

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

2009 MAR 11 A 9:46

FATIMA ZEIN,  
Tenant/Petitioner,

v.

DUDLEY PRO REALTY,  
Housing Provider/Respondent.

Case No: RH-TP-08-29264  
*In re* 2325 15<sup>th</sup> Street NW  
Unit 214

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**FINAL ORDER**

**I. Introduction**

On April 21, 2008, Tenant/Petitioner Fatima Zein filed Tenant Petition ("TP") No. 29,264 with the Rent Administrator, asserting that Housing Provider Dudley Pro Realty violated the Rental Housing Act of 1985 with respect to Tenant's housing accommodation at 2325 15<sup>th</sup> Street, N.W. (the "Housing Accommodation"). The petition charged that: (1) the rent increase was larger than the amount of increase which was allowed by any applicable provision of the Rental Housing Act; (2) there was no proper 30 day notice of rent increase before the increase was charged; (3) the landlord (housing provider) did not file the correct rent increase forms with the Rental Accommodations Division ("RAD") of the Department of Housing and Community Development. The Case Management Order ("CMO") issued to the parties on May 9, 2008, scheduled a hearing in this matter for June 12, 2008.

Tenant appeared for the evidentiary hearing on June 12, 2008. The Housing Provider did not appear. United States Postal Service records show delivery confirmation of the CMO to the

Housing Provider by priority mail delivery confirmation.<sup>1</sup> During the evidentiary hearing, Tenant was represented by Jennifer Berger, Esquire of the AARP Legal Counsel for the Elderly and Tenant testified on her own behalf. Tenant submitted 14 exhibits, all were received in evidence.<sup>2</sup> For reasons set forth below, I find that Tenant has sustained her burden of proof of the violations alleged in the tenant petition.

## **II. Findings of Fact**

1. The CMO was delivered to Housing Provider Dudley Pro Realty by the U.S. Postal Service and was not returned to OAH as undeliverable.
2. The housing accommodation at issue is located at 2325 15<sup>th</sup> Street, NW, Unit 214, Washington, D.C. 20009.
3. Tenant Fatima Zein has been a tenant of the Housing Accommodation since 1987.
4. Tenant's monthly rent in 2005 was \$600.00. Tenant received a telephone call at some point in 2005 from Housing Provider's son, Cornelius Dudley, informing her that her rental payment of \$600.00 was deficient because her rent had been increased by \$17.00, effective August 1, 2005. Tenant did not receive a written notice of this increase. A Notice of Rent increase was not filed with RAD.
5. In 2006, Tenant's rent was raised from \$617.00 to \$644.00. Tenant was not served with a Notice of Increase in Rent Charged. This notice was filed with RAD.

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<sup>1</sup> U.S. Postal Service delivery confirmation number 0307 0020 0004 1794 0740.

<sup>2</sup> A list of exhibits is contained in the Appendix to this Final Order.

6. On December 29, 2005, the office of Councilmember Jim Graham paid Dudley Pro Realty \$204.00 to cover the rental increase for the period from January 2006 through December 2006. On October 24, 2006, the office of Councilmember Jim Graham paid Dudley Pro Realty \$204.00 to cover the rental increase imposed since July 2005.
7. Tenant is 86 years of age and confined to a wheelchair. Tenant applied for elderly status from the Department of Consumer and Regulatory Affairs Rental Accommodations (“RAD”) on March 5, 2008. (PX 103). There is no evidence in the record that this application has been approved.

### **III. Conclusions of Law**

This matter is governed by the Rental Housing Act of 1985 (the “Rental Housing Act” or the “Act”), D.C. Official Code §§42-3501.01 – 3509.07, the District of Columbia Administrative Procedure Act (“DCAPA”), D.C. Official Code §§2-501 – 510, the District of Columbia Municipal Regulations (“DCMR”), 1 DCMR 2800 – 2899, 1 DCMR 2920 – 2941, and 14 DCMR 4100 – 4399. As of October 1, 2006, the Office of Administrative Hearings (“OAH”) has assumed jurisdiction of rental housing cases pursuant to the OAH Establishment Act, D.C. Official Code §2-1831.03(b-1)(1).

