

**DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION**

TP 27,199

In re: 1800 19<sup>th</sup> Street, N.W., Units 5 & 6

Ward Two (2)

CAMILLE BLAKE  
ELIZABETH BACH  
Tenants/Appellants

v.

PIED-A-TERRE/TURNKEY, LLC  
Housing Provider/Appellee

**DECISION AND ORDER**

**June 25, 2004**

**PER CURIAM.** This case is on appeal to the Rental Housing Commission (Commission) from a decision and order issued by the Rent Administrator. 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 July 10, 2001, Camille Blake and Elizabeth Bach, Tenants, filed Tenant Petition (TP) 27,199. The petition alleged: 1) a rent increase larger than allowed by the Act; 2) proper thirty (30) day notice was not provided before the rent increase became effective; and 3) the Housing Provider violated unspecified provisions of the Act. The Rent Administrator scheduled and held a hearing on the petition on December 6, 2001.

Hearing Examiner Gerald J. Roper, on August 8, 2002, issued a decision and order which contained the following findings of fact:

1. Petitioner Camille Blake has been a tenant in the subject rental unit since 1998.
2. Petitioner Elizabeth Bach has been a tenant in the subject rental unit since 1993.
3. Respondent has been the owner of the housing accommodation since February 2000.
4. Petitioner Camille Blake received on July 1, 2001, a notice of rent increase from Respondent, increasing her monthly rent effective August 1, 2001, from \$800 to \$1,250.
5. There was no evidence from Petitioner Elizabeth Bach showing that she had not timely received a proper 30 day notice of rent increase from Respondent, increasing her monthly rent effective August 1, 2001 from \$800 to \$1,250.
6. The \$450 rent increase issued to Camille Blake is based upon a previously unimplemented rent [ceiling] adjustment.
7. The \$450 rent increase issued to Elizabeth Bach is based upon a previously unimplemented rent [ceiling] adjustment.
8. The rent ceiling for Camille Blake's rental unit (Unit #5) is \$4,706.00.
9. The rent ceiling for Elizabeth Bach's rental unit (Unit #6) is \$2,725.00.
10. There was no evidence of substantial reduction of related services as to Camille Blake's unit (Unit #5), by Respondent.
11. There was no evidence of a substantial reduction of services as to Elizabeth Bach's unit (Unit #6) by Respondent.

Blake v. Pied-A-Terre/Turnkey, LLC, TP 27,199 (OAD Aug. 8, 2002) at 9.

The decision and order contained the following conclusions of law:

1. Petitioners have failed to establish that Respondent has violated D.C. OFFICIAL CODE §§ 45-2518(h)(1)-(2)<sup>1</sup>, 14 DCMR § 4205.4, and §

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<sup>1</sup> Currently, D.C. OFFICIAL CODE § 42-3502.08(h)(1)-(2) (2001).

4205.7 by charging a rent increase for her rental unit effective August 1, 2001, that was larger than the amount of increase allowed by the Act.

2. Petitioners have failed to establish a substantial reduction in related service to her [sic] unit by Respondent in violation of D.C. OFFICIAL CODE [§] 45-2521.<sup>2</sup>
3. Respondent provided Petitioner[s] Elizabeth Bach and Camille Blake a proper thirty (30) day notice of rent increase before the August 1, 2001 rent increase became effective, in compliance with D.C. OFFICIAL CODE ANN. Section 45-2544 [sic] (1990 repl. vol.).

Id. at 10. Hearing Examiner Roper dismissed the petition with prejudice in the decision and order dated August 8, 2002.

## II. THE ISSUES

On August 19, 2002, the tenants filed a timely notice of appeal with the Commission from the Rent Administrator's decision and order. The following issues are raised in the tenants' notice of appeal:

- A. The decision and order is not supported by the Rent Control File or the Consumer Price Index.
- B. The decision and order is not supported by law in its discussion of service of the [notice of] rent increase.

Notice of Appeal at 1 and 4.

The Commission held its hearing on the notice of appeal on April 9, 2003.

