861 (RHC Nov. 29, 2000), rev'd in part on other grounds Sawyer Property Mgmt. v. Mitchell, TP 24,991 (RHC Oct. 31, 2002), the tenant received a Notice of Increase of General Applicability, which reflected a 1.8% rent ceiling adjustment and a 22% increase in the rent charged. The tenant alleged that the rent increase violated the provisions of the Act, because it exceeded the amount of any authorized adjustment. In response to the tenant's claim, the housing provider, in Lincoln, presented oral and documentary evidence to show that it increased the rent in accordance with D.C. OFFICIAL CODE § 42-3502.08(h) (2001). The housing provider testified that it utilized a previously perfected, but unimplemented rent ceiling adjustment to increase the tenant's rent. The housing provider introduced documentary evidence, which showed the percent and dollar amount of the rent ceiling adjustment, the date, and the manner that it perfected the rent ceiling adjustment. In addition, the housing

provider submitted the rent history for the tenant's unit to illustrate that it had not previously implemented the rent ceiling adjustment. In Lincoln, the housing provider made it abundantly clear that it did not intend to utilize the noticed annual adjustment of general applicability to increase the tenant's rent. In accordance with § 42-3502.08(h)(2), the housing provider, in Lincoln, preserved the adjustment of general applicability for a later date.

When the hearing examiner issued the decision in Lincoln, he quoted and referenced § 42-3502.08(h). However, in the face of the law and the housing provider's evidence, the hearing examiner held that the housing provider could only increase the tenant's rent by the amount of the noticed adjustment of general applicability. The Commission reversed the hearing examiner in Lincoln, because the decision was not in accordance with § 42-3502.08(h). The Commission recounted the substantial record evidence, which demonstrated that the housing provider properly increased the tenant's rent in accordance with § 42-3502.08(h). The Commission held that the hearing examiner erred when he ruled that the housing provider could only use the noticed adjustment of general applicability to increase the tenant's rent, because the substantial record evidence revealed that the housing provider utilized a previously perfected but unimplemented rent ceiling adjustment to increase the tenant's rent.

In the instant case, the housing provider argues that the hearing examiner's decision was contrary to § 42-3502.08(h) and Lincoln. However, the housing provider did not introduce evidence to show that it used a previously perfected, but unimplemented rent ceiling adjustment to increase the tenant's rent by $95.00 in

accordance with D.C. OFFICIAL CODE § 42-3502.08(h) (2001) and 14 DCMR § 4205 (1998).

When the tenant presented his case, he introduced the Tenant Notice of Increase of General Applicability, which reflected a $12.00 increase in the rent ceiling and a $95.00 rent increase. The tenant also introduced registration documents, which the tenant claimed were the only documents on file with the RACD. The tenant testified that the agency records showed that the rent ceiling for his unit was $738.00, and he stated that there were no documents on file with the agency, which reflected an increase in the rent ceiling from $738.00 to $1239.00. See Tenant's Exhibits 1-4.

In response to the tenant's testimony, the housing provider introduced the Tenant Notice of Rent Increase of General Applicability for 1999, the Certificates of Election of Adjustment of General Applicability for 1999 and 2000, and the tenant's lease. See Respondent's Exhibits (R. Exhs. 1-4). The housing provider's witness, Sherry Burks, testified that R. Exhs. 1-2, the notice of increase and certificate of election for 1999, reflected that the housing provider increased the tenant's rent ceiling from $1239.00 to $1251.00, and increased the tenant's rent from $820.00 to $915.00. In addition, Ms. Burks testified that R. Exh. 3, the certificate of election for 2000, reflected an increase in the rent ceiling from $1251.00 to $1277.00. Thereafter, the housing provider introduced the tenant's lease to demonstrate that the housing provider did not increase the tenant's rent, which was $820.00, during the first twelve months of his tenancy. After the housing provider's witness testified, the housing provider's attorney stated, "We have demonstrated that the rent that Mr. Campbell is being charged is less than the registered rent ceiling." OAD Hearing Tape (Dec. 5, 2000).

