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DISTRICT OF COLUMBIA
OFFICE OF
ADMINISTRATIVE HEARINGS

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OTIS V. HATCHER,
Tenant/Petitioner,

v.

ELSINOR COURTYARD APARTMENTS,
Housing Provider/Respondent.

Case No.: RH-TP-08-29412

In re: 5311 E Street, SE, Unit 105

FINAL ORDER

I. Introduction

On August 27, 2008, Tenant/Petitioner Otis V. Hatcher (“Tenant”) filed Tenant Petition 29,412 alleging (1) his rent was increased at a time when his unit was not in substantial compliance with the housing regulations; (2) that services and facilities in connection with Tenant’s apartment were substantially reduced; (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”); and (4) Housing Provider served Tenant with a notice to vacate in violation of the Act.

II. Procedural History

On October 1, 2008, I issued a Case Management Order (“CMO”) scheduling this matter for a hearing on November 6, 2008. Tenant appeared at the hearing and testified on his own behalf. No one appeared at the hearing on behalf of Housing Provider/Respondent Elsinor

Courtyard Apartments. During the hearing I admitted 24 exhibits into evidence on behalf of Tenant, which are listed in Appendix A attached to this Order.

III. Findings of Fact

On October 1, 2008, this administrative court issued a CMO scheduling a hearing for November 6, 2008. The CMO was sent to Housing Provider Elsinor Courtyard Apartments, by priority mail with delivery confirmation, to the attention of the "Property Manager" at "5312 E Street, SE, Washington, DC 20019." The address to which the CMO was mailed is the same address listed on Tenant's lease as the address for Tenant to make his rent payments and on the complaint for possession filed by Housing Provider in a Landlord/Tenant case. PXs 109, 120. The United States Postal Service web site reflects that Housing Provider was served with the CMO on October 2, 2008, at 12:33 p.m. (Receipt No. 0306-3030-0001-7131-8761). No one representing Housing Provider appeared for the hearing on November 6, 2008, and no request for a continuance was received.

Tenant/Petitioner Otis Hatcher has resided in apartment 105 at 5311 E Street, SE, in the District of Columbia, for approximately 10 years. Due to suffering a stroke, Mr. Hatcher is paralyzed on one side of his body and uses a wheelchair. Mr. Hatcher receives \$831.80/month in social security benefits. Petitioner's Exhibit ("PX") 109. Tenant's current rent is \$658 per month. Tenant's rent was increased from \$598/month to \$658/month effective May 1, 2008. PX 125. Tenant's rent was increased from \$545/month to \$598/month in December 2006.

Tenant's lease is renewable on December 1st of each year. PX 109. Tenant pays a reduced rent through the Internal Revenue Service Section 42 Low Income Housing Tax Credit Program, known as the LIHTC Program. On August 6, 2008, Tenant received a 120-day notice

from Housing Provider stating that Tenant needed to recertify his income and assets to establish his continued eligibility for the rent subsidy.¹ PX 119. The notice stated that “upon renewal of your lease agreement your new rent rate will be \$835 effective December 1, 2008.” *Id.* On September 16, 2008, Tenant received a 90-day notice to recertify. PX 104. The notice stated that Tenant had failed to respond to prior notices. *Id.* On October 1, 2008, Tenant received a 60-day notice to recertify. PX 103. Tenant has not recertified because he does not receive his social security eligibility letter until January and he does not believe that he has to recertify for the housing subsidy every year.

Mr. Hatcher has had ongoing problems in his apartment which have not been repaired by Housing Provider. The front door to Tenant’s apartment for at least the last year (November 2007 to November 2008), has not closed completely and has a broken lock, which permits unauthorized people to enter the apartment. PXs 101, 111A, 111B. The bathroom sink in Tenant’s apartment has been leaking for one year (November 2007 to November 2008). There has been mold present around the bathtub caulking for two years (November 2006 to November 2008). PX 112A, 112B. There is loose plaster falling from the bathroom walls. PX 100. For the last three years (November 2005 – November 2008), Tenant has been unable to close his bedroom closet door because it is off the hinges. PX 101. The hallway outside the bathroom is splintered and has protruding boards, which poses a danger for Tenant who is wheelchair bound.