## III. COMMISSION'S DECISION ON THE ISSUES

- A. **[Whether] [t]he decision and order is supported by the Rent Control File or the [increase in the] Consumer Price Index.**

The Unitary Rent Ceiling Adjustment Amendment Act of 1992 (Rent Ceiling Act) provides that a housing provider "may implement not more than 1 authorized and

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<sup>2</sup> Currently, D.C. OFFICIAL CODE § 42-3502.11 (2001).

previously unimplemented rent ceiling adjustment.” D.C. OFFICIAL CODE § 42-3502.08(h)(1) (2001). In addition, the Rent Ceiling Act stipulates “any notice of an adjustment ... shall contain a statement of the current rent, the increased rent, and the utilities covered by the rent which justify the adjustment or other justification for the rent increase.” D.C. OFFICIAL CODE § 42-3502.08(f) (2001) (emphasis added).

The housing provider stated in testimony at the OAD hearing that they were relying upon two previously unimplemented rent ceiling adjustments for two different tenants who occupied different units. In accordance with 14 DCMR § 4205.4(a), D.C. Reg., Vol. 45, No. 6 at 688 (Feb. 6, 1998)<sup>3</sup>, the housing provider supplied the following information in the notice of rent increase to the tenant in Unit 5:

YOUR CURRENT RENT CEILING IS:	\$4,659.00
YOUR CURRENT RENT CHARGE IS:	\$800.00
YOUR NEW RENT CEILING IS:	\$4,706.00
YOUR NEW RENT CHARGE IS:	\$1,250.00
EFFECTIVE DATE:	August 1, 2001

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<sup>3</sup> The regulation, 14 DCMR § 4205.4(a), D.C. Reg., Vol. 45, No. 6 at 688 (Feb. 6, 1998) provides:

A housing provider shall implement a rent ceiling adjustment by taking the following actions, and no rent adjustment shall be deemed properly implemented unless the following actions have been taken:

- (a) The housing provider shall provide the tenant of the rental unit, not less than thirty (30) days written notice pursuant to §904 of the Act, the following:
  - (1) The amount of the rent adjustment;
  - (2) The amount of adjusted rent;
  - (3) The date upon which the adjusted rent shall be due; and
  - (4) The date and authorization for the most recent rent ceiling adjustment taken and perfected pursuant to §4204.9 [sic];

The reference to 14 DCMR § 4204.9 is in error. The error occurred when the Commission amended 14 DCMR § 4205, D.C. Reg., Vol. 45, No. 6 at 688 (Feb. 6, 1998). On November 22, 2000, the Commission submitted a correction to this error to the District of Columbia Office of Documents and Administrative Issuances. Lincoln Prop. Mgmt. v. Chibambo, TP 24,861 (RHC Nov. 29, 2000) at 16.

Petitioner's Exhibit (Pet. Exh.) 8. The following information was supplied to the tenant in Unit 6 in the notice of rent increase:

YOUR CURRENT RENT CEILING IS:	\$2,698.00
YOUR CURRENT RENT CHARGE IS:	\$800.00
YOUR NEW RENT CEILING IS:	\$2,725.00
YOUR NEW RENT CHARGE IS:	\$1,250.00
EFFECTIVE DATE:	August 1, 2001

Pet. Exh. 10.

The tenants contend that the notices of rent increase are improper because the rent ceiling adjustments identified in the notices do not provide for \$450.00 rent charged increases in both units. In opposition, the housing provider and the hearing examiner appear to rely upon the Commission's holding that the regulations "do not require the housing provider to identify the unimplemented rent ceiling adjustment that is being implemented in the new rent charged." Lincoln Prop. Mgmt. v. Chibambo, TP 24,861 (RHC Nov. 29, 2000) at 15. However, the Commission reversed this ruling in Sawyer Prop. Mgmt. v. Mitchell, TP 24,991 (RHC Oct. 31, 2002) at 12 (holding that "housing providers must identify to tenants, the date and authorization for the rent ceiling adjustment taken and perfected pursuant to [14 DCMR] § 4205.9").<sup>4</sup> See also D.C. OFFICIAL CODE § 42-3502.08(f) (2001) (requiring the housing provider to identify the justification for the rent increase).

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<sup>4</sup> The Court held "an administrative agency must apply the law in effect at the time of its decision in order to avoid sanctioning illegal conduct." Scholtz P'ship v. District of Columbia Rental Accommodations Comm'n, 427 A.2d 905, 914 (1981).

