

**DISTRICT OF COLUMBIA**  
**OFFICE OF ADMINISTRATIVE HEARINGS**  
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2009 MAR 10 3:21

CATHERINE PRESLEY AND STANLEY  
WEBB,

Tenant/Petitioner,

v.

WOSEN ADMASU,  
Housing Provider/Respondent.

Case No.: RH-TP-08-29147

*In re:* 1412 Spring Road, NW

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**FINAL ORDER**

**I. Introduction**

At a hearing on March 21, 2008, Tenants/Petitioners, through their attorneys, John W. Heck, Student Attorney, and Ann Marie Hay, Esquire, D.C. Law Students in Court, presented evidence in support of the tenant petition they had filed on January 3, 2008. D.E. Fox, Esquire, appeared for Respondent/Housing Provider. The record in this case closed on April 29, 2008. Tenants allege that the Property in which their rental unit is located was not registered properly and that the Housing Provider had not filed the proper claim of exemption and rent increase forms when he increased their rent. Tenants seek a roll back of the rent to zero. Petitioners exhibits (PX) 100 through 107 A-V and Respondent's Exhibits (RX) 201-206 were admitted.

## **II. Findings of Fact**

1. Housing Provider/Respondent, Wosen Admasu, purchased 1412 Spring Road, NW (the Property) in October 2006. He was on the premises daily to collect mail.
2. Within two months of purchasing the Property, Mr. Admasu rented the room to Ms. Presley.
3. Housing Provider, not a native English speaker, testified without the assistance of an interpreter. At times, he did not seem to understand certain terms, such as “homestead exemption,” although with persistent questioning, proof of a general understanding emerged.
4. The Property has three rooms on the upper level, two rooms on the first floor; and a basement unit. At all times relevant to this action, at least two of the upper level rooms; both first floor rooms and the basement unit were rented.
5. Catherine Presley, Tenant/Petitioner, rented a first floor room at the Property in December 2006 from Housing Provider. Shortly thereafter, Stanley Webb, Tenant/Petitioner, moved in.
6. At the inception of the tenancy, Housing Provider understood that one person, Ms. Presley, would rent the room. Ms. Presley’s testimony to the contrary was unconvincing. Housing Provider charged \$500 per month for the first floor room for one person with use of common area kitchen and bathrooms.

7. Soon after Ms. Presley's tenancy began, Housing Provider learned that a second person, Stanley Webb, was living in the unit. Mr. Admasu told Ms. Presley that for two people in the room, rent would be \$800. The discussion that followed was akin to negotiation for rent for a second person. It was not a demand or charge for an increase in rent for Ms. Presley alone.

8. Tenants paid \$500 per month through July 2007, usually in cash, without receiving a receipt. In July 2007, Mr. Webb insisted on a receipt, which Housing Provider gave him – for \$500 in rent paid that month. PX 103-B. After July 2007, Tenants stopped paying rent.

9. On October 26, 2007, Housing Provider filed suit for possession for nonpayment of rent from August through October, 2007. In the complaint, he specified that the rent was \$500. PX 104. Since then, Petitioners have paid \$350 per month pursuant to a protective order in that case.

10. Petitioners observed insects and mice in their unit. They also noted there was no smoke detector in their room.

11. Housing inspectors cited Housing Provider for the following housing code violations:

- a. On September 12, 2007, a Notice of Housing Code Violation (127518\_15) was issued for: loose or peeling paint and cracks in the second floor bathroom. PX 106C.

b. Also on September 12, 2007, a Notice of Housing Code Violation (127518\_30) was issued for failure to maintain three clear feet from an obstruction to ventilation in the second floor bathroom; and failure to maintain three feet clear of obstruction to light. PX 106D. These violations were abated by September 26, 2007. RX 201.

c. On October 24, 2007: Housing Provider received a Notice of Housing Code Violation (130055) for sewage odor. PX 106A. The violation was abated by November 29, 2007. RX 201.

d. October 24, 2007, a Notice of Housing Code Violation (130055\_15) was issued for the need of re-glazing in the bathroom. PX 106B.

12. Housing Provider had not filed a Registration/Claim of Exemption form at the time he rented the room to Tenants in December, 2006. However, on October 29, 2007, he registered the Property with the Rental Accommodations Division (RAD) of the Department of Housing and Community Development as a single family house whose owner holds and operates no more than four rental units. Petitioners' Exhibit (PX) 101. At that time, Housing Provider was renting at least five units at 1412 Spring Road, NW.

13. As of March 20, 2008, Housing Provider had not filed a certificate of occupancy. PX 102.

14. In December 2007, Housing Provider sent Tenants a 90 day notice to vacate for personal use and occupancy. Included in that Notice is a Claim of Exemption number (547564). RX 204.

