

**DISTRICT OF COLUMBIA**  
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DISTRICT OF COLUMBIA  
OFFICE OF  
ADMINISTRATIVE HEARINGS

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MARIETTA L. FARMER  
Tenant/Petitioner

v.

ERROL S. WATKIS  
Housing Provider/Respondent

Case No.: RH-TP-07-29045  
*In re* 1344 Fort Stevens Drive, NW  
Apartment 102

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**FINAL ORDER**

**I. Introduction**

On August 16, 2007, Tenant/Petitioner Marietta L. Farmer filed a tenant petition with the Rent Administrator, alleging that Housing Provider/Respondent Errol S. Watkis had committed several violations of the Rental Housing Act of 1985, as amended, D.C. Official Code § 42-3501.01 *et seq.* ("the Act"). The Tenant alleged that the violations occurred in connection with her rental of Apartment 102 at 1344 Fort Stevens Drive, NW. According to Tenant, Housing Provider improperly claimed an exemption from rent control; took a rent increase larger than the increase allowed by law; failed to file proper rent increase forms; and took a rent increase while her apartment was not in substantial compliance with housing regulations. Tenant contends that these violations of the Act occurred when Housing Provider sent her a Notice of Rent Increase on June 22, 2007.

An evidentiary hearing in this matter was held on January 28, 2008. Tenant represented herself at the hearing and testified on her own behalf. Housing Provider represented himself and testified on his own behalf. Based on all the evidence in the record, including the witnesses'

testimony, Tenant/Petitioner's Exhibits ("PXs") 100-102, 104 and 106, and Housing Provider/Respondent's Exhibits ("RXs") 200, 202 and 203, I now issue this Final Order.

## **II. Findings of Fact**

Tenant has leased Apartment 102 at 1344 Fort Steven Drive, NW, (the "Housing Accommodation") from Housing Provider since 2000.

In May 1985, prior to the tenancy, Housing Provider filed a request for an exemption from the District of Columbia's rent control law. RXs 200 and 202. The basis for the exemption was that the building "was 80% vacant on April 30, 1985 . . . ." *See* D.C. Official Code § 42-205(a)(8) (provision repealed by vote of electorate November 5, 1985, pursuant to Initiative, Referendum, and Recall Charter Amendments Act of 1977). The Rent Administrator approved the exemption in December 1985 and assigned Housing Provider Exemption No. 500017 to the Housing Accommodation. RX 200; *see* RX 202.<sup>1</sup>

In the spring of 2004, Housing Provider was checking his files at DCRA and was informed by a DCRA employee that his 1985 Registration/Claim of Exemption form could not be found. The employee advised Housing Provider that if he planned to increase his tenants' rents, he would need to obtain a new Registration/Claim of Exemption form. DCRA then issued Housing Provider a new registration/Claim of Exemption form with a different number (Registration No. 50004469) and no reference to the 1985 exemption.

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<sup>1</sup> Housing Provider had previously requested and received an exemption from rent control because he held and operated four or fewer rental units. PX 100. That 1983 exemption was superseded by the 1985 exemption.

Housing Provider returned to DCRA and was told that his 1985 Registration/Claim of Exemption form had been found. He asked DCRA to remove the more recent Registration/Claim of Exemption form and Registration Number from his file to prevent confusion. A DCRA employee told Housing Provider that the new form and number could not be removed. The employee said that duplicates and other file discrepancies were typically resolved only when a tenant filed a tenant petition objecting to some action by a housing provider.

Because of the confusion in DCRA's files, and at the suggestion of a DCRA employee, Housing Provider decided that he would temporarily adhere to rent increase procedures applicable to non-exempt housing providers. In 2004, 2005 and 2006, he sent his tenants notices of rent increases of general applicability on DCRA forms intended for use by non-exempt housing providers. *See*, for example, PX 101 (Tenant Notice of Increase of General Applicability that Housing Provider, addressed to Tenant and dated March 29, 2004), PX 102 (Notice of Rent Increase Charged, dated March 30, 2005, addressed to a tenant in Apartment 301) and PX 104 (Notice of Rent Increase Charged, dated May 25, 2006, addressed to a tenant in Apartment 101). The forms did not indicate that they were being used notwithstanding Housing Provider's belief that the units were exempt from rent control, and they showed the registration number (50004469) assigned to Housing provider when his exemption file was missing. *Id.* In addition to explaining that the rent increases were based on the consumer price index, the forms listed then-current rent ceilings and rents charged, and new rent ceilings and rents charged. *Id.*

