

DISTRICT OF COLUMBIA
OFFICE OF ADMINISTRATIVE HEARINGS
941 North Capitol Street, N.E., Suite 9100
Washington, DC 20002
TEL: (202) 442-8167
FAX: (202) 442-9451

DISTRICT OF COLUMBIA
OFFICE OF
ADMINISTRATIVE HEARINGS

7008 DEC 19 P 1:51

DONICA DEE BAIRD,
Tenant/Petitioner,

v.

ALPHA LION and LIONEL PROCTOR,
Housing Provider/Respondent.

Case No.: RH-TP-08-29248
In Re 604 Mellon Street, SE, Apt. 2

FINAL ORDER

I. Introduction

On April 4, 2008, Tenant/Petitioner Donica Dee Baird filed Tenant Petition 29,248 alleging (1) the housing accommodation was not properly registered with the Rental Accommodations Division (“RAD”) of the Department of Housing and Community Development (“DHCD”); (2) that services and facilities in connection with Tenant’s apartment were substantially reduced; and (3) Housing Provider took retaliatory action against Tenant in violation of section 502 of the Rental Housing Act of 1985 (“Rental Housing Act” or “the Act”).

Because I find that Housing Provider is a small landlord who is exempt from the rent stabilization provisions of the Rental Housing Act and Tenant failed to prove the allegations in her petition, I dismiss the tenant petition in this case.

II. Procedural History

On May 3, 2008, I issued a Case Management Order scheduling a hearing for June 4, 2008, and setting forth the parties rights and procedural requirements for the hearing. An evidentiary hearing was held on June 4 and July 1, 2008. Tenant Donica Dee Baird appeared at the hearing and testified on her own behalf. Lionel Proctor, property owner, appeared on behalf of Housing Provider and testified. During the hearing, I admitted into evidence Tenant/Petitioner's Exhibits (PX) 101, 103-107, 127A-J. 128-136 and Housing Provider/Respondent's Exhibits (RX) 203, 206, 209, 210, 212, 213, and 214, which are set forth in Appendices A and B, attached to this Order. I excluded the testimony of one Tenant witness and one Housing Provider witness because I determined that their proposed testimony would not be relevant.

Ms. Baird concluded her testimony and rested her case on June 4, 2008, and Housing Provider began the presentation of his case, which was continued to July 1, 2008. At the close of the hearing on June 4, 2008, I permitted both parties to submit additional documents prior to the July 1, 2008, hearing. When Ms. Baird returned for the second day of hearing on July 1, 2008, she again asked for the witness which I previously excluded to testify because Ms. Baird said that the June 4, 2008, hearing was "unfair." I again denied her request testify because the witness' testimony was irrelevant to the tenant petition.

III. Findings of Fact

Donica Dee Baird resided in apartment 2 of 604 Mellon Street, SE, in the District of Columbia from April 17, 2007, until July 2008. The property is a multi-dwelling building with four apartments. The property is owned by Lionel Proctor who also lives in the building. Mr.

Proctor conducts business for his building under the trade name "Alpha Lion." Alpha Lion is not a corporate entity and Mr. Proctor is the sole owner of the property. Mr. Proctor is a small landlord who does not own any other rental property in the District of Columbia.

On November 5, 2004, Housing Provider filed a Claim of Exemption with the RAD and was issued exemption number EX54110. PX 105. On November 4, 2004, Mr. Proctor was issued a certificate of occupancy for the property. PX 106. On November 1, 2004, Housing Provider was issued a basic business license. PX 107, RX 203. Housing Provider's basic business license expired on October 31, 2006, and due to financial problems, as of the hearing date, Housing Provider had not renewed his basic business license.

Mr. Proctor maintains the property in good condition, makes regular repairs, and performs annual inspections on the apartments. RXs 206, 213, 214. When Mr. Proctor purchased the building five years ago he made \$30,000 worth of renovations.

