

**DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION**

TP 27,374

In re: 652 Orleans Place, N.E., Unit 2

Ward Six (6)

CAMILLE S. YOUNG  
Tenant

v.

JEAN DEBROSSE  
Housing Provider

**DECISION AND ORDER**

July 16, 2003

**PER CURIAM.** 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 Act, 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) govern the proceedings. In accordance with § 42-3502.16(h), the Commission initiated review of the Rent Administrator's decision and order, issued by Administrative Law Judge (ALJ) Lennox Simon on August 1, 2002.

**I. PROCEDURAL HISTORY**

Camille S. Young filed Tenant Petition (TP) 27,374 with the District of Columbia Rental Accommodations and Conversion Division (RACD) on December 5, 2001. In the petition, the tenant alleged:

- 1) The building in which the rental unit is located is not properly registered with the RACD; and

- 2) Services and facilities provided in connection with rental of the unit have been substantially reduced.

Tenant Petition at 3-4. In addition, the tenant attached five typed pages detailing the various complaints of violations and disturbances.

The Office of Adjudication (OAD) scheduled TP 27,374 for an administrative hearing on May 29, 2002. On that date, the tenant appeared pro se, and the housing provider appeared represented by counsel, Tonya Waller. As a preliminary matter, Ms. Waller made an oral motion for a continuance, as the housing provider was unable to appear in person.<sup>1</sup> The ALJ advised Ms. Waller that the motion should have been submitted in writing prior to the trial; the continuance was denied. The housing provider participated in the hearing via telephone.

During the testimony, the housing provider revealed that he initiated eviction proceedings against the tenant in District of Columbia Superior Court, Landlord and Tenant Branch for non-payment of rent. However, neither party appeared at the trial because they had an oral agreement for the tenant to vacate the premises. The housing provider stated that he kept the security deposit paid by the tenant to recover the rent that was due. The tenant argues that she was not subject to pay rent as a result of the various housing code violations, problems, and concerns in the unit.

The tenant presented extensive evidence and testimony regarding various problems in the unit. She submitted pictures of broken windows, windows with missing screens, holes in the walls, exposed wiring, uncovered vents, heaters that were not secured to the walls and heavily stained carpet areas. The tenant's testimony included complaints about trash/debris, large furniture that was left in the unit, lack of smoke detectors, a missing kitchen floor and an

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<sup>1</sup> Ms. Waller indicated to the ALJ that the housing provider had been called away to California for an emergency. Later, during the hearing, the housing provider stated that he had become ill while in California and missed his return flight; thus, he was unable to appear at the hearing in person.

occasion when the water and sewer service was interrupted in the unit due to non-payment.<sup>2</sup> The tenant indicated that she repeatedly informed the housing provider of the problems with the rental unit. She acknowledged that some of the problems were rectified, but insisted that she had to correct or eliminate many herself. Several of the problems remained at the time of the hearing.

The housing provider argued that all the issues the tenant raised were void for one of two reasons: (1) he had corrected the problems promptly upon her complaints, or (2) the tenant refused him access to the unit so that he could correct the problems. The housing provider explained that during the first week of the tenant's lease period, he was forced to temporarily suspend installation of the kitchen floor due to lack of the proper permits. He claimed to have reduced the tenant's rent for the month by \$200 to compensate for the inconvenience. The tenant agreed with this testimony.

The tenant also submitted evidence that the housing provider did not register the property with RACD. Instead, the housing provider relied upon the filing of the previous property owner to conduct his business at the address. The housing provider admitted this allegation, but claimed that an employee in RACD had given him information that led him to believe he was in compliance with District law. As further evidence of his own attempts to comply with legal requirements, he noted that two improvement permits had been issued in his name since he purchased the property.

After hearing arguments for both sides, the ALJ concluded, as a matter of law, that:

- (1) The respondent failed to comply with the registration requirements of the District;
- (2) The respondent failed to obtain a Certificate of Occupancy in his own name;

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<sup>2</sup> According to the lease agreement (tenant's exhibit #1) between the parties, the housing provider was responsible for arranging for and paying for water and sewer services to the unit.