### III. Conclusions of Law

This matter is governed by the Rental Housing Act of 1985, D.C. Official Code §§ 42-3501.01-3509.07 (the 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, 1 DCMR 2920-2941, and 14 DCMR 4100-4399. Tenants, proponents of the relief sought, have the burden of proving the allegations in their petition by a preponderance of the evidence. Housing Provider has the burden of proving an exemption from the Act. *Goodman v. District of Columbia Hous. Comm'n*, 572 A. 2d, 1293 (D.C. 1990). OAH Rule 2932.1; *Cf.* D.C. Official Code § 2-509(b).

This is a case where credibility was strained on both sides. Tenants disingenuously assert that Ms. Presley told Mr. Admasu at the outset that two people would be renting the room when Ms. Presley agreed to \$500 in rent. It is not logical that a housing provider would quote a new rent after only a few days unless Mr. Admasu's testimony on this point were true – that after a few days he learned that a second person was living in the room. That response belies Tenants' assertion that they had told him from the outset that two people would be renting. Tenants testified that 12 people lived in the house, but provided no corroborating evidence on that point. Tenants testified and provided photographs of insects and rodents in the unit and testified about the lack of a smoke detector. Yet housing inspectors, who identified a number of non substantial violations, did not cite Mr. Admasu for lack of smoke detector, rodents or insects. Consequently, I must conclude that the problems Tenants identified were not excessive or prolonged. Housing Provider asserted that he lived in the house, but aside from picking up mail, never convincingly proved that assertion. He testified that relatives living in

some rooms in the house were helping him with the mortgage, but were not “renting” the rooms, a contention that strained credulity. Because of the questions regarding credibility, I look for corroborating evidence before accepting an assertion on a contested fact from either party.

#### **A. Claim of Rent Increase**

Underlying the claims of housing code violations, improper registration and failure to file proper rent increase forms is a premise I reject – that there was a rent increase. “Rent means the entire amount of money, money’s worth, benefit, bonus, or gratuity demande, 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.” D.C. Official Code § 42-3501.03 (28) (emphasis added). When a tenant is entitled to a refund based on an invalid rent increase, the increase need not have been paid if it was demanded or charged. *Kapusta v. D.C. Rental Hous. Comm’n*, 704 A.2d 286, 287 (D.C. 1997). In *Kapusta*, the Court of Appeals affirmed an award of a rent refund where rent of more than double the rent ceiling was charged but not paid. In *Kapusta*, there was no question about the terms of the rent. The landlord rented a unit for \$410, even though the rent ceiling was \$200. This case is markedly different. The rent charged was \$500 for one person. Housing Provider proposed a rent of \$800 for two people. Tenants’ assertions to the contrary, I cannot convert discussions about more rent for a second person to a demand for an increase. A \$300 increase to \$800 was not demanded, received or charged, as corroborated by a complaint filed in Superior Court on which Housing Provider stated that the rent was \$500, the initial rent he and Ms. Presley negotiated, with no increase. As such, the prohibition against a rent increase when a

rental unit is not properly registered or licensed, pursuant to D.C. Official Code § 42-3502.08(a)(1)(B) and (C), is inapplicable here.

### **B. Licensure and Registration**

For failure to obtain a license and register properly, Tenants argue that Housing Provider had no legal right to charge any rent. They ask that their rent be rolled back to zero.

To engage in business in the District of Columbia, a person must obtain a license and a license endorsement. D.C. Official Code § 47-2851.02.<sup>1</sup> “Owners of residential buildings in which one or more dwelling units or rooming units are offered for rent or lease shall obtain from the Mayor a license to operate such business.” D.C. Official Code § 47-2828. A “dwelling unit” is defined as “any habitable room or group of habitable rooms located within a residential building and forming a single unit which is used or intended to be used for living, sleeping, and the preparation and eating of meals.” 14 DCMR 199.1. All housing providers, including an exempt provider, must have a business license and a certificate of occupancy. D.C. Official Code §§ 42-3502.05(f)(1). Where a Housing Provider fails to obtain a business license or a certificate of occupancy, and he is required to do so as part of the registration requirements of the Act, that registration is defective because the housing provider failed to meet the registration

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<sup>1</sup> D.C. Official Code § 47-2851.01 provides in part:

Business’ means any trade, profession, or activity which provides, or holds itself out to provide, goods or services to the general public or to any portion of the general public, for hire or compensation, in the District of Columbia.

requirements. *Temple v. District of Columbia Rental Housing Comm'n* 536 A.2d 1024, 1029 (D.C.1987); D.C. Official Code § 42-3502.08. In this case, Housing Provider's failure to obtain a business license is a violation of the Act.

