

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

DISTRICT OF COLUMBIA
OFFICE OF
ADMINISTRATIVE HEARINGS

2009 FEB -6 A 11: 23

ELOIZA MARIA CHAMORRO,
Tenant/Petitioner,

v.

DOMINICO & GLORIA PANZA, TRUSTEES,
Housing Providers/Respondents.

Case No.: RH-TP-07-29127

In re 1454 Irving Street, NW, Unit 202

FINAL ORDER

I. Introduction

At an evidentiary hearing on three days, April 22, July 8, and July 9, 2008, Tenant/Petitioner Eloiza Chamorro presented evidence on claims asserted in her tenant petition. Student Attorneys Darren Schultz and Julie Akemann and Supervising Attorneys Edward Allen and Alysia Robben from the University of the District of Columbia School of Law Housing and Consumer Law Clinic represented Tenant. Attorney Brian Riger represented Housing Provider. As set out below, Ms. Chamorro proved that Housing Provider demanded rent increases that violated the Rental Housing Act; that services and/or facilities had been reduced; and that housing code violations existed in her rental unit.

II. Findings of Fact

1. Tenant/Petitioner Eloiza Chamorro (Tenant) has rented Apartment 202 at 1454 Irving Street, NW (the Property) for approximately 20 years. At various times during her

tenancy, Ms. Chamorro's daughter, Jessica Branch, and son, Rafael Perez, have lived with her.

2. Housing Provider/Respondent (Housing Provider) Dominico Panza is the owner of 1454 Irving Street, NW.
3. The Waggaman Corporation manages the Property.
4. Mr. Panza employs Jose Marquez and George (Jorge) Hernandez, who have apartments at the Property, to perform maintenance in the building as needed. Jose Marquez receives reduced rent from Mr. Panza in exchange for working in the building. Mr. Marquez communicates directly with the Waggaman Corporation about needed repairs and maintenance. He has been an agent of Housing Provider at all times relevant to the instant claims.
5. The Tenant Petition at issue was filed on December 12, 2007.¹ The Petition alleged: a rent increase was larger than allowed by the Rental Housing Act; a rent increase was taken while the unit was not in substantial compliance with District of Columbia Housing Regulations; and services and facilities had been substantially reduced. In an amendment filed on April 11, 2008, Tenant provided more specificity to the three original claims, including exact dates of the challenged rent increases.

¹ The three year statute of limitations bars all claims before December 12, 2004. D.C. Official Code § 42-3502.06(e).

A. Rent Increases

6. On November 15, 2004, Housing Provider sent Tenant a Notice that her rent would increase from \$582 to \$599, effective January 1, 2005; and that the rent ceiling would increase from \$626 to \$644. The Notice specified that the increase was based on the CPI-W of 2.9% for the calendar year 2003 (effective May 1, 2004). Tenant/Petitioner's Exhibit (PX) 134. Housing Provider/Respondent's Exhibit (RX) 205.
7. On December 28, 2004, Housing Provider filed a Certificate of Election of Adjustment of General Applicability (*hereinafter* "Certificate" or "Certificate of Election") with the Rent Administrator for a rent ceiling increase of \$18.00, from \$626 to \$644, a 2.9% increase based on the CPI-W. RX 211. That certificate specified that the rent charged would increase \$16.00, from \$583 to \$599, effective January 1, 2005.
8. Housing Provider sent Tenant a notice of a \$16 rent increase from \$599 to \$615 on November 10, 2005, with an effective date of January 1, 2006. That notice also specified an increase in the rent ceiling from \$644 to \$661, based on CPI-W increase of 2.7% for calendar year 2004 (effective May 1, 2005). RX 206; PX 136.
9. On December 14, 2005, Housing Provider filed a Certificate of Election with DCRA for a rent ceiling increase from \$644 to \$661 and a rent increase from \$599 to \$615, effective January 1, 2006. PX 137; RX 212.

10. On November 13, 2006, Housing Provider sent Tenant notice of a rent increase of \$38, from \$615 to \$653, effective January 1, 2007. PX 139.
11. On November 15, 2007, Housing Provider sent Tenant notice of a rent increase of \$36, from \$653 to \$689, effective January 1, 2008, based on the CPI-W of 3.5% for the “rent control year May 2006 through April 2007.” PX 140; RX 208.
12. On December 28, 2007, Housing Provider filed with DCRA a Certificate of Notice of Increase in Rent Charged for several units at the housing accommodation. The increases were based on the CPI-W. PX 144.