In the notice of appeal, the housing provider argued that it could increase the tenant's rent by the full amount of the difference between the rent ceiling and the rent charged. Since the rent was $820.00 and the rent ceiling was $1239.00, the housing provider maintains that the $419.00 difference between the rent and the rent ceiling "set the maximum limit on the rent increase that the housing provider could implement." Notice of Appeal at 4.[6] In support of its argument, the housing provider quoted a selected portion of Lincoln. The housing provider, however, deleted the salient facts that the Commission relied upon when it decided Lincoln. The housing provider's notice of appeal contained the following altered quotation from Lincoln.

> Immediately preceding the October 1, 1999 adjustment, the rent ceiling for the tenant's unit was $1276.00 and the rent charged was $559.00. [Record cite omitted] * * * * In accordance with D.C. CODE § 45-2518(h)(1) [now § 42-3502.08 (h) (1) (2001 ed.)] and 14 DCMR 4205.8, the housing provider elected to implement a portion of the $717.00 difference between the rent ceiling and rent charged, when it increased the tenant's rent by $126.00 on October 1, 1999.

Notice of Appeal at 4 (alterations in original). In Lincoln, the Commission actually stated the following:

> Immediately preceding the October 1, 1999 adjustment, the rent ceiling for the tenant's unit was $1276.00 and the rent charged was $559.00. See Rent History, R. Exh. 4. This $717.00 difference between the rent ceiling and the rent charged consisted of a portion of the previously unimplemented vacancy rent ceiling adjustment. In accordance with D.C. CODE § 45-2518(h)(1)[7] and 14 DCMR 4205.8, the housing provider elected to implement a portion of the $717.00 difference between the rent ceiling and rent charged, when it increased the tenant's rent by $126.00 on October 1, 1999.

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[6] During the Commission's hearing, the housing provider's attorney argued that the Act permitted the housing provider to increase the rent up to the amount of the rent ceiling without any limitation on the amount of the increase. The Act sets the terms and conditions for every rent increase. 14 DCMR § 4200.6 (1991). The regulation, 14 DCMR § 4205.7 (1998), sets the terms and conditions for rent increases taken pursuant to the Unitary Rent Ceiling Adjustment Act by providing that the rent increase cannot exceed the amount of one rent ceiling adjustment that was perfected, but unimplemented.

[7] Currently D.C. OFFICIAL CODE § 42-3502.08(h) (2001).

Lincoln at 11 (emphasis added). The housing provider omitted the sentence that the Commission underlined in the complete quotation from its decision in Lincoln. In Lincoln, the housing provider demonstrated that it utilized a portion of a previously perfected, but unimplemented vacancy adjustment to increase the tenant's rent. "The vacancy adjustment enabled the housing provider to increase the tenant's rent ceiling by 149%, which resulted in a $728.00 adjustment in the rent ceiling." Id. at 10. Since the housing provider in Lincoln proved that it utilized a portion of a perfected but unimplemented rent ceiling adjustment of $728.00 to increase the tenant's rent by $126.00, the Commission held that the housing provider implemented the rent adjustment in accordance with D.C. OFFICIAL CODE § 42-3502.08(h) (2001) and 14 DCMR § 4205.8 (1998).[8]

In the case at bar, the housing provider's exhibits established that the housing provider increased the tenant's rent ceiling by $12.00 in 1999 and by $26.00 in 2000. The housing provider did not identify a previously perfected but unimplemented rent ceiling adjustment that the housing provider utilized to increase the tenant's rent by $95.00 on September 1, 2000. See 14 DCMR § 4205.7 (1998) (providing that each adjustment in rent charged may not exceed the amount of one perfected, but unimplemented rent ceiling adjustment). The tenant presented oral and documentary evidence to demonstrate that the agency's records did not contain any rent ceiling filings that would permit the housing provider to increase the tenant's rent by $95.00. In order to overcome the tenant's proof, the housing provider had to introduce evidence of a

[8] "If the difference between the rent ceiling and the rent charged for a rental unit consists of all or a portion of one (1) previously unimplemented rent ceiling adjustment, the housing provider may elect to implement all or a portion of the difference." 14 DCMR § 4205.8 (1998).

previously perfected, but unimplemented rent ceiling adjustment that authorized the housing provider to increase the rent ceiling by at least $95.00.

