

**DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION**

TP 27,920

In re: 1008 East Capitol Street, N.E.

Ward Six (6)

**RONA FOOTE LAPRADE**  
Housing Provider/Appellant

v.

**SUSAN KLINBERG, et al**  
Tenants/Appellees

**DECISION AND ORDER**

June 22, 2005

**PER CURIAM.** This case is on appeal from the District of Columbia Department of Consumer and Regulatory Affairs (DCRA), Rental Accommodations and Conversion Division (RACD), to the Rental Housing Commission (Commission). 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, 14 DCMR §§ 3800-4399 (1991), govern these proceedings.

**I. PROCEDURAL HISTORY**

On August 8, 2003, Susan Klingberg, tenant, filed Tenant Petition (TP) 27,920 with the Housing Regulation Administration (HRA) on behalf of herself and two other tenants, all residents of 1008 East Capitol Street, N.E., Washington, D.C. In the petition she alleged that the housing provider, Rona Foote LaPrade, failed to file the proper rent increase forms with the Rental Accommodations and Conversion Division (RACD), and

charged rents in excess of the legally calculated rent ceiling. The parties met with Hearing Examiner Sandra McNair as scheduled by HRA on November 5, 2003 to attempt to conciliate the matter regarding the 1008 East Capitol Street, N.E. housing accommodation. That meeting did not result in conciliation as there were procedural errors that warranted rescheduling the administrative hearing.

On November 20, 2003, Susan Klinberg filed an amendment to her petition. In the amended petition, she included an allegation that the housing provider increased the rent when the unit was not in substantial compliance with the D.C. Housing Regulations.

The rescheduled hearing was held on January 8, 2004 with Hearing Examiner Carl Bradford taking the place of Hearing Examiner Sandra McNair. The parties agreed to Examiner Bradford's hearing of the case despite his brief attempt to mediate the case between the parties. Hearing Examiner Bradford issued the decision and order on May 6, 2004. The decision contained the following:

Findings of fact:

1. The subject property is located at 1008 East Capitol Street, N.E.
2. Petitioners Susan Klinberg, Julie Kim-Reistrup, Scott Bizup, and Elizabeth Gregory signed a lease with Respondent, Rona Foote LaPrade paying a rent of \$1900.00 a month.
3. The subject property is owned and managed by Rona Foote LaPrade.
4. Petitioner Susan Klinberg moved out in June 2001.
5. Respondent filed an amended registration form dated September 10, 1997 indicating a rent ceiling of \$2,674.
6. Respondent served notice on Petitioners of a rent increase from \$2674.00 to \$2995.00.
7. A fifth tenant moved into the house in April 1999.

8. Petitioners have paid an overcharge of \$65.20 per month for 7 months beginning December 2000 to June 2001.
9. Petitioners provided copies of rent checks paid to Respondent.
10. Petitioners did not provide sufficient evidence showing that they put Respondent on notice of substantial housing code violations as alleged in the Petition.
11. Respondent did not act in bad faith.
12. Respondent shall refund to Susan Klingberg, Scott Bizub and Julie Kim-Reistrup \$456.40 plus interest of \$7.29.
13. Respondent shall refund to Petitioners \$59.00 in interest for the 31 months the overcharge was held by Respondent up until the day of the hearing for a total refund of \$522.69.

Klinberg v. LaPrade, TP 27,920 (RACD May 6, 2004) (Decision) at 8. The decision also contained the following:

Conclusions of law:

1. Petitioners did sustain their burden of proof pursuant to D.C. Official Code § 42-3502.05 to establish that Respondent charged a rent higher than the rent ceiling.
2. All other issues are dismissed.

Decision at 9.

The housing provider filed a notice of appeal in the Commission on June 4, 2004<sup>1</sup>.

The Commission held its appellate hearing on August 10, 2004.

## II. THE ISSUES

The notice of appeal raised the following issues:

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<sup>1</sup> In the housing providers notice of appeal she indicates that her motion for reconsideration was denied by the hearing examiner on May 26, 2004. The record does not contain the motion for reconsideration or the order denying the motion.

- A. Whether the Examiner erred in denying Respondent/Appellant's Motion for Reconsideration of his findings and orders, claiming an "attempt to relitigate."
- B. Whether the Examiner erred by making findings of fact and Orders for refunds which were not supported by the evidence. Respondent claims that she did not benefit from the \$2,995 and \$3,000 claimed to have been paid by the tenants. Furthermore, Respondent claims that checks presented as evidence do not add up to any overpayments, even when adding in the payment allegations of the tenant who did not submit cancelled checks.
- C. Whether the Examiner erred in his computations by failing to add up the amounts of the copies of cancelled checks presented into evidence by Petitioners. Appellant alleges that the undisputed Amended Registration amount for \$2,674 per month was not exceeded and tenants did not pay more than the lawful rent at any time.