In addition to obtaining a business license, a housing provider who is renting property for the first time must file a registration statement within 30 days of the rental. The statement must contain dates and numbers of the housing business license and certificates of occupancy. The full text of the applicable statutory provision follows:

Within 120 days of July 17, 1985, each housing provider of any rental unit not exempted by this chapter and not registered under the Rental Housing Act of 1980, shall file with the Rent Administrator, on a form approved by the Rent Administrator, a new registration statement for each housing accommodation in the District for which the housing provider is receiving rent or is entitled to receive rent. 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. No penalties shall be assessed against any housing provider who, during the 120-day period, registers any units under this chapter, for the failure to have previously registered the units. The registration form shall contain, but not be limited to:

- (1) For each accommodation requiring a housing business license, the dates and numbers of that housing business license and the certificates of occupancy, where required by law, issued by the District government;
- (2) For each accommodation not required to obtain a housing business license, the information contained therein and the dates and numbers of the certificates of occupancy issued by the District government, and a copy of each certificate;
- (3) The base rent for each rental unit in the accommodation, the related services included, and the related facilities and charges;
- (4) The number of bedrooms in the housing accommodation;
- (5) A list of any outstanding violations of the housing regulations applicable to the accommodation or an affidavit by the housing provider or manager that there are no known outstanding violations; and



(6) The rate of return for the housing accommodation and the computations made by the housing provider to arrive at the rate of return by application of the formula provided in § 42-3502.12.

D.C. Official Code § 42-3502.05 (f).

The only units not subject to the registration requirements in the Rental Housing Act are units the Act excludes from coverage, exclusions not applicable here. *See* D.C. Official Code § 42-3502.05(e).<sup>2</sup>

Rental units not excluded from the registration requirements may be exempt from the rent stabilizations provisions of the Act if a housing provider files the proper claim of exemption or meets a special circumstances test. *Goodman* 572 A. 2d 1293, 14 DCMR 1401.1.<sup>3</sup> The exemption claimed here — on the RAD Registration and Claim of Exemption Form filed on October 29, 2008, RX 101, — is the so called small landlord exemption. Yet, Housing Provider in the instant matter does not qualify for a small landlord exemption, even under the special circumstances test, because he rented more than four rental units. D.C. Official Code §§ 42-3502.05(a)(3)(A); *Hanson v. District of Columbia Rental Hous. Comm'n*, 584 A.2d 592 (D.C. 1991). Housing Provider violated the Act by not registering the Property properly at the time he rented the unit and for providing false information on the registration form when he registered.

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<sup>2</sup> Exclusions include units operated by a foreign government for diplomatic personnel, rental units in establishments with the primary purpose of providing diagnostic care and treatment of disease, and dormitories.

<sup>3</sup> “The registration requirements of this section shall apply to each rental unit covered by the Act as provided in § 4100.3 and to each housing accommodation of which the rental unit is a part, including each rental unit exempt from the Rent Stabilization Program.” 14 DCMR 4101.1.

A housing provider who fails to register property is prohibited from increasing rent. D.C. Official Code § 42-3502.08. Rent refunds are appropriate to compensate Tenants for illegal rent increases imposed when the Housing Provider is not properly registered. *McCulloch v. D.C. Rental Hous. Comm'n*, 449 A.2d 1072, 1073 (D.C. 1982) (affirming hearing examiner's award of rent refund under the 1977 Rental Accommodations Act where the landlord failed to file amended registrations to document rent increases); *Cf. Sawyer v. D.C. Rental Hous. Comm'n*, 877 A.2d at 111, n. 15 (holding that the housing provider's failure to file a timely amended registration statement to document a vacancy rent ceiling adjustment invalidated a subsequent rent increase based on that adjustment).

Unlike housing providers in *McCullough* and *Sawyer*, Mr. Admasu in the instant case did not increase Tenants' rent. Furthermore, a roll back of rent to zero, as Tenants urge, is not permissible. The Act provides that rent may be rolled back for excessive and prolonged housing code violations that affect the health, safety, and habitability of the residents, but not to less than the September 1983 base rent. D.C. Official Code § 42-3502.08(a)(2). In this case, since the housing code violations detected by the inspector were not substantial and prolonged, base rent is irrelevant to the analysis. Hence I reject Tenants' claim for a roll back in rent.