In the notice of appeal, the housing provider quoted § 42-3502.08(h)(2), which "provides that a housing provider may 'delay the implementation of any rent ceiling adjustment, or ... implement[ ] less than the full amount of any rent ceiling adjustment, and the rent ceiling adjustment or portion thereof, that remains unimplemented shall not expire and shall not be deemed forfeited or otherwise diminished.'" Notice of Appeal at 3. The housing provider maintains that the difference between the rent ceiling and rent charged consisted of "all or a portion of 1 previously unimplemented rent ceiling adjustment." Id. The housing provider's attorney argues, on appeal, that it elected to implement all or a portion of the difference between the rent ceiling and the rent, when it increased the tenant's rent by $95.00. However, the housing provider did not introduce evidence of a previously perfected but unimplemented rent ceiling adjustment, which enabled the housing provider to increase the tenant's rent by $95.00.

The housing provider argues that it was not compelled to introduce evidence of a previously perfected and unimplemented rent ceiling adjustment, because the tenant did not claim that the rent increase violated the Unitary Rent Ceiling Adjustment Act, D.C. OFFICIAL CODE § 42-3502.08(h) (2001). The housing provider states that the DCAPA places the burden upon the tenant to prove a violation of the Act, and the housing provider is not compelled to demonstrate compliance with every provision of the Act. On appeal, the housing provider maintains that it increased the tenant's rent in accordance with the Unitary Rent Ceiling Adjustment Act, but argues that it had no

obligation to identify the previously unimplemented rent ceiling adjustment that it utilized to increase the tenant's rent.

The Unitary Rent Ceiling Adjustment Act, D.C. OFFICIAL CODE § 42-3502.08(h) (2001), permits housing providers to delay the implementation of rent ceiling adjustments. However, § 42-3502.08(h) does not nullify the provisions of the Act and regulations that govern rent and rent ceiling adjustment by setting the terms and conditions for every rent and rent ceiling adjustment. 14 DCMR §§ 4200.4 & 4200.6 (1991). The housing provider cannot simply argue on appeal that it increased the tenant's rent pursuant to the Unitary Rent Ceiling Adjustment Act, when it failed to present evidence that it increased the rent in accordance with the terms of the act and regulations, during the evidentiary hearing.

The housing provider has asked the Commission to reverse the hearing examiner's decision, because it was contrary to the Unitary Rent Ceiling Adjustment Act. However, the housing provider did not introduce any evidence on which the Commission could base such a holding. The Act empowers the Commission to reverse a decision that was not supported by the substantial record evidence or was not issued in accordance with the law. The regulation, which governs rent increases taken pursuant to the Unitary Rent Ceiling Adjustment Act, provides that "each adjustment in rent charged may not exceed the amount of one (1) rent ceiling increase perfected but not implemented by the housing provider." 14 DCMR § 4205.7 (1998); see also D.C. OFFICIAL CODE § 42-3502.08(h)(1) (2001). The Commission cannot reverse the hearing examiner and hold that the housing provider increased the rent in accordance with § 42-3502.08(h), because there is no record evidence to support that holding. In the absence of evidence, the

Commission cannot hold that the housing provider utilized a previously perfected, but unimplemented rent ceiling adjustment to increase the tenant's rent. Moreover, the Commission cannot determine whether the rent adjustment exceeded the amount of one rent ceiling adjustment that the housing provider previously perfected, but elected not to implement, because the housing provider did not identify the rent ceiling adjustment it used to increase the tenant's rent.

In the absence of evidence that the housing provider utilized a previously perfected but unimplemented rent ceiling adjustment to increase the tenant's rent from $820.00 to $915.00, the hearing examiner evaluated the September 1, 2000 rent increase as one that the housing provider implemented contemporaneously with the annual adjustment of general applicability. "The Act regulates the rent for each rental unit under the Rent Stabilization Program by requiring that the rent shall always be less than or equal to the rent ceiling, and by setting terms and conditions for every increase or decrease in rent for a rental unit covered by the Act." 14 DCMR § 4200.6 (1991) (emphasis added).[9] The regulations permit the housing provider to increase the rent to an amount that is equal to or less than the rent ceiling adjustment of general applicability. 14 DCMR § 4206.5 (1991).