B. Reduction in Services and Facilities Claim

13. Tenant understood that a complaint to Mr. Marquez was a complaint to the Housing Provider, an understanding corroborated by an October 2, 2003, letter sent to Waggaman when Tenant referred to Mr. Marquez as the “go to gentleman for maintenance issues,” PX 132, and by a letter from Patricia Dooley at Waggaman dated January 9, 2008, with reference to the “resident manager.” RX 216. Housing Provider never informed Tenant otherwise.
14. As early as 2004, Tenant informed Mr. Marquez about problems in her apartment, particularly problems with leaking windows, rodents and cockroaches.
15. On November 26, 2007, a housing inspector issued a list of housing code violations for Tenant’s apartment for improper fit and lack of weatherproofing in the living room and bedroom windows. PX 141.

16. On November 26, 2007, Tenant sent Waggaman Corporation a letter with ten problem areas outlined and described. PX 142. On December 11, 2007, Patricia Dooley at Waggaman Corporation sent Tenant a letter in response with a plan to address her concerns. PX 143.
17. In January 2008, work in Tenant's apartment began. Walls were painted. PX 145.
18. On May 12, 2008, a note in Spanish was slipped under Tenant's door signed by Jorge. The informally translated note states: "Mrs. Maria, Tomorrow we will come to repair the water leak coming from the windows. Let us know if you will be around tomorrow and at what time." PX 148.

1. Heat

19. Heat was provided to all units at the Property from a single boiler. Because the temperature in Tenant's rental unit was uncomfortable for her, Ms. Chamorro used space heaters and boiled water to make the apartment warmer. Tenant produced a photograph that depicts a radiator in her unit with a loose cover, but did not produce evidence of the actual temperature in her unit at any time. Written notice about a problem with the heat was provided to Waggaman on November 26, 2007. PX 142. Testimony about earlier notice was too vague to be accepted.
20. On December 11, 2007, Patricia Dooley at Waggaman responded to the complaints, stating in part, "It is difficult to regulate the heat in a multiunit building to all tenants' satisfaction; however the heat will be turned up a couple of degrees and we will see if that is more comfortable for a majority of tenants" PX 143. Although Tenant

was not comfortable with the temperature in the apartment for some time, once she notified Housing Provider in writing of the problem, she received a prompt response.

2. Rodent and Insects

21. Although Housing Provider had a contract for extermination services, common areas and Tenant's rental unit had an infestation of mice and cockroaches from December of 2004 until June of 2008, evident on a daily basis. Tenant often saw two or three mice in a day, which she and her son trapped and killed. The note slipped under Tenant's door belies Housing Provider's argument that there was no space under the door for entry by such pests.
22. Tenant or her son complained frequently to Mr. Marquez about the pest problem, explaining that the glue substance used by the exterminators did not work. Tenant's son, Mr. Perez, told Mr. Marquez about the pest problem every time they saw each other in the hall.
23. Mice entered Tenant's apartment under the front door and through holes in the walls. The presence of insects was constant, causing embarrassment to Tenant when she had guests and challenges as she and her son tried to solve the problem with insecticides.
24. Housing Provider was on notice of the rodent problem from at least December 12, 2004, when Tenant made frequent complaints to Mr. Marquez. Tenant did not contact Waggaman Corporation directly until November 26, 2007, when she sent a letter with a list of complaints. PX 142. The problem was resolved by June 2008,

when extermination efforts were effective and Housing Provider plugged the holes that allowed mice to enter.

3. Windows

25. Tenant complained to Mr. Panza directly about the ill fitting and leaking windows in her living room and bedroom sometime before October 2, 2003, when she wrote a letter to the Waggaman Corporation with those concerns. PX 132. The living room windows to which she referred are understood to mean sliding glass doors. In the October 2003 letter, Ms. Chamorro referred to earlier complaints to Mr. Panza and to Jorge Marquez, the on site “go-to gentleman for maintenance issues.”
26. In letters dated May 29, 2005, and September 15, 2006, Ms. Chamorro repeated her concerns about the windows.
27. Major windows repairs were made in June 2007, although the problems were not resolved to Tenant’s satisfaction until approximately one year later.

4. Ceiling, floors, pipes, walls, common areas

28. The ceiling in Tenant’s unit was cracked, with peeling paint and plaster that fell in small chunks. This problem existed from December 2004 until it was repaired in February 2008, although written notice was not provided to Housing Provider until November 26, 2007. PX 142. Testimony about earlier oral notice was too vague to serve as a basis for an award.