¹ Owners and management agents qualified to receive the LIHTC subsidy must be able to prove to the federal government that tenants living in the low income units meet the eligibility requirements of the LIHTC Program and remain eligible throughout their tenancy. 26 U.S.C. § 42; 26 C.F.R. § 1.42-5(b)[1]. The initial eligibility requirements include, but are not limited to, income eligibility. Also, each year the tenant remains in the low-income unit, a re-examination or recertification must be performed to ensure the tenant continues to remain LIHTC Program eligible. *Id.* Failure to correctly prove initial eligibility and re-examine continued eligibility is noncompliance and puts the LIHTC owner at risk of losing its credit claim.

In addition, the hallway floor sinks which causes Tenant concern due to the weight of his wheelchair. There are burn marks on the ceiling around the smoke detector (PX 114) and the ceiling light fixture (PX113). There is similar smoke around the kitchen GFI electrical outlet. PX 115. The burn marks have been present for three years (November 2005 – November 2008). The cover to the kitchen ceiling light is broken (PX 117, 105). The kitchen electrical outlet has been broken for five years (November 2003 – November 2008) and can be moved in and out of the wall. PX 106. The kitchen faucet has been leaking for one year (November 2007- November 2008). PX 105. There are holes present in the walls of the bathroom, bedroom, and hallway. PX 118, 102. Tenant notified the property manager and the Assistant Manager about the problems in his apartment on numerous occasions over the last five years.

On October 27, 2008, the Department of Consumer and Regulatory Affairs (“DCRA”) inspected Tenant’s apartment and issued the following notices of violation:

Kitchen

- Kitchen sink has leaky faucet (PX 105)
- Kitchen ceiling light fixture is defective (PX 105)
- Kitchen electrical wall outlet is defective (PX 106)

Bathroom

- Bathroom has broken or missing parts - baseboard (PX 100)
- Bathroom door is loose from track (PX 101)
- Bathroom floor covering has loose parts (PX 102)
- Caulking around bathroom has missing parts (PX 101)
- Bathroom faucet has a leak (PX 106)
- Bathroom wall has holes. (PX 102)

Hallway

- Hallway wall has loose plaster (PX 100)
- Hallway floor has splintered or protruding boards (PX 102)
- Hallway wall has holes (PX 102)

Bedrooms

- Rear bedroom door has defective or missing parts (PX 101)
- Front bedroom door is loose or disengaged from hinge (PX 102)

Entrance to Apartment

- Entrance door has defective hardware (PX 101)
- Entrance window is not weatherproofed (PX 101)

Dining Room

- Dining room ceiling is unclean (PX 102)

All of the violations listed in the October 27, 2008, notice of violation, existed at the time Tenant's rent was increased, five months earlier, in May 2008. When Tenant's rent was increased in December 2006, the following housing code violations existed: mold in the bathtub, broken kitchen outlet, broken closet door, burns/dirt on the ceiling.

Tenant's rent ledger reflects that his rent has been in arrears of various amounts since October 2007. *Id.* On March 1, 2008, Tenant had an outstanding rent balance of \$1,248. Tenant was credited with a payment of \$598 (PX 122) on March 7, 2008, leaving a balance of \$650. On April 1, 2008, rent in the amount of \$598 was due for April, giving Tenant a balance again of \$1,248. Tenant was credited with a \$500 payment (PX123) on April 11, 2008, leaving a balance of \$748. Tenant did not make any rent payments in May 2008. Tenant's account also reflects a

\$300 charge in May 2008 stating "12/07-3/08 per acct," and on June 1, 2008, the rent for June (\$658) was added. Therefore, Tenant's balance on June 1, 2008, was \$2,364. Tenant paid his June rent of \$658 on June 6, 2008, leaving a balance of \$1,706. Tenant did not pay rent in July or August 2008, leaving a balance of \$3,022 on August 1, 2008. Tenant then paid \$1,316 (two months rent) (PX124) on August 6, 2008, leaving a balance of \$1,706. Tenant did not pay his September 2008 rent on time and incurred a balance of \$2,364 on September 1, 2008. On September 16, 2008, Tenant tendered payment of \$1,316 (two months rent), leaving a balance of \$1,048. Adding Tenant's October 1, 2008, rent, Tenant's balance was \$1,706. The ledger ends on this date.

