

DISTRICT OF COLUMBIA  
OFFICE OF ADMINISTRATIVE HEARINGS  
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DISTRICT OF COLUMBIA  
OFFICE OF  
ADMINISTRATIVE HEARINGS  
2009 APR 29 A 11:45

DOROTHY J. CUMMINGS,  
Tenant/Petitioner,

v.

ROSWELL TAYLOR,  
Housing Provider/Respondent.

Case No.: RH-TP-08-29345

*In re:* 327 17th Street, NE

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**FINAL ORDER**

**I. Introduction**

At the evidentiary hearing on October 7, 2008, Tenant/Petitioner Dorothy Cummings presented evidence in support of claims alleged in the tenant petition she had filed on July 1, 2008, against Respondent/Housing Provider Roswell Taylor. Bronwen Blass, Esq., Wilmer/Hale Loaned Associate, AARP-Legal Counsel for the Elderly, represented Mrs. Cummings; Robert Clayton Cooper, Esq. represented Mr. Taylor.

Based on the record as a whole and applicable law, I conclude that Tenant is entitled to rollback of rent to \$700 and refund of the rent increase charged because of improper registration.

**II. Findings of Fact**

1. Tenant/Petitioner Dorothy Cummings and her husband Velton Cummings, Sr. have rented 327 17th Street, NE, a single family row house, since July 1982.

2. At the inception of the Cummings tenancy, four people owned the Property: Roswell Taylor, his wife Frances DeLee Taylor; and another couple, Thomas Lias and Sharon Lias. The Lias later divorced and in 1988 Thomas Lias died. In 1991, Respondent Roswell Taylor and his wife bought the other 50% interest and held the Property as Tenants by the Entirety.

3. A Registration/Claim of Exemption Form dated January 15, 1986, has Thomas Lias listed as applicant, and asserts that the Property was exempt under § 205(a)(4) of the Act. The Form, signed by Caroline Fargo, has no exemption number. RX 204. No one authenticated that document. Mr. Taylor does not know who Caroline Fargo is nor the nature of the exemption claimed.

4. The last registration form filed for the Property was on January 27, 1986. The applicant identified on the registration form was the Lias-Taylor Partnership. Not one of the boxes listing exemptions was checked. No exemption number appears on the form. However, on the last page is checked the box certifying that the property was in substantial compliance with D.C. Housing Regulations. F. DeLee Taylor signed the form as owner. PX 103.

5. When Mrs. Taylor died in 2005, Mr. Taylor became the sole owner. Until that time, Mr. Taylor was not involved in the management of the Property. The only other property he owns in the District of Columbia is his personal residence.

6. The rent for the Cummings's unit at that time Mr. Taylor became sole owner was \$700.

7. Mr. Taylor has not had a business license to rent the Property, although on his behalf, Willoughby applied for a license on April 22, 2008. The registration fee has been paid and inspection performed. The license is pending.

8. On March 5, 2008, Roswell Taylor filed a Notice of Change of Ownership with RACD listing himself as owner, effective January 1, 1998, and Willoughby Real Estate Co., Inc. as Management Company, effective January 1, 1998. A registration number is hand written on the form with the typed date "1/27/86." PX 100.

9. On March 7, 2008, Mrs. Cummings filed, and the Rent Administrator approved, an Application for Elderly Status. PX 104.

10. Mrs. Cummings has paid \$700 per month in rent since June 25, 2005.

11. On May 22, 2008, David R. Willoughby of Willoughby Real Estate sent a letter to Mr. and Mrs. Velton Cummings stating that the rent would increase to \$1,400, effective July 1, 2008, "due to increase in real estate taxes, insurance, and other costs." In the letter he claimed an exemption and provided a number, although the nature of the exemption was not explained. Attached to the letter was a Notice of Change in Ownership and Management filed with DCRA on March 5, 2008. Mr. Willoughby stated in the letter that he understood that all housing code violations had been abated. On that form is noted a registration number with the date January 27, 1986. PX 100.

#### Housing Code Violations

12. Sometime in 2006, new windows were installed in the den of Tenant's unit. The installation was such that the glass would fall out of the frame unless one was careful

when opening or closing them. Tenant notified Willoughby of the problem after the installation.

13. Also in 2006, at about the same time as the den window installation, a leak developed in the den ceiling. Tenant showed the leak to Ms. Harris at Willoughby.