29. Wood floors in Tenant's unit showed signs of wear with some splintering and cracks. The bathroom floor was missing some tiles.
30. Leaks from pipes in the kitchen and bathroom were problems for Tenant from 2004, although notice was not given to Housing Provider until November 26, 2007. PX 100; PX 123, PX 142.
31. Until April of 2008, the front door to the building permitted uninvited persons to enter after a resident entered because the door did not close properly after a resident unlocked it. Conflicting evidence was produced about the security to the front door of the building, with Tenant taking the position that the door was not secure, permitting people who were not residents to enter. Housing Provider maintains that if nonresidents entered, it was because residents gave them access. In April or May of 2008, the front door was replaced with a properly functioning lock.
32. In her November 26, 2007, letter Tenant told Housing Provider about a hole in the wall between the living room and bedroom where an air conditioner had been. In addition, she expressed her concerns about cleanliness and safety in the common areas. PX 142. As with other allegations, the evidence does not convince me that Tenant gave Housing Provider notice of these problems before November of 2007.

III. Conclusions of Law

This matter is governed by the Rental Housing Act of 1985, D.C. Official Code §§ 42-3501.01-3509.07 (Act), the District of Columbia Administrative Procedure Act, D.C. Official Code §§ 2-501-511, and the District of Columbia Municipal Regulations (DCMR),

1 DCMR 2801-2899 (OAH Rules 2801-2899), 1 DCMR 2920-2941 (OAH Rules 2920-2941), and 14 DCMR 4100-4399.

Although the petition was filed against Dominico and Gloria Panza, Trustees, the evidence supports only Dominico Panza's status as Housing Provider.

A. Res Judicata

Housing Provider argues that the doctrine of res judicata applies, specifically that all claims before June 7, 2007, are barred because Tenant failed to assert those claims in the action brought against her for nonpayment of rent in the Landlord and Tenant Branch of Superior Court. In an action between the same parties, judgment for possession was entered against Tenant in 07 LTB 14262-07 on June 7, 2007. Tenant failed to appear to contest the case, though she redeemed the premises by paying the rent, late fees and costs.

If the doctrine applies, the parties are precluded from re-litigating matters that actually were or could have been litigated in another action. *Tutt v. Doby*, 459 F.2d 1195, 1197 (D.C. Cir. 1972).

Tenant argues that Respondent waived the defense of res judicata because it is an affirmative defense that must be raised in the pleadings or at the start of trial or it is waived. *Goldkind v. Snider Bros.*, 467 A.2d 468,471 (D.C. 1983). See also *Group Health Ass'n, Inc. v. Reyes*, 672 A.2d 74, 75 (D.C. 1996). I agree that the motion was untimely. Pursuant to OAH Rule 2812.4, "[e]xcept as otherwise ordered by this administrative court, no dispositive motion may be filed fewer than fourteen (14) days prior to a trial before this administrative court absent a showing of good cause." The tenant petition at issue in this case was filed six

months after the landlord and tenant action Housing Provider claims is a bar to this action. He has not demonstrated good cause for failure to raise the claim until after a full day of hearing.

Even if the defense were not waived, however, res judicata would not bar Tenant's challenge to the legality of rent increases because the Act "confers primary jurisdiction over rent overcharge petitions upon the Rent Administrator [now ALJ]. . . . [As a result] a Superior Court judge may not undertake to adjudicate the validity of a rent increase." D.C. Official Code § 2-1803 (b-1)(1); *Bedell v. Clark*, TP 24,979 (RHC Apr.29,2003). (quoting *Kennedy v. District of Columbia Rental Hous. Comm'n*, 709 A.2d 94 n1 (D.C.1998)); see also *Drayton v. Poretsky Mgmt.*, 462 A2d 1115, 1120 (D.C. 1983).

Therefore, res judicata does not bar the claims before the date of the superior court action.

B. Collateral Estoppel

Collateral estoppel "renders conclusive in the same or a subsequent action determination of an issue of fact or law when (1) the issue is actually litigated and (2) determined by a valid, final judgment on the merits; (3) after a full and fair opportunity for litigation by the parties or their privies; (4) under circumstances where the determination was essential to the judgment, and not merely dictum." *Cathedral Ave. Co-op., Inc. v. Carter* 947 A.2d 1143, 1150, n. 4 (D.C.2008) (quoting *Washington Med. Ctr. v. Holle*, 573 A.2d 1269, 1283 (D.C.1990). The issues in the instant action were not actually litigated in the landlord and tenant action. Tenant, therefore, is not estopped from pursuing the claims in this forum.

B. Illegal Rent Increase Claim

As explained below, each of the rent increases challenged was invalid because housing code violations existed at the time of the increases. The 2005 and 2006, rent ceiling increases were also invalid because they were not properly perfected. It is settled law that if a housing provider fails to take and perfect a rent ceiling adjustment properly, a subsequent rent increase resulting from that adjustment is invalid and must be refunded to the tenant through the date of the hearing. *Sawyer Prop. Mgmt. Inc. v. D. C. Rental Hous. Comm'n*, 877 A.2d 96,104 (D.C. 2005).