On May 19, 2008, Housing Provider filed, in the Landlord/Tenant Branch of the District of Columbia Superior Court, a complaint for possession of the rental unit. PX 120. The Complaint states that Tenant failed to pay \$1,706 in rent from March 1, 2008, to May 31, 2008. *Id.* In May 2008, the ledger reflects that Tenant's rent was \$1,706 in arrears. *Id.*

Tenant was never served with a 30-day notice to vacate or quit. Tenant learned of the Landlord/Tenant complaint when he was served with a summons to appear in court. On the Landlord/Tenant complaint, Housing Provider checked the box that states "notice to quit has been waived in writing." PX 120. Subsequently, Tenant made monthly rent payments, but remained \$1,706 in arrears through at least October 2008. *Id.* Tenant entered into a settlement agreement with Housing Provider in the Landlord/Tenant case.² The Settlement Agreement set

² During the hearing, Tenant was referring to a number of documents in his possession regarding the Landlord/Tenant case. I requested to see the documents because Tenant was having difficulty providing direct answers to my questions. A Landlord/Tenant Settlement Agreement was included in those documents which I marked for identification as PX 121. During the hearing, Tenant asked to withdraw that exhibit and requested the exhibit be returned to him.

forth certain payments to be made by Tenant and stated that Housing Provider would make repairs in Tenant's apartment.

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. Housing Provider's Failure to Appear

On October 1, 2008, this administrative court issued a CMO setting this matter for a hearing on November 6, 2008, at 1:30 p.m. The record reflects that the CMO was sent to Housing Provider, Elsinor Courtyard Apartments, by priority mail with delivery confirmation, at the same address listed in Tenant's lease and the complaint for possession. The United States Postal Service website reflects the CMO was delivered on October 2, 2008. Because the CMO setting the hearing date was mailed to Housing Providers' last known address and was confirmed to be delivered by the Postal Service, Housing Provider received proper notice of the hearing date. *Dusenbery v. United States*, 534 U.S. 161, 167-71 (2002); *Mennonite Board of Missions v. Adams*, 462 U.S. 791, 800 (1983); *McCaskill v. D.C. Dep't of Employment Servs.*, 572 A.2d 443, 445 (D.C. 1990); *Carroll v. D.C. Dep't of Employment Servs.*, 487 A.2d 622, 624 (D.C. 1985). Proceeding in Housing Providers' absence was therefore appropriate. *Cf. Borger Mgmt. v. Warren*, TP 23,909 (RHC Jun. 3, 1999) at 9 – 10 (affirming default judgment entered in favor of tenants where housing provider received notice of hearing but failed to attend).

B. Tenant's allegations of improper rent increases

Tenant's petition alleges that his rent was increased in December 2006 (\$53 increase) and May 2008 (\$60 increase) when his apartment was not in substantial compliance with the housing regulations.³ The Rental Housing Act prohibits a housing provider from increasing a tenant's rent if the apartment is not in substantial compliance with the housing regulations. D.C. Official Code § 42-3502.08(a)(1)(A); 14 DCMR 4216.1. The regulations implementing the Act provide that substantial compliance with the housing code means the absence of any substantial housing violations, including but not limited to:

- Defective electrical wiring, outlets, or fixtures
- Exposed electrical wiring or outlets not properly covered
- Plaster falling
- Floor, wall, or ceilings with substantial holes,
- Doors lacking required locks
- Large number of housing code violations, each of which may be either substantial or nonsubstantial, the aggregate of which is substantial, because of the number of violations

14 DCMR 4216.2. The Rental Housing Commission ("RHC" or "Commission") has held that the mere existence of housing code violations is sufficient to meet the "substantial" test.

Vincente v. Jackson, TP 27,614 (RHC Sept. 19, 2005) at 17.

³ Mr. Hatcher did not have any notices of increase in rent charged to support that his rent was increased, but relied on a printout of his rent history ("rent ledger") which he received from Housing Provider. PX 125. The rent ledger only covers October 15, 2007, to October 1, 2008. The rent ledger reflects an increase in rent charged from \$598/month to \$658/month, beginning May 1, 2008. Although Tenant did not offer any documentary evidence of the 2006 rent increase, I credit his testimony that his rent was increased from \$545/month to \$598/month, effective December 1, 2006. The amount and date of the increase are consistent with Tenant's other rent increase and the date on which Tenant's lease is renewable.

In this case, DCRA inspected Tenant's apartment and issued notices of 16 housing code violations. Tenant testified credibly that all of these violations existed at the time of the May 2008 rent increase. Tenant also testified credibly that several violations (mold, broken kitchen outlet, broken closet door) existed at the time of the December 2006 increase. I also credit Claimant's testimony that he made several requests over the years, to both the manager and assistant manager, to have repairs made. Therefore, I find that Tenant's rent was improperly increased in December 2006 and May 2008 because housing code violations existed at the time of the increases. I will award Tenant a rent refund of the improper rent increases from December 1, 2006, through November 1, 2008 (the date of the hearing), as set forth in the Remedy (V.) section below.