The evidence demonstrates that the housing provider sought to increase the rent based upon perfected but previously unimplemented vacancy adjustments for the units in question. However, the notices of rent increase served upon the tenants did not include information about the specific previously unimplemented adjustments being implemented. See Pet. Exh. 8 and 10. “The purpose of notice is not to ‘authorize’ a rent ceiling adjustment. Instead notice to the [t]enant of the identity of the previously perfected new rent ceiling and new rent being charged or implemented is the purpose.” Sawyer Prop. Mgmt. at 12 (emphasis in original); see also D.C. OFFICIAL CODE § 42-3502.08(f) (2001) (requiring the notice to contain “other justification for the rent increase”).

The evidence demonstrates that the housing provider failed to include the information required by D.C. OFFICIAL CODE § 42-3502.08(f) and 14 DCMR § 4205.4 in the notices of rent increase provided the tenants in this case. Nonetheless, the hearing examiner concluded, as a matter of law, that “[p]etitioners have failed to establish that Respondent has violated ... 14 DCMR [§] 4205.4.” Blake, OAD at 10. The substantial evidence in the record does not support such a conclusion. Accordingly, the hearing examiner is reversed as to conclusion of law one (1).

The housing providers submitted an Amended Registration Form that was properly filed with the Rental Accommodations and Conversion Division on May 20, 1992. The form contains the following relevant information:

Unit No.	Current Rent Ceiling	Date of Change	Previous Rent Ceiling	Percentage of Increase	Authorizing Section of RHA	Comp. Unit
2	2321	6/92	2072	12%	213(a)(1)	-
5	2321	6/92	2072	12%	213(a)(2)	2
6	2321	6/92	1652	40%	213(a)(2)	2

Respondent's Exhibit (Resp. Exh.) 1. Section 213 is codified as D.C. OFFICIAL CODE § 42-3502.13(a)(1)-(2) (2001), which provides:

(a) When a tenant vacates a rental unit on the tenant's own initiative or as a result of a notice to vacate for nonpayment of rent, violation of an obligation of the tenant's tenancy, or use of the rental unit for illegal purpose or purposes as determined by a court of competent jurisdiction, the rent ceiling may, at the election of the housing provider, be adjusted to either:

- (1) The rent ceiling which would otherwise be applicable to a rental unit under this chapter plus 12% of the ceiling once per 12-month period; or
- (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).

Pursuant to § 42-3502.13(a)(1)-(2) of the Act, the 1992 vacancy adjustment was sufficient to cover the rent increase for only Unit 6. The difference between the previous rent ceiling (\$1652) and the new rent ceiling (\$2321) is \$669.00. See Resp. Exh. 1. This amount more than covers the \$450.00 rent increase for Unit 6. However, neither the 1992 vacancy adjustment nor the 1999 Consumer Price Index for All Urban Wage Earners (CPI-W) rent ceiling adjustment is sufficient to cover the rent increase for Unit 5.<sup>5</sup> Pet. Exh. 6. The difference between the 1992 previous rent ceiling (\$2072) and the 1992 vacancy adjustment to the rent ceiling (\$2321) is only \$249.00 for Unit 5. See

<sup>5</sup> The CPI-W for 1999 was 1.0%. The information reflected in the Certificate of Election of Adjustment of General Applicability filed by the housing provider is as follows:

Resp. Exh. 1. The difference between the prior rent ceiling (\$4659) and the 1999 new CPI-W increased rent ceiling (\$4706) is only \$47.00.<sup>6</sup> Pet. Exh. 6, see note 2. Both adjustments fall far short of the necessary \$450.00 increase which was imposed by the housing provider in the rent charged increase.

The tenants are entitled to a refund of all rent demanded by the housing provider over and above that which is allowed by the Act. The Act authorizes a refund and/or a rent roll back when a housing provider knowingly demands rent for a unit which exceeds the maximum rent allowed under the Act. D.C. OFFICIAL CODE §42-3509.01(a) (2001).<sup>7</sup> The court held an “order for a ‘rent refund’ of money demanded but never received comports with the language of the statute.” Kapusta v. District of Columbia Rental Hous. Comm’n, 704 A.2d 286 (D.C. 1997). Thus, the tenants are entitled to a refund, even if the rent demanded was never paid.

In Reid v. Quality Mgmt. Co., TP 11,307 (RHC Feb. 7, 1985), the Commission held, “a landlord is imputed to have knowledge of a reasonable, prudent man involved in the business of renting properties in the District of Columbia.” The housing provider is a

Unit Number	Prior Rent Ceiling	Prior Rent Charge	New Rent Ceiling	New Rent Charge	Effective Date
5	4659	800	4706	850	11/1/99
6	2698	800	2725	850	11/1/99

Pet. Exh. 6.