**Claim 1: The rent increase was larger than the increase allowed by any  
applicable provision of the Act**

Tenant argues that her rent increase was larger than the amount of increase allowed by any applicable provision of the Rental Housing Act. Tenant is 86 years of age and applied for elderly status on March 5, 2008.

D.C. Official Code §42-3502.08(h)(2) provides that:

[A]n increase in the amount of rent charged while the unit is occupied shall not exceed, taken as a percentage of the current allowable amount of rent charged for the unit, 2% plus the adjustment of general applicability; provided, that the total increase shall not exceed 10%; provided further, that the amount of any such increase in the rent charged for a unit occupied by an elderly or disabled tenant without regard to income ... shall not exceed the lesser of 5% or the adjustment of general applicability.

The provision in the D.C. Code that allows for Tenant to be exempt from rent increases because of elderly status did not become effective until August 5, 2006. Therefore, Tenant would not be able to claim an elderly status exemption when the first rent increase in August of 2005 was made.

Housing Provider raised Tenant's rent again effective August 1, 2006. Because the provision of the D.C. Code that allows for an elderly exemption for tenants became effective four days after Housing Provider increased Tenant's rent, Tenant can not claim the exemption.

Housing Provider raised Tenant's rent effective August 1, 2007. Tenant applied for elderly status on March 5, 2008. There is no evidence in the record that this application was approved by the Rent Administrator. At the time of the rent increase, Housing Provider did not have notice that Tenant was claiming an elderly exemption because Tenant had not applied for elderly status. Tenant did not apply for elderly status until March 5, 2008. In order for Tenant to receive the elderly status exemption, at the very least Housing Provider must have notice that Tenant was taking advantage of the exemption. Also, although Tenant has applied for elderly status there is no evidence in the record that the Rent Administrator has approved this status.

Therefore, Tenant is unable to claim the elderly exemption for the rent increases Housing Provider made during 2005-2007.

**Claim 2: A proper 30 day notice of rent increase was not provided before Tenant's rent increase became effective**

Tenant argues that Housing Provider did not provide a proper 30 day notice of the rent increase before it became effective. The Rental Housing Act at D.C. Official Code §42-3502.05(g)(1)(A), as amended by the Rent Control Reform Amendment Act of 2006, requires housing providers to include the unit number, tenant's name, previous rent charged, new rent charged, and effective date for each increase in rent increase notices.<sup>3</sup>

Tenant argues that Housing Provider did not provide any written notice of the rent increase to her before it became effective. Further, Tenant only learned of the rent increase via a telephone call by Housing Provider's son, Cornelius Dudley, after Tenant sent her rent to Housing Provider.

There is nothing in the record that indicates that Housing Provider served Tenant with a written notice of rent increase before the rent increase became effective as required by D.C. Official Code §42-3509.04(a).<sup>4</sup> Because Housing Provider did not serve Tenant with a written notice of rent increase before the rent increase became effective, no rent increases can be effective until the time that Housing Provider provides proper notice of the increase to Tenant.<sup>5</sup>

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<sup>3</sup> Section 2(b) of the Rent Control Reform Amendment Act of 2006.

<sup>4</sup> Section 42-3509.04(a) requires that service of documents be made by handing the document to the person, leaving it at the person's place of business with some responsible person in charge or by leaving it at the person's usual place of residence with a person of suitable age and discretion; by telegram; by mail or deposit with the United States Postal Service; or by other means in conformity with an order of the Rental Housing Commission or the Rent Administrator.

<sup>5</sup> D.C. Official Code §42-3509.01(b); 14 DCMR 4205.4.