When Ms. Baird rented the apartment on April 17, 2007, she signed a residential lease agreement to pay monthly rent of \$650. PX 128. The following day, Mr. Proctor had Tenant sign another lease because he had used the wrong form. RX 209. The two leases were similar but not identical. The second lease contained the same substantive terms as the first lease and included an addendum (RX 210) notifying Ms. Baird that the property was exempt from the rent stabilization provisions of the Rental Housing Act:

Lessee acknowledges that the Lessor has advised that this property is not regulated by the "RENT STABILIZATION ACT" of the District of Columbia since it is exempt because the owner owns 4 or fewer rental units. A copy of the Certificate of Registration Exemption is attached to this Lease.

RX 209. Ms. Baird's signature and initials appear on all five pages of both leases and the addendum. PX 128, RXs 209, 210. Ms. Baird does not remember signing the second lease but she identified her signature on the second lease. There is no evidence that the second lease was in any way forged or altered. The differences in the information hand written into the leases supports my finding that the two leases were executed separately.

In late February 2008, Tenant began experiencing some problems with the electricity in her apartment fading in and out. On March 13, 2008, Tenant contacted Housing Provider and PEPCO about her electricity for the first time. Ms. Baird told Housing Provider that her electricity faded in and out at times, but she never told him she had any period of time without power. Ms. Baird also complained that her thermostat had stopped working and she was not receiving heat.

On March 17, 2008, Housing Provider hired an electrician to examine the outside electrical panel. The electrician recommended replacing the power box at a cost of \$7,000. Mr. Proctor, who is a former DCRA housing inspector, disagreed with the electrician's recommendations and felt the electrician was trying to make money. Therefore, the following day, Housing Provider had another electrician examine the panel and that electrician made repairs and the power was restored. Ms. Baird felt that the second electrician was not qualified because he was a friend of Housing Provider's and she did not believe he was a "licensed electrician."

Between March 12 and April 4, 2008, Tenant had some intermittent power outages and she would restore the power by pulling the breaker on the electrical panel. Although Mr. Proctor lived in the same building, Ms. Baird did not tell him she was experiencing intermittent power

outages prior to March 17, 2008. Housing Provider told Ms. Baird to come and get him when she is having a problem with the power or thermostat so he could see it. Each time Housing Provider was in Ms. Baird's apartment she had full power, heat, and hot water.

On March 17, 2008, when the electrician was making repairs, during a conversation between Housing Provider and tenant, Ms. Baird said she was going to move out at the expiration of her lease, which was May 31, 2008. Ms. Baird had complained to Housing Provider that her electrical bills were unusually high and she thought it was because of the electrical panel. Also on March 17, 2008, Housing Provider observed electric heaters in Ms. Baird's apartment. The same day, Housing Provider gave Ms. Baird a letter stating that she was overloading the electricity with her electric heaters and directing that she discontinue using the heaters. PX 129. The letter further stated, "Furthermore, you stated that you will be moving when your lease expires on May 31, 2008. I must remind you that I have the right to show your apartment at least two weeks prior to your lease termination." *Id.* Housing Provider also gave Ms. Baird a letter requesting that she provide him with an inventory of food items she claimed to have lost as a result of the power outage and requesting a copy of her electrical bills. RX 212. After receiving the letter Ms. Baird, for no apparent reason, called the police to report that she was being harassed by Housing Provider.

After March 17, 2008, Mr. Proctor and Ms. Baird had an increasingly volatile relationship. Every time Housing Provider tried to discuss repairs with Ms. Baird, she called the police. Ms. Baird made a complaint to DCRA, which inspected the property on March 19, 2008, and no violations were cited. PX 133. On March 18, 2008, Ms. Baird gave Housing Provider a letter regarding her electrical problems. PX 130. On March 19, 2008, Ms. Baird gave Housing Provider a second letter stating that as of that date her electricity was working, requesting

reimbursement of \$200 for food lost due to the power outage, and requesting the outside breaker be replaced as recommended by the first electrician. PX 131. Mr. Proctor told Ms. Baird that he was willing to reimburse her for food lost due to the power outage, but that she must submit a list of what was lost to justify her request for \$200 and an argument ensued. On March 21, 2008, Ms. Baird gave Housing Provider a third letter again asking Housing Provider to address the recommendations of the first electrician and a list of food items lost. PX 132.