The hearing examiner found that the housing provider could only increase the rent by the rent ceiling adjustment of general applicability that was noticed on the September 1, 2000 Tenant Notice of Adjustment of General Applicability. The hearing examiner's decision to restrict the rent increase to the rent ceiling adjustment of general applicability was supported by substantial evidence. Since the housing provider did not present evidence of a previously perfected but unimplemented rent ceiling adjustment that

[9] See supra note 6.

permitted the housing provider to increase the tenant's rent by $95.00, the hearing examiner properly considered the rent increase as one that the housing provider implemented by utilizing the contemporaneous rent ceiling adjustment of general applicability.

For the foregoing reasons, the hearing examiner did not err when he disallowed a portion of the rent increase that the housing provider implemented on September 1, 2000. Accordingly, the Commission denies the issue raised by the housing provider on appeal.

IV. DISCUSSION OF PLAIN ERROR[10]

A. Whether the hearing examiner committed plain error when he held that the housing provider could only increase the rent by 1%.

The hearing examiner committed plain error, when he held that the housing provider could only increase the tenant's rent by 1%, which was the percent of the rent ceiling adjustment of general applicability. While the Act and regulations set the annual rent ceiling adjustment of general applicability as a "percent," the rent increase is prescribed as an "amount." See D.C. OFFICIAL CODE § 42-3502.06(b) (2001); 14 DCMR §§ 4206.2, 4206.5 (1991).

The Act permits housing providers to increase the rent ceiling by the annual adjustment of general applicability, which was 1% in 1999. The 1% rent ceiling adjustment of general applicability increased the rent ceiling from $1239.00 to $1251.00. This resulted in a rent ceiling adjustment of $12.00, which permitted the housing provider to increase the tenant's rent by the amount of $12.00. The hearing examiner limited the housing provider to a 1% increase in the rent charged. The hearing examiner held that

[10] "Review by the Commission shall be limited to the issues raised in the notice of appeal; Provided, that the Commission may correct plain error." 14 DCMR § 3807.4 (1991). See also Proctor v. District of Columbia Rental Hous. Comm'n, 484 A.2d 542 (D.C. 1984) (holding that the Commission's rules permit it to consider issues that are not raised in the appeal, when the issues reveal plain error).

the housing provider could only increase the tenant's rent, which was $820.00, by 1% or $8.00. The hearing examiner committed plain error when he held that the housing provider was restricted to a 1% increase in the rent. Pursuant to 14 DCMR § 3807.4 (1991), the Commission corrects the hearing examiner's plain error of limiting the rent increase to 1%.

The 1% rent ceiling adjustment of general applicability permitted the housing provider to increase the tenant's rent ceiling by $12.00. The regulation, 14 DCMR § 4206.5 (1991) permitted the housing provider to increase the tenant's rent to an amount equal to or less than the $12.00 rent ceiling adjustment. Accordingly, the housing provider could only increase the tenant's rent from $820.00 to $832.00. Since the housing provider increased the tenant's rent to $915.00, the tenant is entitled to a rent refund of $83.00 per month.

The hearing examiner determined that the period for the overcharge was nineteen months. Accordingly, the housing provider shall refund $1,577.00 to the tenant. The Commission arrived at this figure by subtracting the maximum monthly amount that the housing provider could have charged the tenant, $832.00, from the monthly rent that the housing provider demanded from the tenant, $915.00. The Commission multiplied the monthly rent that the housing provider demanded by the period of the overcharge. The calculations are reflected in the following equations: ($915.00 - $832.00) = $83.00; $83.00 x 19 months = $1577.00.

B. <u>Whether the hearing examiner calculated interest in accordance with 14 DCMR § 3826 (1998).</u>

The hearing examiner also committed plain error in the interest calculation. The hearing examiner failed to apply the most recent regulations that govern interest. Interest

is calculated by multiplying the number of months the housing provider held the rent overcharge by the judgment interest rate used by the Superior Court of the District of Columbia on the date that the hearing examiner issued the decision and order. 14 DCMR § 3826.3 (1998). Instead of applying § 3826.3, the hearing examiner relied upon a repealed regulation, § 4217.3, and applied the various interest rates that were in effect on the dates of the overcharges. This was plain error.