Tenant argues that her rent for the period of April 21, 2005, through April 22, 2008, should be \$600.00 per month, the amount of her rent before the increase, because she did not receive written notice of the rent increase during that period. Housing Provider is in violation of D.C. Official Code §42-3502.05(g)(1)(A), as amended by the Rent Control Reform Amendment Act of 2006, because Housing Provider did not serve Tenant with a written rent increase notice that became effective thirty days prior to Tenant's rent increase.<sup>6</sup> The telephone call from Housing Provider's son in 2005 informing Tenant that her rent was no longer \$600.00 was not proper service of Tenant's rent increase.<sup>7</sup> Therefore, Housing Provider is in violation of D.C. Official Code §42-3502.16(i).

Housing providers who knowingly demand or receive any rent for a rental unit in excess of the maximum allowable rent applicable to that rental unit under the provisions of the Rental Housing Act are liable for the excess of the maximum allowable rent.<sup>8</sup>

The D.C. Court of Appeals has articulated the standard administrative law judges are to apply when weighing whether a housing provider "knowingly" violated the Rental Housing Act of 1985. *Quality Mgmt., Inc. v. D.C. Rental Hous. Comm'n*, 505 A.2d 73 (D.C. 1986) held that the term "knowingly" imports only a knowledge of the essential facts bringing housing provider's conduct within the reach of the Rental Housing Act; and, from such knowledge of the essential facts, the law presumes knowledge of the legal consequences arising from performance

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<sup>6</sup> D.C. Official Code § 42-3502.16(i). To be proper, the written notice should have been provided to Tenant thirty days in advance of the effective date of the increase and included the amount of the rent adjustment, the amount of the adjusted rent, and the date upon which the adjusted rent shall be due pursuant to 14 DCMR 4205.4.

<sup>7</sup> D.C. Official Code § 42-3509.04.

<sup>8</sup> D.C. Official Code § 42-3509.01(a).

of the prohibited conduct. Actual knowledge of the unlawfulness of the act or omission is not required.<sup>9</sup> Housing Provider knew that it demanded and received rent for the housing accommodation. Housing Provider's conduct satisfies the "knowingly" standard.

Because Housing Provider "knowingly" demanded or received rent for the rental unit and the rent increase notice was improper, Housing Provider is not entitled to the excess amount demanded or received. D.C. Official Code §42-3509.01(a) provides for rents to be rolled back to a determined amount. In the instant case, Housing Provider knowingly demanded rent from Tenant and increased the rent by \$17.00 in 2005, by \$27.00 in 2006, and by \$35.00 in 2007. Tenant did not receive written notice of any of these increases. Therefore, rent for the housing accommodation is rolled back from the date of the hearing to the amount prior to the rent increase which is \$600.00.

Tenant is entitled to receive a refund of all of the rent increase amounts plus interest that Housing Provider knowingly demanded or received for the housing accommodation. D.C. Official Code §42-3509.01(a).

In 2005, Tenant's rental increase was \$17.00, increasing her rent to \$617.00 effective August 1, 2005. Tenant is entitled to receive a refund of \$204.00 for excess rent charged in 2005. In 2006, the maximum allowable rent remained \$600.00 because the increase was improper. The overcharge of the maximum allowable rent was \$44.00, which became effective August 1, 2006. Tenant is entitled to receive a refund of \$528.00 for the amount of excess rent charged in 2006. In 2007, the maximum allowable rent remained \$600.00. Tenant's rent was increased to \$679.00 and the overcharge for the maximum allowable rent was \$79.00, which

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<sup>9</sup> *Quality Mgmt., Inc. v. D.C. Rental Hous. Comm'n*, 505 A.2d 73, 75 (D.C. 1986).

became effective August 1, 2007. Tenant is entitled to receive a refund of \$869.00 for the amount of excess of rent demanded or received in 2007. Chart A detailing the schedule is attached to this order and provides the amount of the award of the rent refund and interest.