Ms. Baird filed her tenant petition on April 4, 2008. After filing her Tenant Petition, Ms. Baird contacted DCRA to complain about conditions in her apartment unrelated to the electricity. DCRA inspected Ms. Baird's apartment on April 7, 2008, and issued notices of violations for molding being loose from the wall, a window not opening, missing baseboard, a ceiling crack, and wall dampness. PX 136. With the exception of the bathroom window not opening, Housing Provider was unaware of these problems until he received the notice of violation. All of the violations were abated by June 2, 2008. *Id.*

On April 28, 2008, Housing Provider gave Ms. Baird a 30-day notice to vacate because she had indicated that she would not renew her lease and for violating her lease by not informing Housing Provider of needed repairs. Ms. Baird did not pay her rent in May or June 2008. In May 2008, Housing Provider gave Ms. Baird a second 30-day notice to vacate for non-payment of rent and sought possession of the rental unit by filing an eviction petition in the Landlord/Tenant Branch of the District of Columbia Superior Court. In July 2008, at the Landlord/Tenant hearing, Ms. Baird voluntarily vacated the apartment and returned the keys to Housing Provider.

IV. Discussion and Conclusions of Law

This matter is governed by the Rental Housing Act of 1985 (D.C. Official Code §§ 42-3501.01 *et. seq.*), Chapters 41-43 of 14 District of Columbia Municipal Regulations (“DCMR”), the District of Columbia Administrative Procedures Act (D.C. Official Code §§ 2-501 *et. seq.*) (“DCAPA”), and OAH Rules (1 DCMR 2800 *et. seq.* and 1 DCMR 2920 *et. seq.*).

A. The Small Landlord Exemption

Most rental housing units in the District of Columbia are subject to the rent stabilization provisions of the Rental Housing Act with requirements that include registration and regulation of rents that housing providers may charge. However, the Act contains a “small landlord exemption” for housing providers who are not professional landlords and who own four or fewer rental units. D.C. Official Code § 42-3505.02(a). Specifically, the Act provides that the Rent Stabilization Program, D.C. Official Code §§ 42-3502.05(f) through 42-3502.19 (except § 42-3502.17), “shall apply to each rental unit in the District except:

(3) Any rental unit in any housing accommodation of 4 or fewer rental units, including any aggregate of 4 rental units whether within the same structure or not, provided:

(A) The housing accommodation is owned by not more than 4 natural persons;

(B) None of the housing providers has an interest, either directly or indirectly, in any other rental unit in the District of Columbia;

(C) The housing provider of the housing accommodation files with the Rent Administrator a claim of exemption statement which consists of an oath or affirmation by the housing provider of the valid claim to the exemption. The

claim of exemption statement shall also contain the signatures of each person having an interest, direct or indirect, in the housing accommodation”

D.C. Official Code § 42-3502.05(a)(3) (emphasis added).

With exceptions not relevant here, the Rental Housing Act requires housing providers either to register a housing accommodation containing rental units or to file a claim of exemption. D.C. Official Code § 42-3502.05(a)(3)(f); 14DCMR 4102.2. It is undisputed in this case that Housing Provider filed a valid claim of exemption in November 2004.

In order to gain the benefit of the exemption, a Housing Provider is required to give tenants written notice that the housing accommodation is exempt from the rent stabilization provisions of the Rental Housing Act. D.C. Official Code § 42-3502.05(d). Failure to give a tenant notice renders the exemption void. *Richards v. Woods*, TP 27,588 (RHC July 15, 2004) at 4 citing *Chaney v. H.J. Turner Real Estate*, TP 24,189 (RHC March 24, 1989). Tenant in this case argues that she was not given proper notice, which I do not find to be true.

Tenant and Housing Provider presented two different leases in this case. PX 128, RX 209. The first lease was signed on April 17, 2008, and the second lease was signed on April 18, 2008, although both are dated April 17, 2008; the addendum is dated April 18, 2008. The two leases although similar are not identical. Both leases are five pages long and contain the same basic terms. The printed text on pages two through five of both leases are identical. However, the handwritten entries, although containing the same information, are written differently. For example, number 10 (keys) on the first lease states “Lessee shall be charged 100.00”¹ Dollars (\$ _____)” and the initials of Ms. Baird and Mr. Proctor appear in the right hand margin of the

¹ 100 was hand written.

paragraph. Number 10 on the second lease states “Lessee shall be charged one hundred Dollars (\$100.00)² and Ms. Baird and Mr. Proctor’s initials are present.