<sup>6</sup> See note 2 supra.

<sup>7</sup> The Act states:

(a) Any person who knowingly (1) demands or receives any rent for a rental unit in excess of the maximum allowable rent applicable to that rental unit under the provisions of subchapter II of this chapter ... shall be held liable by the Rent Administrator or Rental Housing Commission, as applicable, for the amount by which the rent exceeds the applicable rent ceiling ... and/or for a roll back of the rent to the amount the Rent Administrator or Rental Housing Commission determines.

D.C. OFFICIAL CODE § 42-3509.01(a) (2001).

company in the business of offering rental property in the District of Columbia. Thus, knowledge that the rent demanded exceeded the maximum allowed by the Act is imputed to the housing provider in this case.

The evidence submitted demonstrates that the notice of rent increase served upon the tenants was improper. Neither tenant received notice of the actual rent ceiling adjustment being relied upon to implement the new rent charge. Additionally, with respect to the tenant in Unit 5, the evidence demonstrates that the rent increase imposed was greater than any allowed by the Act. Neither the rent ceiling increase of \$249.00 in 1992, nor the increase of \$47.00 in 1999, was sufficient to cover the \$450.00 increase in rent charged. Therefore, the Commission reverses conclusion of law number one (1).

**B. [Whether] [t]he decision and order is supported by law in its discussion of service of the [notice of] rent increase.**

The Act dictates the ways in which service upon an individual may be completed. In particular, four different modes of service are allowed. Service may be achieved:

- (1) By handing the document to the person, by leaving it at the person's place of business with some responsible person in charge, or *by leaving it at the person's usual place of residence with a person of suitable age and discretion;*
- (2) By telegram, when the content of the information or document is given to a telegraph company properly addressed and prepaid;
- (3) By mail or *deposit with the United States Postal Service properly stamped and addressed;* or
- (4) By any other means that is in conformity with an order of the rental Housing Commission or the Rent Administrator in any proceeding.

D.C. OFFICIAL CODE § 42-3509.04(a)(1)-(4) (2001) (emphasis added).

Hearing Examiner Roper found that the housing provider served the tenant in Unit 6 properly by leaving the notice of the rent increase "in the crack of her door." Blake, OAD at 5. There is uncontroverted testimony in the record that the tenant in Unit 5 was

served in the same manner. CD Recording (OAD Dec. 6, 2002). Hearing Examiner Roper goes on to state that the Act provides suggestions as to service of notices, but that means of service are not limited to those listed in the Act. Blake, OAD at 5. This is an incorrect interpretation of the statute. The Act, when properly construed, requires that service be completed in a manner listed within the text of the Act. There is no provision for leaving the notice in the door. The Act specifically requires that the notice be handed directly to the individual being served or left with a person “of suitable age and discretion.” D.C. OFFICIAL CODE § 42-3509.04(a)(1) (2001).

The Act also allows the housing provider to mail notice to the tenant using the United States Postal Service (USPS). Specifically, notice is achieved by “deposit with the United States Postal Service properly stamped and addressed.” D.C. OFFICIAL CODE § 42-3509.04(a)(4) (2001). Each tenant testified that the notice of rent increase was mailed to her by first class postage pre-paid mail. The housing provider attested to this fact, as well, during the hearing. OAD CD Recording. This evidence is sufficient to establish that the mailing requirement set forth in the Act was properly met.<sup>8</sup>

The court held, “notice of a rent increase had to be given to the tenant at least thirty days before its effective date; without such notice, the increase was invalid.” Allen v. District of Columbia Rental Hous. Comm’n, 538 A.2d 752, 752 (D.C. 1988).<sup>9</sup> In the

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<sup>8</sup> Additionally, service of notice is regulated by 14 DCMR § 3911.3 (1991), which states “service upon a person shall be in accordance with § 904 of the Act” and 14 DCMR § 3911.5 (1991), which states “service by mail shall be complete upon mailing.”