**Claim 3: Housing Provider failed to file the proper rent increase forms with  
the RAD**

Housing providers are required to file with the Rent Administrator a copy of the rent increase notice given to tenants for a rent increase within 30 days after the effective date of the increase.<sup>10</sup> Tenant argues that Housing Provider failed to file the proper rent increase forms with the RAD and testified that there were no rent increase forms on file with the RAD. I accept Tenant's testimony as credible evidence that Housing Provider failed to file rent increase forms with the Rent Administrator.

D.C. Official Code § 42-3509.01(b) provides that when a housing provider fails to meet the obligations required under the Rental Housing Act, the housing provider is subject to a civil fine. However, in order to impose a fine, I must find that Housing Provider intentionally or willfully failed to file a copy of the rent increase notice with the Rent Administrator.<sup>11</sup> The record is absent of any evidence that Housing Provider's failure to file the rent increase forms with the Rent Administrator was intentional. Therefore, I can impose no penalty.

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<sup>10</sup> D.C. Official Code §42-3502.05(g)(1)(A).

<sup>11</sup> D.C. Official Code §42-3509.01(b); *Borger Mgmt., Inc. v. Miller*, TP 27,445 (RHC Mar. 4, 2004) at 98.



**G. Interest**

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

Tenant is owed interest on the rent increases that have been refunded from August 1, 2005, through March 11, 2009, the date of the decision. Chart A, attached to this Order, reflects the interest due on each month's overcharge from August 1, 2005, through March 11, 2009, a total of **\$113.01** in interest.

**IV. Order**

Accordingly, it is this 11<sup>th</sup> day of **March, 2009**:

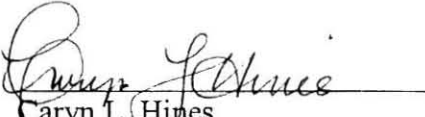
**ORDERED**, Tenant **PREVAILS** in this matter; and it is further

**ORDERED**, that Housing Provider is ordered to pay Tenant **ONE THOUSAND SEVEN HUNDRED FOURTEEN AND ONE CENT (\$1714.01)**; and it is further

**ORDERED**, that Tenant's rent is rolled back to \$600 per month as of July, 2008, and it is further

**ORDERED**, that any party may move for reconsideration of this Final Order within ten days under OAH Rule 2937, 1 DCMR 2937; and it is further

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

  
Caryn L. Hines  
Administrative Law Judge

## APPENDIX

## Exhibits in Evidence

Exhibit No.	Pages	Description
<b>Petitioner</b>		
100	2	Lease 10/28/86
103	1	Fax Cover Sheet
103(A)	2	Application for Elderly or Disabled Status
104	13	Rent Receipts 10/11/04 through 02/05/08
105	1	Letter from Jim Graham to Fatima Zein dated December 29, 2005
105 (A)	1	Check 12/29/05
106	1	Letter from Jim Graham to Dudley Pro Realty 10/24/06
106 (A)	1	Check 10/24/06
107	1	Letter from Jim Graham to Dudley Pro Realty 02/13/07
107(A)	1	Check 02/13/07
108	1	Letter from Jim Graham to Dudley Pro Realty 12/10/07
109(A)	1	Check 12/10/07
113	11	Rent Receipts 5/13/04 through 02/08/08
114	1	Letter from Jennifer Berger, Esq. to Mr. Dudley Re: Request for Amended 2007-2008 Rent Increase
<b>Respondent</b>		