The judgment interest rate used by the Superior Court on March 12, 2002 was 5%. The Commission corrects the hearing examiner's plain error and recalculates the interest for the rent overcharges from September 1, 2000 through March 12, 2002, which is the period set by the hearing examiner. The Commission imposes interest in the amount of $63.06 for the rent overcharges from September 1, 2000 through March 12, 2002. The interest calculation for this period appears in the following chart.

Interest Chart
September 1, 2000 through March 12, 2002

A	B	C	D	E
Amount of Overcharge	Months Held by Housing Provider	Monthly Interest Rate[11]	Interest Factor (BxC)	Interest Due (AxD)
$83.00	19	.004%	.076	$ 6.31
$83.00	18	.004%	.072	$ 5.98
$83.00	17	.004%	.068	$ 5.64
$83.00	16	.004%	.064	$ 5.31
$83.00	15	.004%	.060	$ 4.98
$83.00	14	.004%	.056	$ 4.65
$83.00	13	.004%	.052	$ 4.32
$83.00	12	.004%	.048	$ 3.98
$83.00	11	.004%	.044	$ 3.65
$83.00	10	.004%	.040	$ 3.32
$83.00	9	.004%	.036	$ 2.99

[11] The Commission converted the annual interest rate of 5% to a monthly rate of .004% (.05 / 12 = .004) in order to calculate the interest for each month the housing provider overcharged the tenant.

$83.00	8	.004%	.032	$ 2.66
$83.00	7	.004%	.028	$ 2.32
$83.00	6	.004%	.024	$ 1.99
$83.00	5	.004%	.020	$ 1.66
$83.00	4	.004%	.016	$ 1.32
$83.00	3	.004%	.012	$ .99
$83.00	2	.004%	.008	$ .66
$83.00	1	.004%	.004	$ .33
			Total Interest:	$63.06

In order to award interest for the entire period of the litigation, the Commission calculated interest from the date of the hearing examiner's decision to the date that the Commission issued its decision and order. See 14 DCMR § 3826.2 (1998). The Commission utilized the judgment interest rate used by the Superior Court on the date of the Commission's decision. 14 DCMR § 3826.3 (1998). The rate on December 17, 2002 was 4%. The Commission calculated simple interest on the refund using the formula, Interest = Principal x Rate x Time. The interest for the period, March 13, 2002 through December 17, 2002 is $42.58. The Commission arrived at this figure using the following equation: $1577.00 (principal) x .003 (rate)[12] x 9 months and 4 days (time) = $42.58.

Accordingly, the housing provider shall refund $1682.64 to the tenant for the rent overcharge. This figure represents the rent refund of $1577.00, plus interest from September 1, 2000 through March 12, 2002 in the amount of $63.06, and interest in the amount of $42.58 from the March 13, 2002 through December 17, 2002.

[12] The Commission converted the yearly interest rate into a monthly rate using the following equation: .04 / 12 = .003.

V. CONCLUSION

For the foregoing reasons, the Commission affirms the hearing examiner's decision to disallow the portion of the September 1, 2000 rent increase, which exceeded the amount of the adjustment of general applicability.

The Commission corrected the hearing examiner's plain error of restricting the rent increase to the percent of the annual adjustment of general applicability, as opposed to the dollar amount of the rent ceiling adjustment. Accordingly, the Commission reverses the hearing examiner's decision to restrict the rent increase to 1%, and orders that the rent increase was limited to $12.00, which was the dollar amount of the rent ceiling adjustment of general applicability.

Further, the Commission corrected the hearing examiner's plain error of using fluctuating interest rates to calculate interest. The Commission calculated interest utilizing the judgment interest rate that was in effect on date that the hearing examiner issued the decision. Finally, the Commission imposed interest through the date of its decision.

Accordingly, the housing provider shall refund $1682.64 to the tenant for the rent overcharge.

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 TP 25,093 was sent by priority mail with delivery confirmation, postage prepaid, this 17th day of December 2002 to:

Clarence Campbell
6106 16th Street, N.W.
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LaTonya Miles
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