Tenant also challenged, as an improper rent increase, the August 6, 2008, notice, stating his rent would be increased to \$835 effective December 1, 2008. However, at the time of the hearing, that rent increase had not yet been implemented. The notice Tenant received on August 6, 2008, did not constitute a valid notice of rent increase nor is it clear that the notice was intended to be a notice of rent increase.⁴ The notice Tenant received informed Tenant that he needed to recertify to establish his continued eligibility for the low income housing tax credit he received. Although the letter said that Tenant's new rent, effective December 1, 2008, would be \$835, it was not clear from the letter whether the rent was being raised to \$835 (a \$177 increase) only if Tenant failed to recertify. Tenant then received two additional notices informing him to recertify and by Tenant's own admission, he failed to do so. Tenant argued that because he only receives \$831.80 per month in social security benefits, it would be impossible for him to pay the increased rent amount of \$835. However, this administrative court is without authority to adjust

⁴ Tenant did not allege in his petition that Housing Provider failed to serve Tenant with a proper 30 day notice of rent increase.

Tenant's rent based on his ability to pay. There was no evidence of what the rent increase was based upon (i.e. increase a general applicability) and therefore I am unable to determine whether the increase was a proper amount and Tenant did not allege that his rent was increased in an amount higher than permitted by the Act. However, because housing code violations continue to exist in Tenant's apartment, Housing Provider is prohibited from increasing Tenant's rent until such time as all housing code violations have been abated.

C. Tenant's allegation that services and facilities were substantially reduced

Tenant's petition alleges that services and facilities in connection with his apartment were substantially reduced. Tenant's allegations are based on the existence of housing code violations in his apartment. The Act defines "services" as "services provided by a housing provider, required by law or by the terms of a rental agreement, to a tenant in connection with the use and occupancy of a rental unit, including repairs, decorating and maintenance" D.C. Official Code § 42-3501.03(27). The reduction of services provision of the Act "was drafted to ensure that housing providers provide services required by [the] D.C. Housing Code." *Cascade Park Apts. v. Walker*, TP-26,197 (RHC January 14, 2005) at 22 (citing *Shapiro v. Comer*, TP-21,742 (RHC August 19, 1993) at 20).

To establish that services and facilities were substantially reduced, a tenant must present competent evidence of the existence, duration, and severity of the reduced services. *Jonathan Woodner Company*, TP-27,730 (RHC Feb. 3, 2005) at 11. Tenant must also show that he notified Housing Provider that service was required and Housing Provider failed to make repairs in a reasonable amount of time. *Id.* Tenant testified credibly that the violations in his apartment have existed for one to five years as follows:

CHART A		
VIOLATION	SEVERITY	DURATION
Broken Front Door	Very Serious	1 Year
Leaky Faucet	Very Serious	1 Year
Holes in walls	Serious	2 Years
Mold in Bathtub	Very Serious	2 Years
Dirt/Stains/Burns on ceiling	Moderate	3 Years
Broken Closet Door	Serious	5 Years
Broken Electrical Outlet	Very Serious	5 Years
Defects in Floor	Very Serious	Unknown
Broken Kitchen Light Cover	Moderate	Unknown

Tenant also testified credibly that he verbally notified both the building manager and assistant manager about the problems in his apartment on numerous occasions and no repairs were made. In addition, the settlement agreement entered between Tenant and Housing Provider in the Landlord/Tenant Case states that Housing Provider agreed to make repairs in Tenant's apartment, supporting Tenant's argument that Housing Provider was aware of the problems. Housing Provider failed to appear at the hearing to refute Tenant's testimony. A housing provider is required to maintain the habitability of a rental unit by making necessary repairs in a reasonable, prompt, and complete manner, once the need for such repairs has been brought to their attention. *Newton v. Hope*, TP 27,034 (RHC May 29, 2002) at 7 (where housing provider failed for six months to correct the dampness and cracks in the walls) (*citing Bonheur v. Oparaocha*, TP 22,970 (RHC Feb. 4, 1994) at 9); *Young v. King*, TP 11,988 (RHC Sept. 4, 1987) (where the RHC commission found that the housing provider's failure to make satisfactory repairs to a damaged ceiling and correct a leaky faucet and falling plaster constituted a substantial reduction in services and facilities).