14. A housing inspector from the Department of Consumer and Regulatory affairs inspected Tenant's unit on March 18, 2008 and issued Notice of Violation No. 134581\_15. The violations were: den window not weatherproofed; den window not capable of opening or closing with ease; den ceiling has loose or peeling paint; den wall has loose or peeling paint; living room ceiling has loose or peeling paint, porch ceiling has loose or peeling paint, the porch downspout had a part missing; porch wall had loose or peeling paint. In each instance of loose and peeling paint, the paint "shall be removed and the surface so exposed shall be repainted." PX 105.

15. Willoughby made repairs shortly after the inspection. Although a problematic leak in the living room returned within two weeks of the repair, Willoughby responded to complaints with efforts to remedy the problem. The problems were substantially abated by the time of the July 2008 rent increase, although the parties did not receive a notice of abatement.

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

On the tenant petition at issue, filed on July 1, 2008, Mrs. Cummings alleges: that the building is not properly registered; the rent increase was larger than allowed by law;

and the rent increase was made while the unit was not in substantial compliance with housing regulations.

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 (DCAPA), 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. Tenant, as the proponent of the relief sought, has the burden of proving the allegations in his petition by a preponderance of the evidence. OAH Rule 2932.1; *Cf.* D.C. Official Code § 2-509(b). Housing Provider has the burden of proving an exemption from the Act. *See Revithes v. D.C. Rental Housing Comm'n* 536 A.2d 1007, 1017 (D.C.1987).

#### **A. Exemption**

Mr. Taylor argues that he has met his burden of proving an exemption with production of a registration number that is written on Notice of Change of Ownership forms filed with the Rent Administrator on March 5, 2008, PX 100, and April 14, 2008, RX 209. In the alternative, he argues that he meets requirement of the small landlord special circumstances test established in *Hanson v. D. C. Rental Housing Comm'n*, 584 a.2d 592, 597 (D.C. 1991).

A Housing Provider does not meet his burden of proving an exemption simply by filing a Registration/Claim of Exemption Form. Entitlement to an exemption must be proven at the hearing. Mr. Taylor did not know what exemption had been asserted, although he had a number. He did not know the person who had asserted it. Nor did he

prove that a required fee had been paid. 14 DCMR 4104.3. Mr. Taylor cites a statutory section number, § 205(a)(4), likely D.C. Official Code § 42-3502.05(a)(4), yet did not prove that they unit had been vacant since 1985 or that it had been previously exempt by the Rental Housing Act of 1980. An assertion, a statement, or the Registration/Claim of Exemption Form, do not prove an exemption. *Goodman v. D.C. Rental Hous. Comm'n*, 573 A.2d 1293, 1297 (D.C. 1990); *Revithes v. D.C. Rental Hous. Comm'n*, 536 A.2d 1007, 1017 (D.C. 1987); *Sarzynski v. Ross*, TP 28,162 (RHC Apr. 3, 2008). Further, Housing Provider was required to file a new claim of exemption when ownership of the property changed and when Willoughby became the property manager. *Hammer v. Manor Mgmt., Corp.*, TP-28006 (RHC May 17, 2006). Production of an exemption number does not satisfy Housing Provider's burden.

If a registration number is not sufficient, Housing Provider argues that he is entitled to an exemption under the special circumstances test for the small landlord exemption. That test has roots in the Act, which provides: "any rental unit in any housing accommodation of four or fewer rental units, including any aggregate of four rental units whether within the same structure or not" is exempt from the Act. D.C. Official Code § 42-3502.05. More specifically,

(a) Sections 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 . . . .

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

Housing Provider claims that the exemption goes back to 1986. In fact, on January 27, 1986, the Lias-Taylor Partnership filed a Registration/Claim of Exemption Form for the property at 327 17<sup>th</sup> Street, NE, although no exemption was specified on that form. PX 103. Clearly checked on the form is the box for Partnership, with the four partners listed. Because a partnership, not a natural person, registered the Property, the statutory small landlord exemption of § 42-3502.05 (a) (3) cannot be claimed. *Price v. District of Columbia Rental Housing Comm'n*, 512 A.2d 263, 268 (D.C.1986).

Nor does Housing Provider qualify for an exemption under the special circumstances test articulated in *Hanson v. District of Columbia Rental Hous. Comm'n*, 584 A.2d 592, 596 (D.C. 1991). At the time of the rent increase in 2008, the Willoughby Real Estate Company managed the Property. The special exception small landlord exemption was carved out for individuals who are not real estate professionals — those who are not in the business of renting property and are reasonably unaware of the filing requirements. *Id.* At 596. Property managed by a real estate firm does not qualify for that exemption. On the record in this case, therefore, no exemption has been proven. Housing Provider is subject to the rent stabilization provisions of the Act, D.C. Official Code § 42-3502.05(f) through 42-3502.19, except § 42-3502.17. *See* § 42-3502.05(a).