The first pages of the leases again are substantively the same, but are different forms. For example, number 7 on the first lease reads: “Use of Premises shall be confined to that of a single family residence for the Lessee and it not to be used by the Lessee for the purpose of carrying on a business . . .” PX 128. Number 7 on the second lease reads: “Lessee will comply with all government laws relative to cleanliness, occupancy, and preservation.” RX 209. Both leases contain the signature of Ms. Baird and Mr. Proctor at the bottom of every page and initials next to certain provisions such as rent amount, lost key charge, pet policy, and holdover by lessee. *Id.*

Page four of both leases ends with number “26. **Other Terms**”³ which has several blank lines to insert additional terms and the lines continue onto page five. On the first lease there is a hand-drawn diagonal line through the blank lines on pages four and five. PX 128. On the second lease, number 26 contains the hand written words “(SEE ADDENDUM).” RX 209. Page five of the second lease has the following handwritten in the lines: “27. Lessor shall give 24 notice (sic) to Lessee of any need to enter Lessee’s premises with the exception of an emergency.” Ms. Baird and Mr. Proctor’s initials appear on the left side margin and a line is drawn through the remainder of the blank lines. RX 209. At the bottom of page five on both leases is the signature of Ms. Baird and Mr. Proctor. Ms. Baird identified the signature as hers but testified she did not remember signing the second lease.

² “one hundred” and “100.00” were hand written.

³ Both leases are number incorrectly with the numbers on page four going from 35 to 26.

Attached to the second lease is an "Alpha Lion Residential Lease Addendum." RX 210. The addendum states that in addition to the April 17, 2007, agreement, "Lessee acknowledges that the Lessor has advised that this property is not regulated by the "RENT STABILIZATION ACT" of the District of Columbia since it is exempt because the owner owns 4 or fewer rental units. A copy of the Certificate of Registration Exemption is attached to this Lease." *Id.* The paragraph is then initialed by Ms. Baird and Mr. Proctor with their signatures appearing at the bottom of the page and dated April 18, 2007. *Id.* The addendum also contains six other paragraphs regarding repairs, loss, and accidents, each of which is initialed by Ms. Baird and Mr. Proctor. *Id.*

Ms. Baird suggests that Housing Provider forged her signature on the second lease, yet she also identified the signature as belonging to her. Mr. Proctor was a very credible witness, far more credible than Ms. Baird, and testified that he had Ms. Baird sign a second lease because he did not have her sign the correct lease. Ms. Baird's signature and initials appear on each page of both leases. If the situation was that Housing Provider somehow falsified the second lease, it would seem that the signatures would have been duplicates or copies of the signatures from the first lease. This is not the case. It is clear that the signatures on both leases are the same handwriting, but they are not duplicates.

It is more likely that Ms. Baird does not remember signing the second lease and did not know necessarily understand what was meant in the addendum that the property was exempt. It also makes sense from the testimony, that the handwritten entry in the second lease indicating that Housing Provider would give 24 hour notice to Tenant before entering the apartment to make repairs, was added at Ms. Baird's request. Throughout her testimony, Ms. Baird expressed concerns about Housing Provider or repairmen entering her apartment either when she was not

present or without adequate notice. I find that Housing Provider gave Ms. Baird proper notice that the property was exempt and has met his burden of proving that he is entitled to an exemption as a small landlord who owns four or fewer rental properties in the District of Columbia. *Richards v. Woods*, TP 27,588 at 5 (holding that the housing provider has the burden of proving that he or she is exempt from the coverage of the Rental Housing Act and that the tenant was served with notice).

B. Tenant's allegation that the property was not properly registered.

The registration and coverage provisions of the Rental Housing Act apply to exempt and non-exempt rental units and housing accommodations. 14 DCMR 1401.1⁴; *Hammer v. Manor Mgmt Corp.*, TP 28,006 (RHC May 17, 2006) at 7-8. The only units that are not subject to the registration requirements are those units that the Act excludes from coverage. *See* D.C. Official Code § 42-3502.05(e). The Rental Housing Commission has held that the registration requirements for exempt and non-exempt housing accommodations are those found in the regulations at 14 DCMR 4100. *Hammer*, TP 28,006 at 8. The regulations provide that the terms 'to register' and 'registration' shall be understood to include filing the following with the Rent Administrator:

- (b) For rental units exempt from the Rent Stabilization Program the information required to establish the claim of exemption pursuant to § 205(a) of the Act and § 4103 [of the regulations].