Meanwhile, Housing Provider did not want to wait for a tenant to challenge his exemption status, so, on November 14, 2006, he emailed the director of DCRA, explained the situation and requested assistance. RX 203. On January 26, 2007, Housing Provider received a

letter from DCRA's Acting Rent Administration, stating that the "ambiguities surrounding EX 500017 and 1344 Fort Stevens Garden Apartments have been resolved." RX 200. The Acting Rent Administrator's letter set out his understanding of the problem and explained what DCRA had done to correct it:

A review of the administrative file indicates that you registered your property on or about October 3, 1983. Pursuant to section 205(a)(8), of the Rental Housing Act of 1985, you were issued a Claim of Exemption, which provided that a building which was 80% vacant on April 30, 1985, and which ha[d] been approved for exemption pursuant to the Rental Housing Act of 1985 by the Rent Administrator . . . could claim exemption. The provision under which your property was granted its exemption has since been repealed. Your exemption under section 205(a)(8), however, is not affected. . . .

Please accept our apology for the administrative error on the part of our staff . . . and our delay in bringing this matter to closure.

*Id.*

On June 22, 2007, having resolved the file problem with DCRA, Housing provider mailed Tenant a letter notifying her of a rent increase effective August 1, 2007. PX 106. The letter stated that Tenant's rent would increase from \$546 to \$795 per month. *Id.* At the bottom of the letter, Housing Provider wrote, "DCRA/RACD Number E500017," but nowhere in the letter is the Housing Accommodation's exemption status addressed or the word "exemption" used.

### **III. Discussion and Conclusions of Law**

This matter is governed by the Rental Housing Act of 1985, D.C. Official Code §§ 42-3501.01-3509.07, the District of Columbia Administrative Procedure Act, D.C. Official Code §§ 2-501-510, 14 District of Columbia Municipal Regulations ("DCMR") 4100-4399 and

OAH Rules 2800-2899 and 2920-2941.<sup>2</sup> As of October 1, 2006, the Office of Administrative Hearings has jurisdiction of rental housing cases pursuant to the OAH Establishment Act, D.C. Official Code § 2-1831.03.

During a discussion of preliminary matters at the evidentiary hearing, Tenant asked to withdraw her claim that Housing Provider had increased her rent while her apartment was not in substantial compliance with housing regulations. I construe her request as a summary motion for voluntary dismissal of that claim, as permitted by OAH Rule 2817.1. Housing Provider did not object, and the motion is granted without prejudice, as provided in OAH Rule 2817.4.

Tenant's remaining three claims all relate, directly or indirectly, to the issue of whether Housing Provider properly relied on Exemption No. 50017 when he advised Tenant of a rent increase effective August 1, 2007.

In resolving this case, I need not consider whether Housing Provider actually met the substantive exemption requirements of D.C. Official Code § 42-205(a)(8) at the time he filed his exemption application in 1985. Whether or not those requirements were met in 1985, Housing Provider has not established that he was otherwise entitled to rely on that exemption when taking a rent increase in August 2007. A prerequisite to the taking of any rent increase is that "[t]he housing accommodation [be] registered in accordance with § 42-3502.05." D.C. Official Code § 42-3502.08(a)(1)(B). According to D.C. Official Code § 42-3502.05(d), proper registration, in the case of an exempt property, includes giving notice of the exemption to the tenant before the lease is executed: "Prior to the execution of a lease or other rental agreement after July 17, 1985, a prospective tenant of any unit exempted under subsection (a) of this section shall receive a

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<sup>2</sup> The OAH Rules are also found at 1 DCMR 2800-2899 and 2920-2941.

notice in writing advising the prospective tenant that rent increases for the accommodation are not regulated by the rent stabilization program.” Specific procedures for providing notice of the exemption are provided in 14 DCMR 4101. The Rental Housing Commission has held that a purported exemption for a rental unit not properly registered is void from the start. *Butler v. Toye*, TP 27,262 (RHC Dec. 2, 2004) at 5.<sup>3</sup>

The burden of proving an exemption from rent control is on the housing provider. *Goodman v. D.C. Rental Hous. Comm’n*, 573 A.2d 1293, 1297 (D.C. 1990). Neither party introduced evidence at the hearing, however, to show that Tenant was aware of Housing Provider’s claim of exemption at the time she signed her lease in 2000, or, in fact, at any time prior to the hearing itself. The Tenant Notice of Increase of General Applicability that Housing Provider gave to Tenant on or around March 29, 2004, makes no mention of a claim or exemption and does not indicate it is anything other than notice of a rent increase being implemented for a non-exempt housing accommodation. PX 101. Neither party offered the lease into evidence.