1. Increases in 2004 rent ceiling and 2005 rent charged

As early as 2004, Tenant notified Housing Provider, through an agent, that insects and rodents were problems in her unit. The problem was not abated until June of 2008. Under the Act “the rent for any rental unit shall not be increased above the base rent unless: [t]he rental unit and the common elements are in substantial compliance with the housing regulations D. C. Official Code § 42-3502.08(a)(1)(A). “Infestation of insects or rodents” is a substantial housing code violation, 14 DCMR 4216.2(1), invalidating any rent increase taken before the infestation was abated in June 2008.

The Rental Housing Act also requires that a rent increase be taken and perfected in the manner and timeframe prescribed in the Act and regulations. Housing Provider was required to file and perfect a rent increase based on the adjustment of general applicability, commonly known as a CPI-W, within 30 days of when it first became eligible for the

increase. 14 DCMR 4204.10(c). Generally, housing providers first become eligible to take a CPI-W rent increase on May 1 of each year because that is the date when the Rental Housing Commission's published annual amount of the general applicability adjustment becomes effective. *See* D.C. Official Code § 42-3502.06(b); *Sawyer Prop. Mgmt. Inc. v. D. C. Rental Hous. Comm'n*, 877 A. 2d 96,104 (D.C. 2005); 51 D.C. Reg. 2020 (Feb. 20, 2004); 52 D.C. Reg. 1089 (Feb. 4, 2005). For the rent ceiling increase claimed in 2004, Housing Provider had 30 days from May 1, 2004, to file its Certificate of Eligibility of Adjustment of General Applicability, for the CPI-W increase that year². 52 D.C. Reg. 1089. Housing Provider filed the Certificate more than six months later, on December 28, 2004. PX 135; RX 211. Housing Provider did not offer any evidence that he was otherwise entitled to take and perfect the 2004 CPI-W increase at a later date. With the late filing, the rent ceiling increase for 2004 was never perfected and is therefore invalid. Without a valid rent ceiling, the rent increase charged, effective January 1, 2005, was also invalid. *Sawyer supra* at 104.

2. Increase in 2005 rent ceiling and 2006 rent charged

Because the infestation problems had not been abated and a housing code violation existed at the time of the rent increase in January 2006, that increase was invalid. D. C. Official Code § 42-3502.08(a)(1)(A).

As with the previous year, Housing Provider first became eligible to claim a rent ceiling increase based on the CPI-W on May 1, 2005. From that date, he had 30 days — to May 31, 2005 — to perfect the increase by filing a Certificate of Election of General

² Once perfected, a rent increase cannot be passed on to a tenant until the statutorily required time period has elapsed. That time period was 180 days from the date of the previous rent increase in 2004 and 2005, 12 months after the prior increase after the Act was amended in 2006. D.C. Official Code § 42-3502.08 (g); *see also Sawyer, supra* at 104.

Applicability. Housing Provider did not file that Certificate until December 14, 2005, more than six months too late for timely perfection. RX 212. Therefore, the rent ceiling increase and rent charged increase based on that Certificate, which identifies January 1, 2006, as the effective date, were not valid.

3 2007 and 2008 increases in rent charged

Housing Provider notified Tenant of rent increases, from \$615 to \$653, effective January 2007, and from \$653 to \$689, effective January 2008. At the time those rent increases were charged, the housing code violation that existed for infestation of insects and rodents had not been abated. Therefore, the 2007 and 2008 increases in rent charged were invalid. D. C. Official Code § 42-3502.08(a)(1)(A).

Because of the invalid rent increases in 2005, 2006, 2007 and 2008, Tenant's rent must be rolled back to \$583, the level before the 2005 increase. D.C. Official Code § 42-3509.01(a). The last legal rent ceiling was \$626. In addition, Tenant is entitled to a refund of all rent demanded above \$583, whether or not paid. *Id.*; *Kapusta v. D.C. Rental Housing Commission*, 704 A.2d 286 (D.C. 1997).

C. Reduction in services and facilities

Tenant alleges that reduction in services and facilities included lack of heat, leaking windows, peeling plaster, holes in walls, leaky pipes, and the need for extermination services.

Under the Act, related services are:

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.

D.C. Official Code § 42-3501.03 (27).

A 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.

D.C. Official Code § 42-3501.03 (26).

If I find that related services or related facilities in Tenant's unit were substantially reduced, I may decrease the rent ceiling or rent charged³ depending on the date of the reduction, "to reflect proportionally the value of the change in services and facilities." D.C. Official Code § 42-3502.11.