- (3) The respondent subjected the tenant to a substantial reduction of services and/or facilities related to the rental of the subject apartment; and
- (4) OAD is without jurisdiction to afford the tenant the monetary and equitable relief the tenant has prayed for ....

Young v. Debrosse, TP 27,374 (OAD Aug. 1, 2002).

On September 9, 2002, the Commission initiated review of the ALJ's decision and order pursuant to D.C. OFFICIAL CODE § 42-3502.16(h) (2001) and 14 DCMR § 3808 (1991).<sup>3</sup> In accordance with 14 DCMR § 3808.2 (1991), the Commission mailed the hearing notices by priority mail, with delivery confirmation. The Commission held a hearing on March 27, 2003 to provide the parties an opportunity to present arguments on the issue identified by the Commission. The housing provider appeared represented by counsel; the tenant did not appear.

## **II. ISSUE ON APPEAL**

In its notice of initiated review, the Commission raised the following issue.

Whether the ALJ erred when he failed to determine whether the tenant was entitled to a rent ceiling reduction as a result of his finding that the housing provider substantially reduced the tenant's related services and/or facilities, as is permitted by the Act, D.C. OFFICIAL CODE § 42-3502.11 (2001).

Notice of Commission Initiated Review (RHC Sept. 9, 2002) at 2.

## **III. DISCUSSION OF THE ISSUE**

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<sup>3</sup> The regulation, 14 DCMR § 3808 (1991), provides:

- 3808.1 Not later than twenty (20) days after the deadline for the parties to file an appeal, the Commission may initiate a review of any decision of the Rent Administrator.
- 3808.2 The Commission shall serve the parties who appeared before the hearing examiner with its reasons for initiating a review and shall inform them of their right and opportunity to present arguments on the issues identified by the Commission.
- 3808.3 All due process rights afforded parties in a review commenced by a notice of appeal shall also be provided when the review is initiated by the Commission.
- 3808.4 In appeals initiated pursuant to this section, the provisions of §§3802.10, 3802.11 and 3805.5 shall not apply.

**Whether the ALJ erred when he failed to determine whether the tenant was entitled to a rent ceiling reduction as a result of his finding that the housing provider substantially reduced the tenant's related services and/or facilities, as is permitted by the Act, D.C. OFFICIAL CODE § 42-3502.11 (2001).**

The Act provides that the Rent Administrator may decrease the rent ceiling for a housing accommodation once she has determined that services or related facilities supplied by the housing provider in relation to the unit have been substantially decreased. D.C. OFFICIAL CODE § 42-3502.11 (2001). There is no question that the ALJ concluded as a matter of law that the housing provider substantially reduced facilities and services related to the unit in question. Therefore, the only concern is whether the law required him to adjust the rent ceiling and order the tenant a refund.

The Act provides that the ALJ may reduce the rent ceiling on the unit for a substantial reduction in services or facilities.<sup>4</sup> Therefore, the ALJ must use his discretion and knowledge to decide the proper level of adjustment. The decision of the ALJ must be stated "in writing and shall be accompanied by findings of fact and conclusions of law .... Findings of fact and conclusions of law shall be supported by and in accordance with the reliable, probative and substantial evidence." D.C. OFFICIAL CODE § 2-509(e) (2001). In this case, the ALJ erred when he failed to make findings of fact and conclusions of law addressing the issue of a rent ceiling adjustment. Instead, he concluded that the remedy prayed for by the tenant, a refund of monies spent on clean-up and repairs, was beyond his jurisdiction to provide.

At the Commission hearing, counsel for the housing provider argued that even if the rent ceiling was lowered, no refund could be ordered because the tenant "failed to present evidence

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<sup>4</sup> D.C. OFFICIAL CODE § 3502.11 states:

If the Rent Administrator determines that the related services or related facilities supplied by a housing provider for a housing accommodation or for any rental unit in the housing accommodation are substantially increased or decreased, the Rent Administrator may increase or decrease the rent ceiling, as applicable, to reflect proportionally the value of the change in services or facilities.

regarding the value of the reduction in services.” Alternatively, counsel argued that “the tenant did not pay rent for three of the five months of her tenancy,” implying that she could not be refunded for rent not paid. Both of these arguments fail.