The Rental Housing Act provides that where services or facilities in a rental unit are substantially decreased, the rent for the unit shall be decreased "to reflect proportionally the

value of the change in services and facilities.” D.C. Official Code § 42-3502.11. The Rental Housing Commission has consistently held that the Administrative Law Judge is not required to assess the value of a reduction in services and facilities with “scientific precision,” but may instead rely on his or her “knowledge, expertise and discretion as long as there is substantial evidence in the record regarding the nature of the violation, duration, and substantiality.” *Kemp v. Marshall Heights Cmty. Dev.*, TP 24,786 (RHC Aug. 1, 2000) at 8 (citing *Calomiris v. Misuriello*, TP 4809 (RHC Aug. 30, 1982) and *Nicholls v. Tenants of 5005, 07, 09 D St., S.E.*, TP 11,302 (RHC Sept. 6, 1985). Because I find that it is the large number of housing code violations in the aggregate that amount to a substantial reduction in services and facilities, I will reduce Tenant’s rent by 10% from August 27, 2006 (two years prior to the filing of the Tenant petition), to November 6, 2008 (the date of hearing).⁵

D. Tenant’s allegation that a notice to vacate was served in violation of the Act

Tenant testified that he was never served with a notice to vacate or quit prior to Housing Provider seeking possession of the rental unit in Landlord/Tenant court. Tenant’s testimony is supported by the Landlord/Tenant complaint which states that the notice to quit was waived in writing; however, there is no evidence of any such waiver.

Section 501 of the Rental Housing Act provides, in part:

No tenant shall be evicted from a rental unit for any reason other than for nonpayment of rent unless the tenant has been served with a written notice to vacate which meets the requirements of the

⁵ Where violations continue following the date that the tenant’s petition is filed, the RHC has held that the remedy for the improper rent adjustment may go up to the date the record closed, which is usually the hearing date. *Redmond v. Marjerle Mgmt., Inc.*, TP 23,146 (RHC Mar. 26, 2002) at 6 quoting *Jenkins v. Johnson*, TP 23,410 (RHC Jan. 4, 1995) at 6.

section. Notices to vacate for all reasons other than for nonpayment of rent shall be served upon both the tenant and the Rent Administrator.

D.C. Official Code § 42-3505.01(a) (emphasis added). The Landlord/Tenant complaint states that eviction was sought for nonpayment of rent and therefore Housing Provider was not required to provide Tenant with any type of 30-day notice. *See Suggs v. Lakritz Adler Mgmt., LLC*, 933 A.2d 795, 798 (D.C. 2007) (holding that thirty days' notice is not required in cases of nonpayment of rent under D.C. Official Code § 42-3505.01(a)); *Mullin v. N Street Follies Limited P'ship*, 712 A.2d 487, 491 (D.C. 1998) (distinguishing between the requirement for a 30 day notices when possession is sought for late payment of rent versus nonpayment of rent which does not require 30-day notice).⁶

Tenant denied that he was in fact being evicted for nonpayment of rent and testified that Housing Provider sought possession of the rental unit for no reason other than harassment. However, Tenant's testimony in this regard is not supported by the evidence. Tenant provided the rent ledger for his apartment as evidence of his rent increase. PX 125. The rent ledger reflects that Tenant has been consistently behind in rent since at least October 2007. *Id.* Tenant countered that he was not behind in his rent because he tendered payments to Housing Provider on March 3, 2008 (\$598), April 3, 2008 (\$500), and August 1, 2008 (\$1,316). PXs 122, 123, 124. Each of these payments is reflected in the rent ledger as having been received and credited. PX 125. Nonetheless, the rent ledger reflects that when Housing Provider filed for possession in

⁶ D.C. Official Code § 42-3201 *et. seq.* provides for circumstances where a housing provider is required to provide a tenant with a 30-day notice to "quit." Those circumstances, which are not applicable here, include when a lease is for a certain term, the expiration of a month to month lease, tenancies at will, and tenancies by sufferance. D.C. Official Code §§ 42-3201-3205. *See e.g. Mullin*, 712 A.2d at 491 (where tenant was evicted for nonpayment of rent and therefore not required to be served with a notice to vacate under the RHA, the court looked to the notice to quit provisions of § 42-3201 *et. seq.* because the record established that the tenant was a tenant by sufferance).

May 2008, Tenant remained \$1,706 in arrears. Tenant has not met his burden of proving that Housing Provider violated the Rental Housing Act.⁷

E. Tenant's allegations of retaliation

Tenant's petition alleges that Housing Provider retaliated against him by filing for possession of the rental unit. The Rental Housing 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" D.C. Official Code § 42-3505.02(a); *see also* 14 DCMR 4303.3.