⁴ "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 (emphasis added).

14 DCMR 4101.2. The regulations at § 4100, do not require an exempt housing provider to have a business license as a prerequisite to registration. The requirement to have a business license is in the rent stabilization provisions of the Rental Housing Act at D.C. Official Code § 42-3502.05(f)(1), which applies only to non-exempt housing providers and requires those housing providers to file a registration form that contains, among other things:

- (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.

Sections 42-3502.05(f) through 42-3502.19, are the rent stabilization provisions of the Act that do not apply to exempt housing providers. *See* D.C. Official Code § 42-3502.04(a)(3).

The Rental Housing Commission has held that 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 requirements. *1736 18th Street, N.W. Partnership v. 1736 18th Street Tenants Assc'n*, TP 11,537 (RHC Dec. 26, 1996) at 19. In this case, because Housing Provider was properly exempt from the rent stabilization provisions of the Act, he satisfied the registration requirements by filing a claim of exemption in November 2004, even though he allowed his business license to lapse.

There is however a requirement, outside the Rental Housing Act, for Housing Provider to maintain a business license. The District's licensing regulations provide that a basic business license shall be issued for apartment houses. D.C. Official Code § 47-2828(c)(1); 14 DCMR 200.3. The penalty for a housing provider's failure to maintain a business license is a fine which would be issued by DCRA and not by this administrative court.

Even if I were to find that a business license were a registration requirement for Housing Provider in this case, the failure to have a business license would not render the property exemption void and the remedy would be a fine and not a rent refund or reduction as requested by Tenant. *See* D.C. Official Code § 42-3509.01(d); *accord Hammer*, TP 28,006 at 9 (where Commission held that a housing provider's failure to comply with the registration requirements to file a change in ownership within 30 days did not render the exemption void if the property otherwise met the requirements for a claim of exemption). To impose a fine, it must be proven that 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); *see also Miller v. D.C. Rental Hous. Comm'n*, 870 A.2d 556, 558 (D.C. 2005). In this case, Housing Provider was violating the District's licensing laws but he was not violating the Rental Housing Act and therefore I do not reach the issue of willfulness.

The only circumstances under which Tenant would be entitled to a rent refund or reduction for a housing provider's failure to properly register rental property is if the housing provider increased the rent while the property was not properly registered. The regulations provide that any housing provider who has failed to satisfy the registration requirements of the Act shall not be eligible for and shall not take or implement the following:

- (a) Any upward adjustment in the rent ceiling for a rental unit authorized by the Act;
- (b) Any increase in rent charged for a rental unit which is not properly registered;
or
- (c) Any of the benefits that accrue to the housing provider of rental units exempt from the Rent Stabilization Program.

14 DCMR 4109.9. In this case, Housing Provider did not increase Tenant's rent.⁵

Tenant has failed to meet her burden of proving that the property was not properly registered.

C. Tenant's allegation that services and facilities in connection with her unit were substantially reduced.

A housing provider who is subject to the small landlord exemption is exempt from the rent stabilization provisions of the Act, D.C. Official Code §§ 42-3502.05(f) through 42-3502.19 (except § 42-3502.17). *See* D.C. Official Code § 42-3502.05(a). The exempted provisions include Tenants' claims of a reduction in services and facilities. *See Lyons v. Pickrum*, TP 27,616 (RHC Feb. 1, 2005) at 10 (finding that the Rent Administrator did not have jurisdiction over the tenant's reduction in services and facilities claim where the housing provider was exempt from the rent stabilization provisions of the Act). Accordingly, Tenants' claim that services and facilities were substantially reduced is dismissed.