The Commission has expressly denied the need for expert testimony or evidence regarding the value of a reduction in services in order for the ALJ to calculate the rent ceiling reduction and any corresponding refund. Specifically, the Commission stated, “[W]e hold that evidence of the existence, duration and severity of a reduction in services and/or facilities is competent evidence upon which the Rent Administrator ... may fix the dollar value of a reduction in services or facilities without expert or direct testimony on the dollar value of the reduction.” George I. Borgner, Inc. v. Woodson, TP 11,848 (RHC June 10, 1987) at 11 quoted in Kemp v. Marshall Heights Cmty. Dev., TP 24,786 (RHC Aug. 1, 2000) at 8. Accordingly, the ALJ has the elements necessary to assess the value of reduced or eliminated services or facilities. He may call upon his own knowledge and expertise to make the determination as long as he bases his decision upon evidence in the record.

Counsel for the housing provider is also mistaken in her assertion that where no rent was paid, no refund may be ordered. The applicable statute uses the specific phrase “rent refund.” The District of Columbia Court of Appeals has spoken directly to the issue of the meaning of this term.

‘Rent’ means the entire amount of money ... demand, received, or charged by a housing provider ... Thus the ... order for a “rent refund” of money demanded but never received comports with the language of the statute. When read with the definition of rent, the statute commands that a violator “shall be held liable ... for the amount...[demanded, received or charged]” ....

Kapusta v. District of Columbia Rental Hous. Comm’n., 704 A.2d 286, 287 (D.C. 1997)

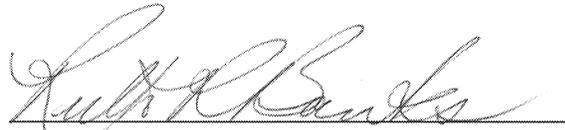
(alteration in original) (citations omitted). This interpretation of the statute has been affirmed in

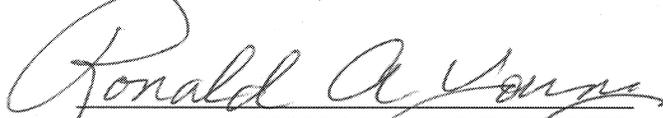
a variety of cases. See also Delwin Realty Co. v. District of Columbia Hous. Comm'n., 458 A.2d 58, 60 (D.C. 1983) (stating that the statutory section ordering a rent refund “is triggered by mere demand for excess rent; there is no requirement of proof ... rent was actually collected”).

#### IV. CONCLUSION

Despite the housing provider’s attempts to persuade otherwise, the law imposes a penalty for substantially reducing services and facilities. This penalty is a requirement once the ALJ concludes as a matter of law that the reduction in services has occurred. The remedy afforded the tenant is outlined in the relevant statutory text. See supra note 4. The Commission finds that the ALJ did err when he failed to determine whether the tenant was entitled to a rent ceiling reduction. This case is remanded to the Rent Administrator for further findings in accordance with this decision.

SO ORDERED.

  
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RUTH R. BANKS, CHAIRPERSON

  
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RONALD A. YOUNG, COMMISSIONER

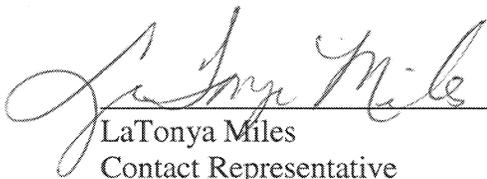
  
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JENNIFER M. LONG, COMMISSIONER

## CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Decision and Order in TP 27,374 was mailed postage prepaid by priority mail with delivery confirmation this **16<sup>th</sup> day of July, 2003** to:

Camille S. Young  
13817 Caste Blvd.  
Silver Spring, MD 20904

Tonya Waller, Esquire  
1717 K Street, N.W.  
Suite 600  
Washington, D.C. 20036

  
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LaTonya Miles  
Contact Representative