

**DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION**

TP 27,665

In re: 5037 Call Place, S.E.

Ward Seven (7)

NICOLE THOMAS  
Tenant

v.

KATHY DANIEL  
Housing Provider

**DECISION AND ORDER**

June 18, 2004

**PER CURIAM.** This matter is before the District of Columbia Rental Housing Commission (Commission) pursuant to the Rental Housing Act of 1985 (Act), D.C. Law 6-10, 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. In accordance with D.C. OFFICIAL CODE § 42-3502.16(h) (2001), the Commission initiated review of the Rent Administrator's decision issued by Hearing Examiner Carl Bradford, on June 16, 2003.

**I. PROCEDURAL BACKGROUND**

On October 31, 2002, Nicole Thomas, the tenant of unit 301 at the housing accommodation located at 5037 Call Place, S.E., filed Tenant Petition (TP) 27,665 with the Rental Accommodations and Conversion Division (RACD). In her petition the tenant alleged that the housing provider, Kathy Daniel: 1) failed to file the proper rent increase forms with the RACD; 2) imposed a rent increase which was larger than the amount permitted under the Act; 3)

substantially reduced services and/or facilities provided in connection with her unit; and 4) directed retaliatory action against her for exercising her rights in violation of section 502 of the Act.

The hearing was held on April 16, 2003, with Hearing Examiner Carl Bradford presiding. The hearing examiner issued his decision and order on June 16, 2003. On June 23, 2003, the hearing examiner issued an amended decision. In his decision the hearing examiner found that the housing provider, in violation of D.C. OFFICIAL CODE § 42-3502.06 (2001), demanded rent for the tenant's rental unit in excess of the maximum allowable rent applicable to the rental unit. Pursuant to the same provision of the Act, the hearing examiner further found that the housing provider acted in "bad faith" when she charged the tenant a rent for her unit which exceeded the maximum allowable rent applicable to the rental unit. Despite these findings, the hearing examiner only ordered the housing provider to correct her "amended registration to reflect the correct current rent \$568.00." Thomas v. Daniel, TP 27,665 (RACD June 23, 2003). Thereafter, the hearing examiner ordered that the tenant petition be dismissed with prejudice, without ordering a rent refund.

On July 22, 2003, the Commission initiated review of the hearing examiner's decision and order pursuant to D.C. OFFICIAL CODE § 42-3501.16(h) (2001)<sup>1</sup> and 14 DCMR § 3808.1 (1991).<sup>2</sup> In accordance with 14 DCMR § 3808.2 (1991), the Commission notified the parties of

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<sup>1</sup> D.C. OFFICIAL CODE § 42-3502.16(h) (2001) provides that, "[T]he Rental Housing Commission may review a decision and order of the Rent Administrator on its own initiative."

<sup>2</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.

its reason for initiating review and informed the parties of their right to present arguments on the issue identified by the Commission. On July 31, 2003, the Commission issued its hearing notice by priority mail with delivery confirmation. The Commission scheduled the hearing on its initiated review for September 24, 2003.

## II. ISSUE ON APPEAL

In its notice of initiated review, the Commission identified the following issue as the basis of review:

Whether the hearing examiner erred when he failed to grant the tenant a rent refund after finding that the housing provider demanded or received rent for the tenant's rental unit in excess of the maximum allowable rent applicable to the rental unit in violation of D.C. OFFICIAL CODE § 42-3509.01(a) (2001).

Notice of Commission Initiated Review (RHC July 22 2003) at 2.

## III. DISCUSSION OF THE ISSUE

- A. **Whether the hearing examiner erred when he failed to grant the tenant a rent refund after finding that the housing provider demanded or received rent for the tenant's rental unit in excess of the maximum allowable rent applicable to the rental unit in violation of D.C. OFFICIAL CODE § 42-3509.01(a) (2001).**

The penalty provision of the Act, clearly states in pertinent part:

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 or for treble that amount (in the event of bad faith) 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) (emphasis added).

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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.