Housing Provider has failed to meet his burden to show that he complied with the registration requirements of the Act. The rent increase taken August 1, 2007, is therefore unlawful. D.C. Official Code § 42-3502.08(a)(1)(B). Housing provider must refund the amount it overcharged Tenant, plus interest. D.C. Official Code § 42-3509.01(a); *Sawyer Prop. Mgmt. of Md., Inc. v. D.C. Rental Hous. Comm’n*, 877 A.2d 96, 101 (D.C. 2005). The rent refund includes all months from the date the increase was taken (August 2007) through the month in

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<sup>3</sup> The failure to properly register an exempt property is not a waiver of the exemption forever, however, but only for so long as the failure to register continues. *Hammer v. Manor Mgmt. Corp.*, TP-28,006 (RHC May 17, 2006).

which the hearing took place (January 2008, in which rent was payable on the first day of the month (PX 106)). The refund must be made whether or not Tenant actually paid the rent Housing Provider demanded. See D.C. Official Code § 42-3501.03(28) (defining “rent” as money “demanded” by a housing provider); *Kapusta v. D.C. Rental Hous. Comm’n*, 704 A.2d 286, 287 (D.C. 1997) (affirming award of rent refund where rent was demanded but not paid).

The rules implementing the Rental Housing Act provide for the award of interest on rent refunds calculated from the date of the violation to the date of the issuance of the Final Order. 14 DCMR 3826.2. The interest rate imposed is the judgment interest rate used by the Superior Court of the District of Columbia on the date of issuance of the decision. See 14 DCMR 3826.3; *Joseph v. Heidary*, TP-27,136 (RHC July 29, 2003); *Marshall v. D.C. Rental Hous. Comm’n*, 533 A.2d 1271, 1278 (D.C. 1987). The Superior Court interest rate is currently 4% per annum.

The following table computes the amount of Tenant’s refund and interest. Tenant’s total award is \$1,576.10, consisting of a rent refund of \$1,494, and interest of \$82.10.

<b>Calculation of Rent Refund and Interest</b>					
<b>A</b>	<b>B</b>	<b>C</b>	<b>D</b>	<b>E</b>	<b>F</b>
Dates of Overcharges	Amount of Overcharge	Months Held by Housing Provider	Monthly Interest Rate	Interest Factor (CxD)	Interest Due (BxE)
August 2007	\$249.00	19	.00333	.06327	\$15.75
September 2007	\$249.00	18	.00333	.05994	\$14.93
October 2007	\$249.00	17	.00333	.05661	\$14.10
November 2007	\$249.00	16	.00333	.05328	\$13.27
December 2007	\$249.00	15	.00333	.04995	\$12.44
January 2008	\$249.00	14	.00333	.04662	\$11.61
<b>TOTAL</b>	<b>\$1494.00</b>				<b>\$82.10</b>

As noted above, having concluded that Housing Provider did not establish its right to rely on a claimed exemption from rent control, I need not decide whether the substantive basis for the

claim of exemption (an 80 percent vacancy rate on April 30, 1985) existed. Whether it did or not, Housing Provider could not rely on the exemption without properly registering the Housing Accommodation as required by D.C. Official Code § 42-3502.05(d).

In addition to her allegation that the rent increase of August 1, 2007, was unlawful, Tenant claimed that Housing Provider failed to file proper forms for the increase. Because Housing Provider was not entitled to rely on Exemption No. 500017, he would have been required to file rent increase forms consistent with management of a non-exempt property. The remedy for his failure to file those forms, however, would be the same as the remedy imposed for the \$249 rent overcharge.