### C. Remedy

Absent evidence of an improper rental increase, the sole penalty for failing to properly register rental property is a fine. D.C. Official Code § 42-3509.01(d). Housing Provider did not properly register the housing accommodation at any time relevant to this action. At the time the tenancy began, he had no registration. When he filed a Claim of Exemption in October 2007, he based that claim on renting four or fewer units in the District of Columbia. Yet, his own testimony establishes that he rented at least five units in the house, in violation of the exemption claimed. Without proper registration, Housing Provider could not take a rent increase, D.C. Official Code § 42-3502.08, and is subject to a fine up to \$5,000. D.C. Official Code § 42-3509.01.

To impose a fine, it must be proven that the Housing Provider “intended to violate or was aware that it was violating a provision of the Rental Housing Act.” *Quality Mgmt., Inc., v. D.C. Rental Hous. Comm’n*, 505 A.2d 73, 76 (D.C. 1986). In *Quality Mgmt.*, the Court held that the term, “willful,” requires proof of a culpable mental state, *i.e.*, intent to violate the law. *Id.* at 76, n.6. Willfulness means “something worse than good intentions coupled with bad judgment.” *Sherman v. Comm’n on Licensure to Practice the Healing Art*, 407 A.2d 595, 599 (D.C. 1979) (quoting *Mullen v. United States*, 263 F.2d 275, 276 (1958)). In *M.B.E Inc. v. Minority Bus. Opportunity Comm’n of D.C.*, 485 A.2d 152, 158 (D.C. 1984), the court held that when finding willfulness the focus “is on the intentional performance of a prohibited act.” The cases indicate that it is not necessary to establish that a housing provider had actual knowledge of the controlling law in order to find willfulness. It is sufficient that the act or acts constituting willfulness were intended for an illegal purpose.

Here, Mr. Admasu purchased the property in 2006 and rented the room to tenants within two months. He did not register the Property for one year, and when he did so, stated that it was a single family house with four or fewer rental units, an incorrect representation. His suggestion at the hearing that other persons living in the house were relatives who simply helped him with the mortgage, and were not “renters” was not credible.

I am satisfied that Housing Provider’s actions were intended for an illegal purpose, justifying the imposition of a fine of \$1,000.

Finally, in their post hearing submission, Tenants seek recovery for reduction in services and facilities. However, that claim was not pleaded and cannot be considered in this action. *See, Parreco v. District of Columbia Rental Housing Comm’n*, 885 A.2d 327, 334 -335 (D.C.2005).

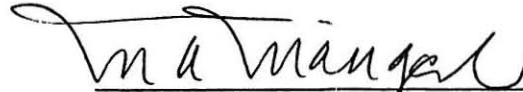
**D. ORDER**

Therefore, based on the foregoing findings of facts and conclusions of law, it is this 10<sup>th</sup> day of March, 2008:

**ORDERED**, that Housing Provider pay a fine of **ONE THOUSAND DOLLARS (\$1,000)**, to the D.C. Treasurer in accordance with the attached instructions within 30 days of service of this Final Order; and it is further

**ORDERED**, that all other claims are **DENIED**; 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

Petitioners' (PX); Respondent's (RX)

- PX 100 Tenant Petition
- PX 101 Landlord's Claim of Exemption Form with RAD
- PX 102 Certificate of Occupancy
- PX 103A DCRA Payment/Receipt
- PX 103B Rent Receipt
- PX 104 Complaint for Asmasu v. Catherine Presley and Stanley Webb, Lt 07-037806
- PX 105 Photographs of Unit doors at 1412 Spring Road, NW
- PX 106 Notices of Violation
- PX 107 Photographs
- PX 108 Assessment of Property (not admitted)
  
- RX 201 Notices of Violation
- RX 202 Abatement 11/29/07
- RX 203 RAD Claim of Exemption
- RX 204 Notice to Vacate
- RX 205 Marriage Certificate (not offered)
- RX 206 Photographs
- RX 207 Tax Document

## **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, N.E.  
Suite 9200  
Washington, D.C. 20002  
(202) 442-8949

**Certificate of Service:**

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

Joanna C. Day, Esquire  
John W. Heck  
DC Law Students in Court  
616 H Street, NW, Suite 500  
Washington, DC 20001

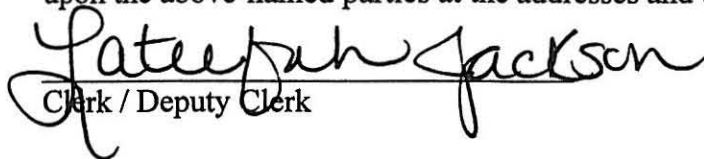
David E. Fox, Esquire  
David E. Fox & Associates  
1325 18th St NW, Suite 103  
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**By Inter-Agency Mail:**

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. Ave., SE  
Washington, DC 20020

I hereby certify that on 3-10, 2009, this document was caused to be served upon the above-named parties at the addresses and by the means stated.

  
Clerk / Deputy Clerk