The hearing examiner erred when he failed to grant the tenant a rent refund despite his finding that the housing provider demanded or received rent for the tenant's rental unit in excess of the maximum allowable rent applicable to the rental unit in violation of D.C. OFFICIAL CODE § 42-3509.01(a) (2001). The definition of "rent" in the Act includes the amount of money "demanded, received, or charged." D.C. OFFICIAL CODE § 42-3501.03(28) (2001). Therefore, an order for a "rent refund" of money demanded but never received, comports with the language of the Act. When read with the definition of rent, the Act commands that a violator "shall be liable... for the amount by which the rent ("entire amount of money... demanded, received or charged") exceeds the applicable rent ceiling...." D.C. OFFICIAL CODE § 42-3509.01(a) (2001); D.C. OFFICIAL CODE § 42-3501.03(28) (2001). The Act clearly requires a rent refund. See Kapusta v. District of Columbia Rental Hous. Comm'n, 704 A.2d 286 (D.C. 1997) (holding that statutory damages are triggered by the mere demand for excess rent as there is no requirement of proof that the excess rent was actually collected); Temple v. District of Columbia Rental Hous. Comm'n, 536 A.2d 1024, 1025 (D.C. 1987) (ordering refund, though only one third of the rent had been collected); Afshar v. District of Columbia Rental Hous. Comm'n, 504 A.2d 1105, 1108 (D.C. 1986) (concluding that "a landlord who even demands rent in excess of the established ceiling will be liable for either treble the excess, ... a rollback of the rent, or both").

A tenant must not be left uncompensated when a housing provider unlawfully raises rent or reduces services. The Rent Administrator shall award a rent refund or roll back, including an award of treble the refund amount, upon a finding of bad faith. In the current case, not only was the housing provider found to have demanded rent for the tenant's rental unit in excess of the maximum allowable rent applicable to the rental unit, but the hearing examiner also found that the housing provider acted in "bad faith." The hearing examiner, after determining that the evidence in the record supported a finding of bad faith by the housing provider, is required to

grant an award of treble damages. See Temple, 536 A.2d at 1037 (noting that treble damages have often been imposed for failure to comply with the registration requirement); Yasuna v. District of Columbia Rental Hous. Comm'n, 504 A.2d 605 (D.C.1986); Third Jones Corp. v. Young, TP 20,300 (RHC Mar. 22, 1990); see also 14 DCMR § 4210.2 (1991) (“Refunds of rent shall not be trebled under Section 4210.1 of this sub-title unless the surrounding circumstances indicate that the housing provider acted in bad faith.”); cf. Dey v. L.J. Development, Inc., TP 26,119 (RHC Oct. 15, 2003).

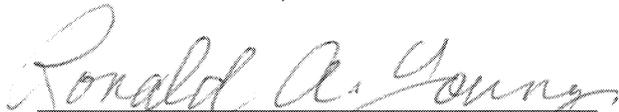
Accordingly, this case is remanded to the Rent Administrator for calculation of the trebled rent refund due the tenant, plus interest, as a result of the housing provider’s demand for rent in excess of the maximum allowable rent applicable to her rental unit.

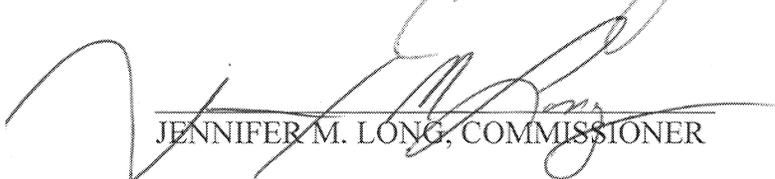
#### IV. CONCLUSION

For the foregoing reasons, the Commission remands TP 27,665 to the Rent Administrator. The Commission directs the Rent Administrator to calculate and order a trebled rent refund to the tenant as required by the finding of bad faith in the current case, plus interest.

SO ORDERED.

  
RUTH R. BANKS, CHAIRPERSON

  
RONALD A. YOUNG, COMMISSIONER

  
JENNIFER M. LONG, COMMISSIONER

## 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., 6th Floor  
Washington, D.C. 20001  
(202) 879-2700

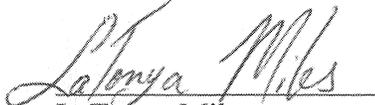
## CERTIFICATE OF SERVICE

I certify that a copy of the Decision and Order in TP 27,665 was mailed postage prepaid by priority mail, with delivery confirmation, on this 18<sup>th</sup> day of June, to the following persons:

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