District of Columbia
Office of Administrative Hearings
941 North Capitol Street, NE, Suite 9100
Washington, DC 20002
TEL: (202) 442-8167
FAX: (202) 442-9451

THOMAS OLIVER, Tenant/Petitioner, v. LEROY SPIGNER, Housing Provider/Respondent.	Case No.: RH-TP-07-29105 *In re*: 829 Florida Avenue NE

PROPOSED FINAL ORDER

I. Introduction

On October 29, 2007, Thomas Oliver filed Tenant Petition ("TP") 29,105 with the Rent Administrator[1] against Housing Provider/Respondent Leroy Spigner alleging: (1) Tenant did not receive a proper 30-day notice of rent increase before the increase was charged; (2) Housing Provider did not register the building in which Tenant's unit is located with the Rental Accommodation and Conversion Division ("RACD") of the

[1] The Rent Administrator heads the Rental Accommodations Division ("RAD") within the Department of Housing and Community Development. The Council of the District of Columbia authorized the Office of Administrative Hearings ("OAH") to hold hearings and issue decisions in cases previously heard and decided by the Rent Administrator, beginning October 1, 2006. D.C. Official Code § 2-1831.03(b-1)(1). Accordingly, the Rent Administrator transmitted this petition to this administrative court for all proceedings.

Department of Consumer and Regulatory Affairs ("DCRA")[2]; and (3) the services and/or facilities provided in connection with Tenant's unit have been substantially reduced.

On December 10, 2007, this administrative court issued a Case Management Order ("CMO") scheduling an evidentiary hearing in this matter for February 7, 2008, at 9:30 a.m. Administrative Law Judge Jennifer Long presided over the hearing and admitted Tenant's Exhibits PX#101-106 and Housing Provider's Exhibit RX#200 into evidence, which are listed in Appendix A attached to this Order.[3]

Based on the following findings of fact and conclusions of law, I find that Tenant has met his burden of proof for claims 2 and 3. I find that Tenant has not met his burden of proof for claim 1.

II. Findings of Fact

1. The housing accommodation at issue in this petition is a room located at 829 Florida Avenue, NE identified as Unit B.

2. Tenant moved into the room in April 2007 and his rent was $135.00 weekly. When Tenant's wife moved in, Housing Provider charged Tenant an additional $50.00 making

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[2] On October 1, 2007, the rental housing functions of the Department of Consumer and Regulatory Affairs, Rental Accommodations and Conversion Division ("RACD") were transferred to the Department of Housing and Community Development, Rental Accommodations Division ("RAD").

[3] Administrative Law Judge Caryn Hines wrote the proposed Final Order. The District of Columbia Administrative Procedure Act ("DCAPA") provides in § 2-509 that when a final order is written by someone who did not personally hear the evidence that the decision is a proposed order and gives adversely affected parties an opportunity to file exceptions and present argument.

his rent $185.00 weekly. Tenant's rent totaled $740.00 monthly. The parties did not sign a lease.

3. There was at least one other occupant of another room at 829 Florida Avenue. The individual rooms locked with a key. PX 103.

4. As part of the rental agreement, Housing Provider instructed Tenant that he could purchase an air conditioner and there would be an extra charge if Tenant wanted air conditioning. This agreement was not in writing. An air conditioning unit was purchased in June 2007 and Housing Provider charged Tenant an additional $30.00 monthly for the excess electricity. Tenant paid this charge until September 2007.

5. The housing accommodation has been infested with mice since June 2007.

6. On October 29, 2007, Thomas Oliver filed Tenant Petition ("TP") 29,105 with the Rent Administrator alleging that (1) Tenant did not receive a proper 30-day notice of rent increase before the increase was charged; (2) Housing Provider did not register the building in which Tenant's unit is located with the RACD of DCRA; and (3) the services and/or facilities provided in connection with Tenant's unit have been substantially reduced.

7. On December 10, 2008, this administrative court issued a CMO scheduling a hearing in this matter for February 7, 2008. Administrative Law Judge Jennifer Long presided over the hearing. Tenant appeared and introduced six exhibits into evidence. Judge Long admitted five of them into evidence. Housing Provider appeared and introduced three photographs into evidence. Judge Long admitted all of them into evidence.

8. There is no evidence in the record that Housing Provider has a certificate of occupancy or a business license for the housing accommodation. PX 101 and 102.