D. Tenant's allegation that Housing Provider retaliated against her in violation of the Rental Housing Act.

A housing accommodation that is exempt from rent control is free only from limited, specific sections of the Act, but is subject to all other provision. The "small landlord" exemption does not extend to allegations of retaliation which is contained in Subchapter V of the Rental Housing Act. *See* D.C. Official Code § 42-3502.05(a) (limiting the exemption to certain portions of Subchapter II of the Rental Housing Act); *Butler v. Toye*, TP 27,262 (RHC December 2, 2004) at 12. Therefore, a remedy is available to Tenant if Housing Provider engaged in

⁵ Although Ms. Baird testified that she had received a notice in May 2008 that her rent was to be increased in July 2008, that occurred after Ms. Baird filed her tenant petition and she vacated the apartment before the rent increase became effective.

prohibited retaliation against her. The remedy is the imposition of a civil fine of up to \$5,000, payable to the District of Columbia, if there was a willful violation of the retaliation provision. D.C. Official Code § 42-3509.01(b).

The Act prohibits a housing provider from taking “any retaliatory action against any Tenants who exercise any right conferred upon the Tenants by this chapter.” Retaliatory action includes “any action or proceeding not otherwise permitted by law which seeks to recover possession of a rental unit . . . violate the privacy of the tenant, harass, reduce the quality or quantity of service . . . termination of tenancy without cause, or any other form of threat or coercion.” D.C. Official Code § 42-3505.02(a); *see also* 14 DCMR 4303.3.

To prevail on a claim for retaliation, Tenants must show that Housing Provider’s actions were provoked by Tenant’s exercise of her rights under the Act. The Act also provides that certain actions taken by a housing provider (i.e. eviction) are presumptively retaliatory if they occur within six months of a tenant exercising certain rights enumerated in the Act.⁶ D.C. Official Code § 42-3505.02(a).

⁶ The regulations provide: “When a tenant petition, filed in accordance with § 4214.1 alleges retaliatory action as in § 4303.3, the Rent Administrator shall make the presumption that the housing provider’s alleged retaliatory action was, in fact, retaliatory if it was taken during the six (6) month period after the tenant did any of the following:

(a) Made a written request or an oral request in the presence of a witness to the housing provider to make repairs necessary to bring the housing accommodation or the rental unit into compliance with the housing regulations;

(b) Contacted appropriate officials of the District of Columbia government, either orally in the presence of a witness or in writing, concerning existing violations of the housing regulations in the rental unit the tenant occupies or pertaining to the housing accommodation in which the rental unit is located, or reported to the officials suspected violations which, if confirmed, would render the rental unit or housing accommodation in noncompliance with the housing regulations;

In this case, Tenant argues that Housing Provider retaliated against her for complaining about the electricity by threatening eviction and by a complaint for possession of the rental unit. The evidence shows that on March 17, 2008, Ms. Baird complained to Housing Provider about electrical problems in her apartment and made a complaint to DCRA (although no violations were cited). Ms. Baird testified that Housing Provider's March 17, 2008, letter was a threat of eviction and therefore retaliation. The letter stated, in pertinent part: "Furthermore, you stated that you will be moving when your lease expires on May 31, 2008. I must remind you that I have the right to show your apartment at least two weeks prior to your lease termination." Mr. Proctor testified credibly that when he spoke with Ms. Baird on March 17, 2008, about the electricity Ms. Baird told him that she did not intend to renew her lease. Ms. Baird denied that she ever told Mr. Proctor she was moving. I found Mr. Proctor's testimony to be more credible than Ms. Baird's.

Although Ms. Baird attempted to depict Mr. Proctor as an indifferent and deficient landlord, my impression of Mr. Proctor was the opposite. Mr. Proctor testified credibly that prior to March 17, 2008, he never had any problems with Ms. Baird and she never made any complaints about the apartment. Although, their relationship became volatile after March 17,

(c) Legally withheld all or part of the tenant's rent after having given a reasonable notice to the housing provider, either orally in the presence of a witness or in writing, of a violation of the housing regulations;

(d) Organized, was a member of, or was involved in any lawful activities pertaining to a tenant organization;

(e) Made an effort to secure or enforce any of the tenant's rights under the tenant's lease or contract with the housing provider; or

(f) Brought legal action against the housing provider.

2008, I do not believe it was the result of any action or inaction on the part of Mr. Proctor. The plain language of the letter does not threaten or demand eviction. I do not find that Mr. Proctor's letter amounted to an act of harassment or a threat of eviction.