### III. DISCUSSION OF THE ISSUES

#### **D. Whether the Examiner erred in denying Respondent/Appellant's Motion for Reconsideration of his findings and orders, claiming an "attempt to relitigate."**

Pursuant to 14 DCMR § 4013.3 (1991), "[t]he denial of a motion for reconsideration shall not be subject to reconsideration or appeal." The Commission held in Wedderburn v. Thomas, TP 23,970 (RHC July 30, 1996), that a motion for reconsideration is not reviewable on appeal. Additionally, in C.I.H. Properties v. Torain, TP 24,817 (RHC July 17, 2000) at 8, the Commission stated, "the relief that the housing provider sought in its notice of appeal, the appeal of the motion for reconsideration in order that the OAD could reconsider it, is a form of relief that the Commission is unable to grant." Additionally, the District of Columbia Court of Appeals (DCCA) held in Totz v. District of Columbia Rental Hous. Comm'n, 474 A.2d 827, 828 (D.C. 1984) that the court does not have jurisdiction to hear an appeal from the denial of a motion for reconsideration by an administrative agency.

Accordingly, the appeal of this issue is denied.

- B. Whether the Examiner erred by making findings of fact and Orders for refunds that were not supported by the evidence. Appellant claims that she did not benefit from the \$2,995 and \$3,000 claimed to have been paid by the tenants. Furthermore, Respondent claims that checks presented as evidence do not add up to any overpayments, even when adding in the payment allegations of the tenant who did not submit cancelled checks.**
- C. Whether the Examiner erred in his computations by failing to add up the amounts of the copies of cancelled checks presented into evidence by Petitioners. Appellant alleges that the undisputed Amended Registration amount for \$2,674 per month was not exceeded and tenants did not pay more than the lawful rent at any time.**

According to D.C. OFFICIAL CODE § 42-3509.01(a) (2001), “[a]ny person who knowingly demands or receives any rent for a rental unit in excess of the maximum allowable rent applicable to that rental unit ... 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.” (emphasis added). The term “Rent” is defined by D.C. OFFICIAL CODE § 42-3501.03(28) (2001), as “the entire amount of money, money’s worth, benefit, bonus, or gratuity demanded, received, or charged by a housing provider as a condition of occupancy or use of a rental unit, its related services, and its related facilities.” (emphasis added).

In the instant case, the hearing examiner found that the Appellant’s most recently filed rent increase forms with RACD were dated September 10, 1997. RACD Record (R.) at 64. The record indicates that the rent ceiling was increased to \$2674.00 for the 1008 East Capitol Street, N.E., property in that filing. R. at 83. However, according to the evidence in the record, on October 31, 2000, the housing provider sent the tenants a

letter notifying them of a rent increase for the housing accommodation to \$2995.00, effective in December 2000. R. at 82.

In Kapusta v. District of Columbia Rental Hous. Comm'n, 704 A.2d 286, 287 (D.C. 1997), where a hearing examiner ordered a housing provider to pay his former tenant a rent refund of \$2004.00, a figure which was based on the amount of money the housing provider demanded for a nine-month period, the Court stated:

The Commission's 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 by which the ['entire amount of money ... demanded, received or charged'] exceeds the applicable rent ceiling' ... Thus, we reject [the housing provider's] contention and conclude the Commission did not err in ordering a rent refund based on the amount of money that [the housing provider] demanded in excess of the rent ceiling.

Id. at 287.

Based on the statutory language and interpretation by the District of Columbia Court of Appeals, the hearing examiner was correct in awarding a refund to the parties in the tenants' petition. It is irrelevant whether the housing provider actually benefited from the increased rent, or if the submitted checks failed to add up to an overpayment. The mere demand for rent in excess of the rent ceiling is justification for an award of a rent refund of monies in excess of the rent ceiling. See McDonald v. Nuyen, TP 26,124 (RHC Aug. 29, 2003), citing Kapusta v. District of Columbia Rental Hous. Comm'n, 704 A.2d 286 (D.C. 1997). Therefore, actual payment of the excessive rent is not a condition upon which a rent refund is based. Accordingly, the housing provider's appeal issues are denied, and the decision of the hearing examiner is affirmed.

#### IV. CONCLUSION

The appellant's appeal of the hearing examiner's dismissal of her motion for reconsideration is denied. The hearing examiner's award of rent refunds due to the housing provider's demand of rents which exceeded the rent ceiling is affirmed.

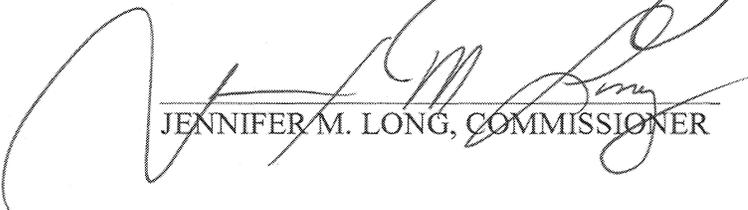
**SO ORDERED.**



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 issues 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 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 27,920 was mailed by priority mail with delivery confirmation, postage paid, this 22<sup>nd</sup> day of June 2005 to:

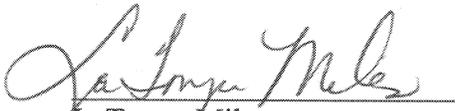
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