A housing provider may not be found liable for substantial reduction in related services unless the housing provider has been put on notice of the existence of the conditions. *Calomiris Inv. Corp. v. Milam*, TP 20,144, TP 20,160, and 20,248 (Apr. 26, 1989). In this case, Housing Provider was put on notice of the leaking windows and need for extermination services in December 2004. He was notified of peeling plaster, holes in walls, leaky pipes, and concerns with the common areas in November 2007.

³ When the amendment to D.C. Official Code § 42-3502.11 became effective on August 5, 2006, the remedy was a reduction in rent charged. Before that date, the remedy was a reduction in the rent ceiling.

It is not necessary for an Administrative Law Judge to receive expert testimony or precise evidence concerning the degree to which services and facilities have been reduced in order to compensate Tenant for the value of the reduced services. “[E]vidence of the existence, duration and severity of a reduction in services and/or facilities is competent evidence upon which the [judge] can find the dollar value of a rent roll back.” *George I. Borgner, Inc. v. Woodson*, TP 11,848, (RHC, June 10, 1987) at 11.

If a related and substantially reduced service or facility existed at the time Tenant filed her petition and continued unabated through the date of the hearing, Tenant may receive an award through the date of the hearing. See *Redman v. Graham*, TP 24,681 (RHC July 1, 2004) at 46; *Jenkins v. Johnson*, TP 23,410 (RHC Jan. 4, 1995) at 6.

1. Heat

Tenant alleges that heat in her apartment was absent during the winter months. She produced photographs to corroborate her testimony on this issue, photographs that depict a radiator unit with a loose cover. Nothing in the photographs proves that a heating unit was nonfunctional. I accept that her unit was too cool for her comfort, but not that heat was absent. The heating system was building wide. Had the heat been absent, I would have expected corroborating evidence about building wide heating problems and actual temperature readings, yet no such evidence was produced.

Although Tenant alleges that the problem with heat was present since 2004, the most convincing testimony about notice to Housing Provider was dated November 26, 2007, PX 142, when Tenant sent a letter to Housing Provider listing several problems, including insufficient heat. Within two weeks, Housing Provider responded with a building wide

solution to raise the temperature “a couple of degrees.” As with housing code violations, 14 DCMR 10502(c), after Housing Providers are notified of a reduction in services and facilities, they must be given a reasonable time to abate a problem. *Parreco v. D.C. Rental Hous. Comm'n*, 885 A.2d 327, 337 (D.C. 2005). In this case, because Housing Provider responded in a timely way, Tenant cannot recover for diminished heat, even if I had found that it was a reduced service.

2. Rodents and insects

Tenant alleges that Housing Provider’s failure to provide effective extermination services led to bothersome insects and rodents in her unit. I agree. She had cockroaches and mice in her rental unit, which she needed to trap herself with her son’s help, and she noticed mice in the common areas. Photographs and persuasive testimony from Tenant and her son and daughter support the allegation of lack of effective extermination services that existed from December 12, 2004, until a repair in June 2008. Tenant provided notice to Mr. Marquez orally as early as December 12, 2004. Because of the infestation, Tenant’s monthly rent ceiling (before August 2006), or rent charged (after August 2006), is reduced 10% for rodent and insect infestation through June 2008 when the problem was abated.

3. Windows

3. The problems with the windows in Tenant’s apartment are not disputed. Those problems, with leaking of water and cold air, began before December 12, 2004. In June 2007, Housing Provider made significant repairs. Accordingly, Tenant is entitled to a 15% reduction in rent for the problem windows from December 12, 2004, until June 2007. Evidence supports Tenant’s position that additional work was needed after June 2007.

However, I am not persuaded that the condition of the windows after the major repairs was a substantial reduction of services or facilities that would justify extending the award. D.C. Official Code § 42-3502.11.

4. Paint, plaster, leaks, common areas.

Tenant alleges her unit had peeling paint and plaster holes in walls and baseboards, leaky plumbing, unsafe and unsanitary common areas. However, once Housing Provider was put on notice of these problems by letter dated November 2007, efforts were made to resolve the problems in a timely way. Consequently, Tenant cannot recover for these reductions.

IV. Award

In sum, Tenant is entitled to recover for rent overcharges. She is also entitled to recover rent refunds for the infestation of rodents and insects with a 10% reduction in rent ceiling from December 2004 until June 2008 and for the leaky windows at a 15% reduction from December 2004 until June 2007. The Rental Housing Commission Rules implementing the Rental Housing Act provide for the award of interest on rent refunds at the interest rate used by the Superior Court of the District of Columbia from the date of the violation to the date of issuance of the decision. 14 DCMR 3826.1 – 3826.3; *Marshall v. D.C. Rental Hous. Comm'n*, 533 A.2d 1271, 1278 (D.C. 1987). The tables in Appendices B and C compute Tenants' award and the interest due on the award at the 4% interest rate used by the Superior Court of the District of Columbia on the date of this decision.