**Chart A**  
**Rent Increase Refund and Interest Calculation**

<b>DATES OF OVERCHARGES</b>	<b>AMOUNT OF OVERCHARGES</b>	<b>MONTHS HELD BY HOUSING PROVIDER</b>	<b>MONTHLY INTEREST RATE</b>	<b>INTEREST DUE</b>
Aug-05	\$17.00	43.39	0.003333333	\$2.46
Sep-05	\$17.00	42.39	0.003333333	\$2.40
Oct-05	\$17.00	41.39	0.003333333	\$2.35
Nov-05	\$17.00	40.39	0.003333333	\$2.29
Dec-05	\$17.00	39.39	0.003333333	\$2.23
Jan-06	\$17.00	38.39	0.003333333	\$2.18
Feb-06	\$17.00	37.39	0.003333333	\$2.12
Mar-06	\$17.00	36.39	0.003333333	\$2.06
Apr-06	\$17.00	35.39	0.003333333	\$2.01
May-06	\$17.00	34.39	0.003333333	\$1.95
Jun-06	\$17.00	33.39	0.003333333	\$1.89
Jul-06	\$17.00	32.39	0.003333333	\$1.84
Aug-06	\$44.00	31.39	0.003333333	\$4.60
Sep-06	\$44.00	30.39	0.003333333	\$4.46
Oct-06	\$44.00	29.39	0.003333333	\$4.31
Nov-06	\$44.00	28.39	0.003333333	\$4.16
Dec-06	\$44.00	27.39	0.003333333	\$4.02
Jan-07	\$44.00	26.39	0.003333333	\$3.87
Feb-07	\$44.00	25.39	0.003333333	\$3.72
Mar-07	\$44.00	24.39	0.003333333	\$3.58
Apr-07	\$44.00	23.39	0.003333333	\$3.43
May-07	\$44.00	22.39	0.003333333	\$3.28
Jun-07	\$44.00	21.39	0.003333333	\$3.14
Jul-07	\$44.00	20.39	0.003333333	\$2.99
Aug-07	\$79.00	19.39	0.003333333	\$5.11
Sep-07	\$79.00	18.39	0.003333333	\$4.84
Oct-07	\$79.00	17.39	0.003333333	\$4.58
Nov-07	\$79.00	16.39	0.003333333	\$4.32
Dec-07	\$79.00	15.39	0.003333333	\$4.05
Jan-08	\$79.00	14.39	0.003333333	\$3.79
Feb-08	\$79.00	13.39	0.003333333	\$3.53
Mar-08	\$79.00	12.39	0.003333333	\$3.26
Apr-08	\$79.00	11.39	0.003333333	\$3.00
May-08	\$79.00	10.39	0.003333333	\$2.74
Jun-09	\$79.00	9.39	0.003333333	\$2.47
<b>TOTAL</b>	<b>\$1,601.00</b>			<b>\$113.01</b>

## APPEAL RIGHTS

Pursuant to D.C. Official Code §§ 2-1831.16(b) and 42-3502.16(h), any party aggrieved by a Final Order issued by the Office of Administrative Hearings may appeal the Final Order to the District of Columbia Rental Housing Commission within ten (10) business days, in accordance with the Commission's rule, 14 DCMR 3802. The ten (10) day time limit shall begin to run when the order becomes final. If the Order is served on the parties by mail, an additional five (5) business days shall be allowed, in accordance with 1 DCMR 2811.5.

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 / Delivery Confirmation**

Jennifer L. Berger, Esq.  
AARP Legal Counsel for the Elderly  
601 E Street NW  
Washington, D.C. 20049

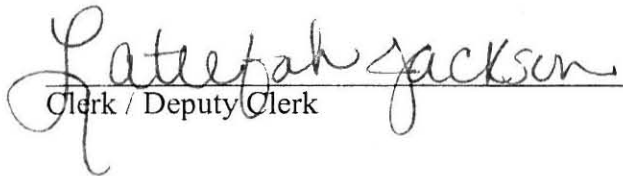
Dudley Pro Realty  
2101 Rhode Island Ave., NE  
Washington, D.C. 20018

**By Inter-Agency Mail:**

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

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

I hereby certify that on 3-11, 2009, this document was caused to be served upon the above-named parties at the addresses and by the means stated.

  
Clerk / Deputy Clerk