**B. Challenge to Rent Increase**

Tenant argues that the \$700 rent increase from \$700 to \$1400, effective July 1, 2008, was unlawful because the housing accommodation was not properly registered, proper notice was not given and because housing code violations were present at the time of the increase.

**1. Registration and Notice**

All housing providers must have a business license and proper registration. D.C. Official Code §§ 42-3502.05(f), § 47-2828; 14 DCMR 200.3. The registration requirements are found in the regulations at 14 DCMR 4101 and 4102. A housing provider who fails to properly register a housing accommodation is prohibited from increasing the rent. D.C. Official Code § 42-3502.08(a)(1)(B); 14 DCMR 4109.9. In this case, Housing Provider produced an exemption number and date in 1986, yet did produce a properly filed registration/exemption form that corresponded to that number. Hence, for failure to register properly, the rent increase was invalid

Furthermore, Tenant argues that the notice provided to Tenant, PX 100, did not meet regulatory requirements. Pursuant to 1 DCMR 4205.4, a housing provider shall take specific actions before implementing a rent increase. Those actions are:

(a) The housing provider shall provide the tenant of the rental unit, not less than thirty (30) days written notice pursuant to §904 of the Act, the following:

- (1) The amount of the rent adjustment;
- (2) The amount of the adjusted rent;



- (3) The date upon which the adjusted rent shall become due; and
- (4) The date and authorization for the rent ceiling adjustment taken and perfected pursuant to 4202.9;

14 DCMR 4205

The notice of increase, PX 100, provided 30 days notice. It includes the new rent to be charged, but not the amount of the adjustment (increase). Most importantly, it did not provide the date and authorization for the increase. Hence the increase was not valid. Tenant is entitled to a refund.

## **2. Housing Code Violations**

Tenant contends that the rent increase was invalid for a second reason: the presence of substantial housing code violations at the time of the increase. Rent for any rental unit shall not be increased “unless the unit is in substantial compliance with housing regulations, if noncompliance is not the result of tenant neglect or misconduct.” D.C. Official Code § 42-3502.08(a)(1). A housing provider may not implement a rent increase for a rental unit in which substantial housing code violations exist, even if the housing provider has made substantial, but unsuccessful, efforts to abate the violations. *Hutchinson v. Home Realty, Inc.*, TP 20523 (RHC Sept. 5, 1989).

Tenant has the burden of proving that the substantial housing code violation existed at the time the rent increase was taken. *Nwankwo v. William J. Davis, Inc.*, TP 11,728 (RHC Aug. 6, 1986), *aff'd*, *Nwankwo v. D.C. Rental Hous. Comm’n*, 542 A.2d 827, 831 (D.C. 1988); 542 A.2d 827, 831 (D.C. 1988). Tenant must show “the dates and duration of those violations.” *Payne v. A & A Marbury, LLC*, OAH No. RH-TP-06-28616

at 11 (Final Order, May 16, 2007), citing *Russell v. Smithy Braedon Prop. Co.*, TP 22,361 (RHC July 20, 1995) at 16. Further, Tenant must prove “that Housing Provider was on notice of the violations.” *Payne, supra* at 11, citing *Gavin v. Fred A. Smith Co.*, TP 21,198 (RHC Nov. 18, 1992) at 4.

In this case, a Notice of Housing Code Violations was issued on March 18, 2008. Willoughby made repairs shortly thereafter. Although leaks reemerged, they were resolved within two weeks of notice. Tenant has not met her burden of proving that substantial housing code violations were present at the time of the rent increase in July 2008.<sup>1</sup>

### C. Remedy

Rent means the entire amount of money, money’s worth, benefit, bonus, or gratuity demand, 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).

Tenant is entitled to a roll back of her rent to of \$700, the amount of the illegal increase, and a refund from the date of the initial demand, July 1, 2008, through the date

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<sup>1</sup> Tenant seeks a reduction in rent for conditions in her rental unit from 2006 to 2008. The remedy for reduction in services and facilities is a decrease in rent charged. D.C. Official Code § 42-3502.11. However, such a claim cannot be considered here because it was not alleged in the tenant petition, depriving Housing Provider of adequate notice. See *Parreco v. D.C. Rental Hous. Comm’n*, 885 A.2d 327, 337 (D.C. 2005). The remedy for housing code violations is the invalidation of a rent increase, if the violations were present at the time of the increase. D.C. Official Code § 42-3502.08(a)(1).

of the hearing. D.C. Official Code § 42-3509.01 (a). She is also entitled to 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. District of Columbia Rental Hous. Comm'n*, 533 A.2d 1271, 1278 (D.C. 1987). Below is a schedule that computes the interest due on each month’s overcharge at the three (3) percent interest rate set for judgments of the Superior Court of the District of Columbia through the date of this decision.