In addition, the Rental Housing Act of 1985 provides for an award of treble damages where a housing provider acts in bad faith:

Any person who knowingly . . . substantially reduces or eliminates related services previously provided for a rental unit shall be held liable . . . for the amount by which the rent exceeds the applicable rent charged or for treble that amount (in the event of bad faith) and/or for a roll back of the rent to the amount the [Administrative Law Judge] determines.

D.C. Official Code § 42-3509.01(a).

A finding of bad faith requires “egregious conduct, dishonest intent, sinister motive, or a heedless disregard of duty.” *Vicente v. Jackson*, TP 27,614 (RHC Sept. 19, 2005) at 12 (citing *Quality Mgmt. v. District of Columbia Rental Hous. Comm'n*, 505 A.2d 73, 75 (D.C. 1986) and *Third Jones Corp. v. Young*, TP 20,300 (RHC Mar. 22, 1990)).

Tenant believed that a report to Mr. Marquez at the Property was a report to Housing Provider. Although I accept that those reports were enough to assign liability to Housing Provider for reduced services and facilities, that notice alone does not prove that Mr. Panza’s conduct was egregious, or that he had dishonest intentions or motives. In fact, once Tenant complained directly to Waggaman, the problems in her unit were addressed. Hence, damages will not be trebled pursuant to D.C. Official Code § 42-3509.01(a).

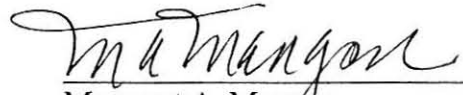
V. ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is this 5th day of February, 2009,

ORDERED, that Housing Provider Dominico Panza reimburse Tenant **SEVEN THOUSAND FOUR HUNDRED SIXTY DOLLARS AND SEVENTY-SIX CENTS** (\$7,460.76) for illegal rent increases and for reduction in services and facilities, plus interest through the date of this decision; and it is further

ORDERED, that Tenant's rent is rolled back to \$583 per month as of July 2008, subject to future increases in compliance with the Rental Housing Act; and it is further

ORDERED, that reconsideration and appeal rights of any party aggrieved by this Order appear below.


Margaret A. Mangan
Administrative Law Judge

**Appendix A
Exhibits**

Tenant/Petitioner Exhibits (PX)

- 100 Photograph Under kitchen sink
- 101 Photograph Wood Floor #1
- 102 Photograph Wood Floor #2
- 103 Photograph Under bathroom sink
- 104 Photograph Bathroom wall and floor
- 105 Photograph Air Conditioning Unit
- 106 Photograph Bedroom ceiling #1
- 107 Photograph Bedroom ceiling #2
- 108 Photograph Living room ceiling
- 109 Photograph Building main entrance door #1
- 110 Photograph Building main entrance door #2
- 111 Photograph Building main entrance door #3
- 112 Photograph First floor stairway #1
- 113 Photograph second floor hallway
- 114 Photograph Third floor stairway #1
- 115 Photograph Third floor stairway #2
- 116 Photograph Third floor stairway #3
- 117 Photograph First floor stairway #2
- 118 Photograph Kitchen Exhaust fan
- 119 Photograph Unit fuse box
- 120 Photograph Bedroom
- 121 Photograph Bathroom floor
- 122 Photograph Bathroom ceiling
- 123 Photograph Bathroom tub
- 124 Photograph Wall near unit entrance
- 125 Photograph bedroom ceiling and wall
- 126 Photograph Floor heating unit #1
- 127 Photograph Building main entrance
- 128 Photograph heating unit #2
- 129 Photograph heating unit #3
- 130 Photograph heating unit #4
- 131 Photograph heating unit #5
- 132 Letter from Tenant to Housing Provider dated October 2, 2003
- 133 Letter from Tenant to Housing Provider dated May 29, 2004
- 134 Notice of Increase in Rent Ceiling and Rent Charged dated November 15, 2004 for 2005
- 135 Certificate of Election of Adjustment of General Applicability dated Dec. 28, 2004
- 136 Notice of Increase of rent ceiling and rent charged dated Nov. 10, 2005 for 2006
- 137 Certificate of Election of Adjustment of General Applicability dated Dec. 14, 2005
- 138 Letter from Tenant to Housing Provider dated September 15, 2006
- 139 Notice of Increase in Rent Charged dated November 13, 2006