III. Conclusions of Law

This matter is governed by the Rental Housing Act of 1985 ("Rental Housing Act"), D.C. Official Code §§ 42-3501.01 *et seq.*, the District of Columbia Administrative Procedure Act ("DCAPA"), D.C. Official Code §§ 2-501 *et seq.*, and the OAH rules in the District of Columbia Municipal Regulations ("DCMR"), 1 DCMR 2800 *et seq.,* and 1 DCMR 2920 *et seq.* The Office of Administrative Hearings ("OAH") has jurisdiction pursuant to D.C. Official Code § 2-1831.03(b-1)(1).

A. The Legal Status of Petitioner

Because Housing Provider rented out individual rooms to the occupants of the housing accommodation and demanded and received rent weekly, I conclude that the petitioner was a tenant under the Rental Housing Act. The Act defines a "tenant" to include a "tenant... lessee ... or any other person entitled to the possession, occupancy, or the benefits of any rental unit owned by another person." D.C. Official Code § 42-3501.03(36). A "rental unit," is defined as "any part of a housing accommodation . . . which is rented or offered for rent for residential occupancy and includes any . . . room . . . ."

Among the factors I consider in determining that Petitioner is entitled to the protection of the Rental Housing Act are the following: (1) Petitioner had a separate agreement with Housing Provider. (2) Petitioner was assigned a particular room with a

lock that was unique to that room. PX 103. In contrast to a rooming house arrangement, the room that Petitioner occupied was under the exclusive control of the Petitioner. *See* 14 DCMR 199 (defining a "rooming house" as a building in which the accommodations "are not under the exclusive control of the occupants of the accommodations." (3) The substance of the agreement between Petitioner and Housing Provider. *See Harkins v. Win Corp.*, 771 A.2d 1025, 1027 n.4 (D.C. 2001) (noting that the central conceptual distinction between a roomer and a tenant is that the tenant acquires an interest in the real estate and has the exclusive possession of the leased premises while the roomer acquires no estate and has merely the use without the actual or exclusive possession. *Harkins* also lists factors to be considered in determining whether the occupant has exclusive possession.)

B. Tenant's Claims

1. Tenant did not receive a proper 30-day notice of rent increase before the increase was charged

Tenant considered Housing Provider's additional electricity charge of $30.00 monthly a rent increase. The parties have no written lease agreement. Housing Provider testified that he instructed Tenant when Tenant moved in that if Tenant wanted air conditioning then there would be an extra monthly charge for the use of the air conditioner.[4] At that time, Housing Provider did not know and did not tell Tenant what the monthly charge would be. When Tenant wanted an air conditioner, Housing Provider

[4] There is another occupant of the housing accommodation who paid Housing Provider $30.00 for the use of the air conditioner who is not part of this tenant petition. Tenant paid $30.00 and the other occupant paid $30.00 which totaled the $60.00 fee for the air conditioner.

installed one and told Tenant that the cost to him would be $30.00 a month. Tenant agreed to pay this additional fee.

The agreement to pay the additional monthly fee for the air conditioner was not in writing. An air conditioner was installed in June 2007 and Tenant paid an additional $30.00 monthly fee for the excess electricity. Tenant paid this charge to Housing Provider and stopped in September 2007 when he no longer needed the air conditioner. Tenant nor Housing Provider testified that Tenant was responsible for paying this payment after the air conditioner was no longer needed. I conclude that the payment of $30.00 that Housing Provider charged Tenant was not rent.

Rent is defined by the Rental Housing Act in D.C. Code §42-3501.03(28) 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." Housing Provider demanded and received from Tenant a payment of $30.00 for the use of an air conditioner and it was not a condition of occupancy or use of the rental unit.

Further, the payment was not for related services or related facilities. Related services is defined by the Rental Housing Act in D.C. Code 42-3501.03(27) as "any services provided by a housing provider, required by law or by the terms of a rental agreement, to a tenant in connection with the use and occupancy of a rental unit, including repairs, decorating and maintenance, the provision of light, heat, hot and cold water, air conditioning, telephone answering or elevator services, janitorial services, or the removal of trash and refuse." Here, the law does not require Housing Provider to

furnish air conditioning and the oral agreement between Housing Provider and Tenant was that Housing Provider would make air conditioning available to Tenant upon request for a separate fee. Therefore, the air conditioning in this case is not a related service.