	Rent charged	Adjusted rent	Amt overcharge	Months held	Monthly interest	Interest due
Jul-08	\$1,400	\$700	\$700	9	0.0025	\$15.75
Aug-08	\$1,400	\$700	\$700	8	0.0025	\$14.00
Sep-08	\$1,400	\$700	\$700	7	0.0025	\$12.25
Oct-08	\$1,400	\$700	<u>\$700</u>	6	0.0025	<u>\$10.50</u>
			\$2,800			\$52.50
			Total Overcharges and Interest			\$2,852.50

Because Tenant has elderly status under the Act, future rent increases are subject to the “lesser of 5% or the adjustment of general applicability.” D.C. Official Code § 42-3502.08 (h)(2).

The Act also permits the imposition of a fine, payable to the District of Columbia, against housing providers who intentionally violate the Act. Specifically, the Act provides that: “Any person who wilfully . . . (4) fails to meet obligations required under this chapter shall be subject to a civil fine of not more than \$5,000 for each violation.” D.C. Official Code § 42-3509.01(b). Willfulness focuses on one’s knowledge that he or she is violating the law. *See Miller v. D.C. Rental Hous. Comm’n*, 870 A.2d 556, 558 (D.C. 2005) (holding that a fine may be imposed where 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. n.6 (D.C. 1986) (holding that “willfully” implies intent to violate the law and a culpable mental state).

In this case, Housing Provider erred in not registering the Property properly. Nevertheless, it has not been proven that Housing Provider intended to violate or was aware he was violating the law. Hence, no fine is imposed.


#### IV. ORDER

Therefore, it is this 28<sup>th</sup> day of April, 2009:

**ORDERED**, that Housing Provider pay Tenant **two thousand eight hundred fifty-two dollars and fifty cents (\$2,852.50)** in rent refunds and interest; and it is further

**ORDERED**, that Tenant’s rent is rolled back to **seven hundred dollars (\$700)** until an increase is taken in conformity with the Act; and it is further

**ORDERED**, the reconsideration and appeal rights of any Party aggrieved by this Order appear below.

  
Margaret A. Mangano  
Administrative Law Judge

EXHIBITS

Petitioner's Exhibits (PX)

- 100: Letter from Willoughby to Cummings 5/22/2008, with attachment of Notice of Change in Ownership form filed on 3/5/08
- 101 Certificate re: Business License 3/17/2008
- 102 Certificate re: Business License 6/5/2008
- 103 Registration/Claim of Exemption Form 1/27/2008
- 104 Application for Elderly Status
- 105 Notice of Housing Code Violation 134581\_15 (3/16/2008)
- 106 Letters from Cummings to Willoughby 2/3/2008
- 107 Letter from Cummings to Willoughby 4/27/08

Respondent's Exhibits (RX)

- 200 Deed
- 201 Deed
- 202 Deed
- 203 D.C. Department of Health Certificate of Death
- 204 Registration/Claim of Exemption Form 1986
- 205 Not offered
- 206 Not offered
- 207 Payment Receipt
- 208 Payment Receipt
- 209 Notice of Change in Ownership, Management or Changes in Services and Facilities dated 4/15/08
- 210 Copy of check dated 4/22/08
- 211 Not offered
- 212 Not offered
- 213 Not offered
- 214 Not offered
- 215 Not offered
- 216 Letter to David Willoughby dated 11/30/07
- 217 Offer for Sale dated 5/10/08
- 218 Not offered
- 219 Not offered
- 220 W.R.C. Real Estate Improvement Company, Inc.
- 221 Not offered
- 222 W.R.C. Real Estate Improvement Company, Inc.
- 223 Letter to Willoughby dated 4/27/08 (same as PX 107)

## 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

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

Bronwen Blass, Esq.  
AARP-Legal Counsel for the Elderly  
601 E Street, NW  
Washington, DC 20049

Robert Clayton Cooper, Esq.  
1625 Massachusetts Avenue, NW  
Suite 425  
Washington, DC 20036

**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 4-29, 2009, this document was caused to be served upon the above-named parties at the addresses and by the means stated.

Benedetta Rhames  
Clerk / Deputy Clerk