- 140 Notice of Increase in Rent Charged dated November 15, 2007
- 141 Notice of Violation dated November 26, 2007
- 142 Letter from Tenant to Housing Provider dated November 26, 2007
- 143 Letter from Housing Provider to Tenant dated December 11, 2007
- 144 Certificate of Notice of Increase in Rent Charged dated December 28, 2007
- 145 Letter from Housing Provider to Tenant dated January 24, 2008
- 146 Facsimile from Housing Provider to Tenant dated January 24, 2008
- 147 Notice of Violation dated May 14, 2008 (not admitted)
- 148 Letter from Marquez dated May 12, 2008

Housing Provider/Respondent Exhibits (RX)

- 200 The lease between the Parties
- 201 Rent increase notice dated October 20, 2000
- 202 Rent increase notice dated October 2001
- 203 Rent increase notice dated November 2002
- 204 Rent increase notice dated November 25, 2003
- 205 Rent increase notice dated November 15, 2004
- 206 Rent increase notice dated November 10, 2005
- 207 Rent increase notice dated November 13, 2006
- 208 Rent increase notice dated November 15, 2007
- 209 Notice of Rent Adjustment November 2002
- 210 Certificate of Election of Adjustment of General Applicability December 2003
- 211 Certificate of Election of Adjustment of General Applicability December 28, 2004
- 212 Certificate of Election of Adjustment of General Applicability December 14, 2005
- 213 Certificate of notice of increase December 14, 2005
- 214 Housing Provider's letter to Tenant dated April 11, 2004
- 215 Housing Provider's letter to Tenant dated January 2, 2006
- 216 Housing Provider's letter to Tenant's attorney dated January 9, 2006
- 217 Housing Provider's letter to Tenant dated March 24, 2006
- 218 Housing Provider's letter to Housing Inspector dated February 20, 2007
- 219 Housing Provider's letter to Tenant dated April 2, 2007
- 220 Receipt for windows and doors June 2007
- 221 Housing Provider's letter to Tenant dated December 11, 2007
- 222 Housing Provider's letter to Tenant dated January 4, 2008

APPENDIX B

RH_TP-07-29127 Chamorro v. Panza							
2005	rent demanded	allowable rent	refund due	months held	interest rate	interest due	
January	599	582	17	48.2	0.0033333	2.73130602	
February	599	582	17	47.2	0.0033333	2.67463992	
March	599	582	17	46.2	0.0033333	2.61797382	
April	599	582	17	45.2	0.0033333	2.56130772	
May	599	582	17	44.2	0.0033333	2.50464162	
June	599	582	17	43.2	0.0033333	2.44797552	
July	599	582	17	42.2	0.0033333	2.39130942	
August	599	582	17	41.2	0.0033333	2.33464332	
September	599	582	17	40.2	0.0033333	2.27797722	
October	599	582	17	39.2	0.0033333	2.22131112	
November	599	582	17	38.2	0.0033333	2.16464502	
December	599	582	17	37.2	0.0033333	2.10797892	
2006							
Jan	615	582	33	36.2	0.0033333	3.9816018	
Feb	615	582	33	35.2	0.0033333	3.8716128	
Mar	615	582	33	34.2	0.0033333	3.7616238	
Apr	615	582	33	33.2	0.0033333	3.6516348	
May	615	582	33	32.2	0.0033333	3.5416458	
Jun	615	582	33	31.2	0.0033333	3.4316568	
Jul	615	582	33	30.2	0.0033333	3.3216678	
Aug	615	582	33	29.2	0.0033333	3.2116788	
Sep	615	582	33	28.2	0.0033333	3.1016898	
Oct	615	582	33	27.2	0.0033333	2.9917008	
Nov	615	582	33	26.2	0.0033333	2.8817118	
Dec	615	582	33	25.2	0.0033333	2.7717228	
2007							
Jan	653	582	71	24.2	0.0033333	5.7267606	
Feb	653	582	71	23.2	0.0033333	5.4901176	
Mar	653	582	71	22.2	0.0033333	5.2534746	
Apr	653	582	71	21.2	0.0033333	5.0168316	
May	653	582	71	20.2	0.0033333	4.7801886	
Jun	653	582	71	19.2	0.0033333	4.5435456	
Jul	653	582	71	18.2	0.0033333	4.3069026	
Aug	653	582	71	17.2	0.0033333	4.0702596	
Sep	653	582	71	16.2	0.0033333	3.8336166	
Oct	653	582	71	15.2	0.0033333	3.5969736	
Nov	653	582	71	14.2	0.0033333	3.3603306	
Dec	653	582	71	13.2	0.0033333	3.1236876	