Nor was the air conditioning a related facility as defined by the Rental Housing Act in D.C. Code 42-3501.03(26). Related facility is "any facility, furnishing, or equipment made available to a tenant by a housing provider, the use of which is authorized by the payment of the rent charged for a rental unit, including any use of a kitchen, bath, laundry facility, parking facility, or the common use of any common room, yard or other common area." In the instant case, Housing Provider made the air conditioning unit available to Tenant but their agreement was that the use of the air conditioning unit would come at an additional cost. Therefore, the use of the air conditioning unit is not a related facility.

Because the charge of $30.00 was not rent, the demand or receipt of the $30.00 was not a rental increase and therefore Tenant was not entitled to a proper thirty day notice of the rental increase under D.C. Official Code §42-3502.08(f).

2. Housing Provider did not register the building in which Tenant's unit is located with the RACD

Tenant argues that the housing accommodation was not properly registered.[5] The Rental Housing Act at D.C. Official Code § 42-3502.05(f) provides that:

[5] Tenant introduced a letter signed by Lennox Douglas Acting Administrator of the Building and Land Regulation Administration in which Mr. Douglas swore that after a search of the agency's records no certificate of occupancy was found. PX 101. Tenant

> Any person who becomes a housing provider of such a rental unit after July 17, 1985, shall have 30 days within which to file a registration statement with the Rent Administrator.

Housing Provider concedes that the housing accommodation is not registered with the RACD. I find that Housing Provider violated D.C. Official Code § 42-3502.05(f), however, in order to impose a fine for failure to register with the RACD I must find that this failure was willful. [6]

The Rental Housing Commission determined that:

> 'Willfully' goes to the intent to violate the law... If you also intended to violate the law, that would be 'willfully.'[7]

There is no evidence in the record that Housing Provider intended to violate the Rental Housing Act; thus there is no evidence that Housing Provider acted willfully. Therefore, I can impose no penalty.

3. The services and/or facilities provided in connection with Tenant's unit have been substantially reduced

Tenant alleges that the facilities have been substantially reduced due to the mice infestation in the housing accommodation. The Rental Housing Act provides that if it is determined that related services or facilities supplied by a housing provider are substantially decreased, the Administrative Law Judge may decrease the rent to reflect

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also introduced a certificate stating DCRA has no rooming house license for the housing accommodation. PX 102.

[6] D.C. Official Code § 42-3509.01(b).

[7] *Borger Mgmt., Inc. v. Miller*, TP 27,445 (RHC Mar. 4, 2004) at 11 (citing *Quality Mgmt. Inc. v. D.C. Rental Hous. Comm'n*, 505 A.2d 73, 75-76 (D.C. 1986)).

proportionately the value of the change in services. D.C. Official Code § 42-3502.11 (2006). The failure of a housing provider to furnish services required by the D.C. Housing Regulations amount to a reduction in services.[8] The D.C. Housing Regulations require that a housing provider maintain a residential building "in a rodent-proof or reasonably insect-proof condition" and to provide extermination services. 14 DCMR 805.4 & 805.5.

Tenant testified that he saw mice periodically in the housing accommodation when Tenant moved in but the infestation of mice began in late June or early July 2007 and lasted until October 2007. Tenant testified that the mice entered through holes in the ceiling and the floors. PX 106(a)-(c),(g). Tenant also testified that the Florida room, which is the back porch and is a common area, is cluttered and infested with mice. PX 106(e)(f). Tenant saw mice running down the walls of his room and put down mice traps in his room to eliminate the mice problem. PX 106(d). Tenant saw and heard the mice in the kitchen and heard them scurrying at night. Tenant told Housing Provider several times in July about the problem and asked for the housing accommodation to be exterminated after which Housing Provider put poison and peanut butter around the housing accommodation and left poison for Tenant to do the same.

Housing Provider concedes that there are mice in the housing accommodation. Housing Provider testified that he put down mice traps and filled the holes in Tenant's room with steel wool pads. Housing Provider personally treated the property with peanut butter flavored poison and gave Tenant more poison to continue to treat the mice problem. Housing Provider could not give a date or period of time when he laid the

[8] *See Jonathan Woodner Co. v. Enobakhare,* TP 27,730 (RHC Feb. 3, 2005) at 6.

poison down in the housing accommodation other than it was after Tenant's complaints. Housing Provider also testified that he asked periodically about the mice problem.

The issue therefore was whether the mice present in Mr. Oliver's housing accommodation was so substantial as to amount to a reduction in services. The Rental Housing Commission ("RHC") has held that to prove a claim for reduction in services, the tenant must present competent evidence of the existence, duration, and severity of the reduced services.[9] Housing Provider acknowledges that there are mice in the housing accommodation and I credit Mr. Oliver's testimony that the housing accommodation was infested with mice.