Tenant did not argue at the hearing that Housing Provider's violation was committed willfully or in bad faith. Given the circumstances described by Housing Provider in his undisputed testimony, I do not believe penalties for willful or bad faith conduct should be imposed. *Third Jones Corp. v. Young*, TP 20,300 (RHC Mar. 22, 1990); *Quality Mgmt., Inc. v. D.C. Rental Hous. Comm'n*, 505 A.2d 73, 76, n. 6 (D.C. 1986).

#### **IV. Order**

Based on the foregoing findings of fact and conclusions of law, it is, this 4th day of March 2009:

**ORDERED**, that the summary motion of Tenant Marietta L. Farmer to dismiss her claim that a rent increase was taken while her housing unit was not in substantial compliance with housing regulations is **GRANTED**, and the claim is **DISMISSED WITHOUT PREJUDICE**; it is further

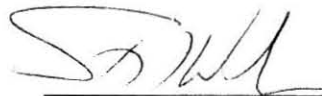


**ORDERED**, that Tenant Petition No. 29,045 is **GRANTED**; it is further

**ORDERED** that Housing Provider Errol S. Watkis pay Tenant Marietta L. Farmer **ONE THOUSAND FIVE HUNDRED SEVENTY-SIX DOLLARS AND TEN CENTS (\$1,576.10)**; it is further

**ORDERED**, that either party may move for reconsideration of this Final Order within 10 days under OAH Rule 2937; and it is further

**ORDERED**, that the appeal rights of any party aggrieved by this Order are stated below.

A handwritten signature in dark ink, appearing to read 'S M Wellner', is written over a horizontal line.

Steven M. Wellner  
Administrative Law Judge

## **MOTIONS FOR RECONSIDERATION**

Any party served with a final order may file a motion for reconsideration within ten (10) days of service of the final order in accordance with 1 DCMR 2937. When the final order is served by mail, five (5) days are added to the 10 day period in accordance with 1 DCMR 2811.5.

A motion for reconsideration shall be granted only if there has been an intervening change in the law; if new evidence has been discovered that previously was not reasonably available to the party seeking reconsideration; if there is a clear error of law in the final order; if the final order contains typographical, numerical, or technical errors; or if a party shows that there was a good reason for not attending the hearing.

The Administrative Law Judge has thirty (30) days to decide a motion for reconsideration. If a timely motion for reconsideration of a final order is filed, the time to appeal shall not begin to run until the motion for reconsideration is decided or denied by operation of law. If the Judge has not ruled on the motion for reconsideration and 30 days have passed, the motion is automatically denied and the 10 day period for filing an appeal to the Rental Housing Commission begins to run.

## **APPEAL RIGHTS**

Pursuant to D.C. Official Code §§ 2-1831.16(b) and 42-3502.16(h), any party aggrieved by a Final Order issued by the Office of Administrative Hearings may appeal the Final Order to the District of Columbia Rental Housing Commission within ten (10) business days after service of the final order, in accordance with the Commission's rule, 14 DCMR 3802. If the Final Order is served on the parties by mail, an additional three (3) days shall be allowed, in accordance with 14 DCMR 3802.2.

Additional important information about appeals to the Rental Housing Commission may be found in the Commission's rules, 14 DCMR 3800 et seq., or you may contact the Commission at the following address:

District of Columbia Rental Housing Commission  
941 North Capitol Street, NE  
Suite 9200  
Washington, DC 20002  
(202) 442-8949

**Certificate of Service:**

**By Priority Mail with Delivery  
Confirmation (Postage Paid):**

Marietta L. Farmer  
1344 Fort Stevens Drive, NW  
Unit #102  
Washington, DC 20011

Errol S. Watkis  
1516 Portal Drive, NW  
Washington, DC 20012

Errol S. Watkis  
P.O. Box 55567  
Washington, DC 20040

I hereby certify that on 3-4,  
2009 this document was caused to be served  
upon the above-named parties at the  
addresses and by the means stated.

  
Clerk / Deputy Clerk

**By Inter-Agency Mail:**

District of Columbia Rental Housing  
Commission  
941 North Capitol Street, NE  
Suite 9200  
Washington, DC 20002

Keith Anderson  
Acting Rent Administrator  
Rental Accommodations Division  
Department of Housing and Community  
Development  
1800 Martin Luther King, Jr., Avenue, SE  
Washington, DC 20020