Mr. Proctor did subsequently issue Ms. Baird a 30-day notice to vacate, again based on his understanding that she did not intend to renew her lease. The notice to vacate was issued to Ms. Baird on April 28, 2008, after she filed her April 4, 2008, tenant petition. Therefore, the issue is not properly before this administrative court and was not an allegation included in her petition. It is well established that the cut-off for a tenant's claims is the date the petition is filed. *Menor v. Weinbaum*, TP-22,769 (RHC August 4, 1993) at 5. Otherwise, "if the filing of the petition were not the cut off point for the issues to be adjudicated, the landlord would never know what was to be defended." *Id.* The Rental Housing Commission has held that the issues to be adjudicated must be in the petition and the tenant must prove the conditions existed before the tenant filed the petition. *Redmond v. Majerle Mgmt., Inc.*, TP 23,146 (RHC June 4, 1999) at 45. At the time Ms. Baird filed her tenant petition, she was not facing eviction.

Tenant has failed to meet her burden of proving that Housing Provider retaliated against her in violation of the Rental Housing Act.

V. Order

Therefore, it is this 19th day of **December 2008**:

ORDERED, that Tenant/Petitioner Donica Dee Baird has failed to meet her burden of proof and the tenant petition is **DISMISSED WITH PREJUDICE**;

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 set forth below.



Erika L. Pierson
Erika L. Pierson
Administrative Law Judge

APPENDIX A
TENANT'S EXHIBITS ADMITTED INTO EVIDENCE

PX 101	Notice of Violation 4/7/08
PX 103	Business License Verification
PX 104	Screen Print
PX 105	Registration/Claim of Exemption
PX 106	Certificate of Occupancy
PX 107	Basic Business License
PX 127A	Photograph: Circuit Breaker
PX 127B	Photograph: Circuit Breaker
PX 127C	Photograph: Circuit Breaker/Meter Panel
PX 127D	Photograph: Inside Panel
PX 127E	Photograph: Wiring in breaker box
PX 127F	Photograph: full electrical panel
PX 127G	Photograph: meter
PX 127H	Photograph: Kitchen panel breakers
PX 127I	Photograph: Full panel
PX 127J	Photograph: Lugs supporting panel
PX 128	Residential Lease
PX 129	March 17, 2008, letter from Lionel Proctor
PX 130	March 17, 2008, letter from Donica Baird from electrician & letter from Ms. Baird to Lionel Proctor
PX 131	March 19, 2008, letter from Ms. Baird to Mr. Proctor
PX 132	March 21, 2008, letter from Ms. Baird to Mr. Proctor
PX 133	DCRA Rapids Report
PX 134	April 1, 2008, letter from Ms. Baird to Mr. Proctor
PX 135	Electric Bill
PX 136	DCRA Rapids Report

APPENDIX B
HOUSING PROVIDER'S EXHIBITS ADMITTED INTO EVIDENCE

RX 203	Certificate of Registration
RX 206	Invoice
RX 209	Residential Lease
RX 210	Residential Lease Addendum
RX 212	March 17, 2008, letter from Mr. Proctor to Ms. Baird
RX 213	February 1, 2008, letter from Mr. Proctor to Ms. Baird
RX 214	August 2, 2007, letter from Mr. Proctor to all tenants

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:

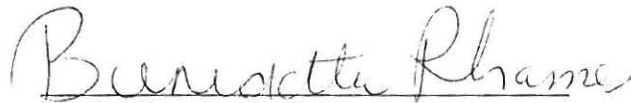
District of Columbia Rental Housing Commission
941 North Capitol Street, N.E.
Suite 9200
Washington, D.C. 20002
(202) 442-8949

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

Lionel Proctor
604 Mellon Street, SE, #3
Washington, DC 20032

Donica D. Baird
P.O. Box 36033
Washington, DC 20020

I hereby certify that on Dec. 19,
2008, this document was caused to be served
upon the above-named parties and upon
DOES at the addresses listed 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
District of Columbia Department of
Consumer and Regulatory Affairs
Rental Housing Administration
941 North Capitol Street, NE, Suite 7100
Washington, DC 20002