2008							
Jan	689	582	107	12.2	0.003333	4.3508982	
Feb	689	582	107	11.2	0.003333	3.9942672	
Mar	689	582	107	10.2	0.003333	3.6376362	
Apr	689	582	107	9.2	0.003333	3.2810052	
May	689	582	107	8.2	0.003333	2.9243742	
Jun	689	582	107	7.2	0.003333	2.5677432	
Jul	689	582	107	6.2	0.003333	2.2111122	
Aug	689	582	107	5.2	0.003333	1.8544812	
Total			2308			147.479864	
refund plus interest for rent overcharges			2455.479864				

Appendix C
Refunds for Substantial Reduction in Services and Facilities

For the time before August 2006, the reduction of 25% (15% for windows + 10% for rodents and insects) is subtracted from the rent ceiling, resulting in an adjusted rent ceiling of 75%. The refund due, therefore, is the difference between the adjusted rent ceiling and the rent charged. Beginning in August 2006, the 25% reduction is taken directly from the rent charged. D.C. Official Code § 42-3502.11 Because the windows were repaired in Jun 2007, the reduction of 10% for insects and rodents continued through June 2008.

Month	rent ceiling	adjustment	adjusted ceiling	rent charged	refund due	months held	int rate	interest due
		25%						
Dec-04	626	75%	469.5	582	112.5	49.2	0.003333	18.44816
Jan-05	626	75%	469.5	582	112.5	48.2	0.003333	18.07319
Feb-05	626	75%	469.5	582	112.5	47.2	0.003333	17.69823
Mar-05	626	75%	469.5	582	112.5	46.2	0.003333	17.32327
Apr-05	626	75%	469.5	582	112.5	45.2	0.003333	16.94831
May-05	626	75%	469.5	582	112.5	44.2	0.003333	16.57334
Jun-05	626	75%	469.5	582	112.5	43.2	0.003333	16.19838
Jul-05	626	75%	469.5	582	112.5	42.2	0.003333	15.82342
Aug-05	626	75%	469.5	582	112.5	41.2	0.003333	15.44846
Sep-05	626	75%	469.5	582	112.5	40.2	0.003333	15.07349
Oct-05	626	75%	469.5	582	112.5	39.2	0.003333	14.69853
Nov-05	626	75%	469.5	582	112.5	38.2	0.003333	14.32357
Dec-05	626	75%	469.5	582	112.5	37.2	0.003333	13.94861
Jan-06	626	75%	469.5	582	112.5	36.2	0.003333	13.57364
Feb-06	626	75%	469.5	582	112.5	35.2	0.003333	13.19868
Mar-06	626	75%	469.5	582	112.5	34.2	0.003333	12.82372
Apr-06	626	75%	469.5	582	112.5	33.2	0.003333	12.44876
May-06	626	75%	469.5	582	112.5	32.2	0.003333	12.07379
Jun-06	626	75%	469.5	582	112.5	31.2	0.003333	11.69883
Jul-06	626	75%	469.5	582	112.5	30.2	0.003333	11.32387
	rent charged	reduction						0
Aug-06	582	25%			145.5	29.2	0.003333	14.16058
Sep-06	582	25%			145.5	28.2	0.003333	13.67563
Oct-06	582	25%			145.5	27.2	0.003333	13.19068
Nov-06	582	25%			145.5	26.2	0.003333	12.70573
Dec-06	582	25%			145.5	25.2	0.003333	12.22078
Jan-07	582	25%			145.5	24.2	0.003333	11.73583
Feb-07	582	25%			145.5	23.2	0.003333	11.25087
Mar-07	582	25%			145.5	22.2	0.003333	10.76592
Apr-07	582	25%			145.5	21.2	0.003333	10.28097
May-07	582	25%			145.5	20.2	0.003333	9.79602
Jun-07	582	25%			145.5	19.2	0.003333	9.311069
Jul-07	582	10%			58.2	18.2	0.003333	3.530447

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, D.C. 20002
(202) 442-8949

Certificate of Service:

By Priority Mail with Delivery Confirmation (Postage Paid):

Alysia Robben, Esquire
Darren Schultz, Student Attorney
University of District of Columbia
David A. Clark School of Law
Housing and Consumer Law Clinic
4200 Connecticut Ave., NW
Building 38, 2nd Floor
Washington, D.C. 20008

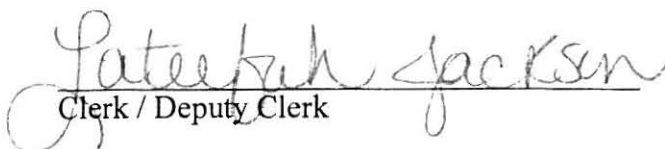
Brian D. Riger, Esquire
Gildar & Riger
6001 Montrose Road
Suite 701
Bethesda, MD 20852

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

I hereby certify that on 2-6, 2009, this document was caused to be served upon the above-named parties at the addresses and by the means stated.


Clerk / Deputy Clerk