The RHC has also held that an unabated rodent infestation constitutes a reduction in services because the housing provider did not provide services required by the housing code.[10] I credit Mr. Oliver's testimony that he made multiple complaints to Housing Provider about mice in the housing accommodation. Both Tenant and Housing Provider acknowledge that Mr. Spigner personally treated the mice infestation once. Housing Provider also testified that he left the poison at the housing accommodation with the tenants. Tenant acknowledged that Housing Provider left the poison at the housing accommodation for him to treat the mice as needed. Further, Housing Provider testified that he checked periodically with Tenant about the problem and heard nothing else about it.

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[9] *Jonathan Woodner Co.*, TP 27,730 at 11.

[10] *Cascade Park Apts. v. Walker,* TP 26,197 (RHC Jan. 14, 2005) at 23.

There is no evidence in the record that after Tenant complained and Housing Provider laid the poison that Tenant continued to complain to Housing Provider about the problem. I find that the housing accommodation was infested with mice for a four month period and that Tenant experienced a substantial reduction of services during this time. Tenant testified that mice crawled up and down the walls of his room, scurried during the night all over the kitchen and left droppings on the stove and were nested amongst the clutter in the Florida room impeding his use of the common area. Therefore, I value the reduction of services by 20% of the rent amount. The infestation lasted four months from June 2007 to October 2007. Tenant paid $185.00 in rent weekly which totaled $740.00 monthly. A reduction of 20% of $740.00 is $148.00. When $148.00 is multiplied by the four months that Tenant's services were reduced that amount is $740.00 plus interest. Chart A detailing the amount Tenant is owed is attached to this order.

IV. ORDER

Therefore, it is, this **30th** day of **June 2009:**

ORDERED, any party aggrieved by this Proposed Order has an opportunity to file exceptions and present arguments based on the decisions rendered in this order within thirty days of the date of this Proposed Order; and it is further

ORDERED, if no exceptions are filed then this Proposed Order becomes Final within thirty-one days of the date of this Proposed Order; and it is further

ORDERED, that Tenant prevails on the claim that Housing Provider did not register the building in which Tenant's unit is located; and it is further

ORDERED, that Tenant prevails on the claim that the services and/or facilities provided in connection with Tenant's unit have been substantially reduced; and it is further

ORDERED, that Housing Provider Leroy Spigner is ordered to pay Tenant Thomas Oliver **seven hundred- forty dollars** ($740.00) in award plus interest in the amount of **fifty-six dollars and seventy-three cents** ($56.73); and it is further

ORDERED, that Tenant does not prevail on the claim that Tenant did not receive a proper 30-day notice of rent increase before the increase was charged and therefore it is **DISMISSED WITH PREJUDICE**; and it is further

ORDERED, that either party may request reconsideration of this Final Order within 10 days pursuant to 1 DCMR 2937; and it is further

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

Caryn L. Hines
Administrative Law Judge

APPENDIX

Exhibits in Evidence

Exhibit No.	Pages	Description
Petitioner		
101	1	Certificate of Occupancy
102	1	Certificates
103	2	Notes
104	4	Receipts
105	1	Certificate of Service
106	4	Photos
Respondent		
200 (a-c)	3	Photos

Chart A

Rent Refund and Interest Computation

DATES OF OVERCHARGES	AMOUNT OF OVERCHARGES	MONTHS HELD BY HOUSING PROVIDER	MONTHLY INTEREST RATE	INTEREST DUE
Jun-07	$148.00	25	0.003333333	$12.33
Jul-07	$148.00	24	0.003333333	$11.84
Aug-07	$148.00	23	0.003333333	$11.35
Sep-07	$148.00	22	0.003333333	$10.85
Oct-07	$148.00	21	0.003333333	$10.36
TOTAL	**$740.00**			**$56.73**

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, in accordance with the Commission's rule, 14 DCMR 3802. The ten (10) day limit shall begin to run when the order becomes final. 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) to:

Thomas Oliver
829 Florida Avenue NE
Washington, DC 20002

Leroy Spigner
829 Florida Avenue NE
Washington, DC 20002

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

I hereby certify that on 6-30, 2009,
this document was caused to be served upon the
above-named parties at the addresses and by the means stated.

Lateefah Jackson
Clerk / Deputy Clerk