<sup>9</sup> This ruling is supported by D.C. OFFICIAL CODE § 42-3509.04(b), which states:

No rent increases, whether under this chapter, the Rental Accommodations Act of 1975, the Rental Housing Act of 1977, the Rental Housing Act of 1980, or any administrative decisions issued under these acts, shall be effective until the first day on which rent is

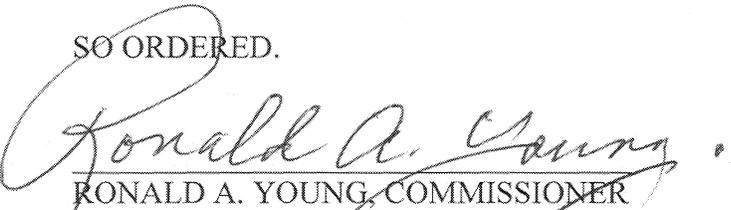
instant case, the effective date of the rent increase was August 1, 2001. To be timely, the housing provider was required to serve the notice no later than July 2, 2001. As previously established, the housing provider deposited a notice with the USPS on June 29, 2001, for each tenant. As this date is three days prior to the last day of timely service, the record shows that notice of the rent increase was timely served by the housing provider.

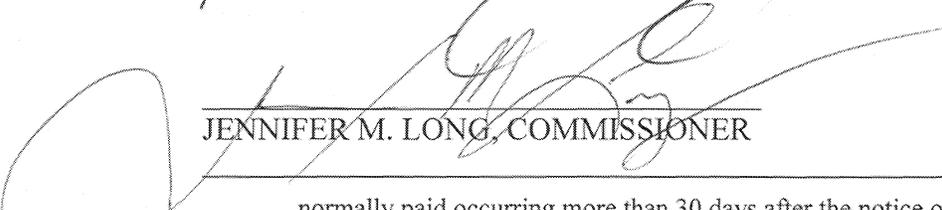
The record evidence demonstrates that the housing provider properly served the tenants with timely notice of the rent increase to be implemented on August 1, 2001. As such, conclusion of law three (3) in the decision of Hearing Examiner Roper regarding the issue of notice is affirmed.

#### **IV. CONCLUSION**

The record reflects facts and evidence that require conclusion of law one (1) to be reversed and conclusion of law three (3) to be affirmed. Accordingly, the hearing examiner is reversed in part and affirmed in part. This case is remanded to the Rent Administrator for calculation of the rent refund and interest amount due the tenants. Additionally, the Rent Administrator should determine the amount to which the tenants' rent should be rolled back.

SO ORDERED.

  
RONALD A. YOUNG, COMMISSIONER

  
JENNIFER M. LONG, COMMISSIONER

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normally paid occurring more than 30 days after the notice of the increase is given to the tenant.

## MOTIONS FOR RECONSIDERATION

Pursuant to 14 DCMR § 3823 (1991), final decisions of the Commission are subject to reconsideration or modification. The Commission's rule, 14 DCMR § 3823.1 (1991), provides, "[a]ny party adversely affected by a decision of the Commission issued to dispose of the appeal may file a motion for reconsideration or modification with the Commission within ten (10) days of receipt of the decision."

## JUDICIAL REVIEW

Pursuant to D.C. OFFICIAL CODE § 42-3502.19 (2001), "[a]ny person aggrieved by a decision of the Rental Housing Commission ... may seek judicial review of the decision ... by filing a petition for review in the District of Columbia Court of Appeals." Petitions for review of the Commission's decisions are filed in the District of Columbia Court of Appeals and are governed by Title III of the Rules of the District of Columbia Court of Appeals. The Court's Rule, D.C App. R. 15(a), provides in part: "Review of orders and decisions of an agency shall be obtained by filing with the clerk of this court a petition for review within thirty days after notice is given, in conformance with the rules or regulations of the agency, of the order or decision sought to be reviewed ... and by tendering the prescribed docketing fee to the clerk." The Court may be contacted at the following address and telephone number:

D.C. Court of Appeals  
Office of the Clerk  
500 Indiana Avenue, N.W., 6<sup>th</sup> Floor  
Washington, D.C. 20001  
(202) 879-2700

## CERTIFICATE OF SERVICE

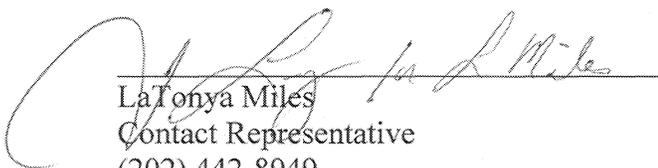
I hereby certify that a copy of the foregoing Decision and Order in TP 27,199 was mailed by priority mail with confirmation of delivery, to the persons noted below this **25<sup>th</sup> day of June 2004.**

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