To prevail on a claim of retaliation, Tenant must show that Housing Provider's actions were provoked by Tenant's exercise of his 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. D.C. Official Code § 42-3505.02(a).⁸ Although the evidence shows that Tenant made a complaint to

⁷ The documents which Tenant had tendered to this administrative court included a settlement agreement entered in the Landlord/Tenant case. In the settlement agreement, Tenant agreed that he owed Housing Provider rent. When I read the settlement agreement to Tenant and questioned him about its contents, Tenant, realizing that the settlement agreement belied his argument that he did not owe rent, withdrew the exhibit.

⁸ 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;

DCRA, that complaint was not made until October 2008, five months after Housing Provider sought possession of the rental unit. Tenant did complain about problems in his apartment, but all of his requests were verbal and there was no evidence that those verbal requests were witnessed by another person as required by D.C. Official Code § 42-3505.02(a), nor was Tenant able to provide the exact dates of his complaints. Therefore, the presumption of retaliation does not apply in this case. Tenant has not established a link between any exercise of his rights and Housing Provider's decision to seek possession of the rental unit. On the contrary, although Housing Provider did not appear for the hearing, the evidence shows that at the time Housing Provider sought possession of the rental unit, Tenant's rent was \$1,706 in arrears. Tenant has failed to prove that Housing Provider's actions were retaliatory under the Rental Housing Act.

(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;

(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.

V. Remedies

A. Rent Refund for improper rent increases

Tenant has established that his rent was improperly increased in December 2006 and in May 2008 because substantial housing code violations existed in his apartment. The Rental Housing Act prohibits a Housing Provider from increasing a Tenant's rent when the rental unit is not in substantial compliance with the housing regulations. The evidence shows that Tenant's rent was increased by \$53 on December 1, 2006, and by \$60 on May 1, 2008. Therefore, Tenant is awarded a refund of these rent increases as follows:

CHART B: HOUSING CODE VIOLATIONS			
Dates of Overcharge	Amount	Time Held by HP	Refund
12/1/06 – 12/31/07	\$53/mo	13 months	\$689
1/1/08 – 4/30/08	\$53/mo	4 months	\$212
5/1/08 – 11/1/08	\$113/mo ⁹	7 months	\$791
		TOTAL	\$1,692

The Rental Housing Commission has held that if the violation did not terminate prior to the filing of a petition and the record contains evidence of the continuing violation, the remedy of a refund for improper rent adjustment may go up to the date the record closed. *Canales v. Martinez*, TP 27,535 (June 29, 2005) at 11 (citing *Jenkins v. Johnson*, TP 23,410). The record in this case closed on November 6, 2008, the date of the hearing, and therefore, Tenant is awarded a rent refunded of the improperly demanded rent increases through November 2008. Tenant's total award for rent overcharges due to housing code violations is \$1,692.

⁹ This amount represents the December 2006 improper rent increase of \$53/month plus the May 1, 2008, improper increase of \$60/month: $\$53 + \$60 = \$113$.

Although the evidence shows that Tenant's rent is in arrears, he is entitled to a rent refund. It is well-established that a tenant is entitled to a rent refund in circumstances where the housing provider demands rent illegally, notwithstanding that the rent is not paid. *See* D.C. Official Code § 42-3501.03 (28) (defining "rent" as money "demanded" by a housing provider); *see also Kapusta v. D.C. Rental Hous. Comm'n*, 704 A.2d 286, 287 (D.C. 1997) (affirming award of rent refund where rent was demanded but not paid); *Schauer v. Assalaam*, TP 27,084 (RHC Dec. 31, 2002) at 6 (holding that the tenant's rent refund was based on the amount demanded rather than the amount paid under a court protective order). Thus, Tenant is entitled to a refund for the rent increases demanded.

B. Rent Refund for Reductions in Services and Facilities

Tenant has established that services and facilities in connection with his apartment were substantially reduced due to the existence of housing code violations. I find that the large number of housing code violations in the aggregate amount to a substantial reduction in services and facilities and I reduce Tenant's rent by 10% from September 2006 (two years prior to the filing date of the petition) to November 2008 (the date of hearing). Tenant is awarded a rent refund for reductions in services and facilities as follows:

CHART C: REDUCTION IN SERVICES & FACILITIES				
Dates of Overcharge	Rent Demanded	Number of Months Demanded	Total Amount Demanded	10% Reduction /Refund
9/01/06 – 11/30/06	\$545	3 months	\$ 1,635	\$ 163.50
12/01/06 – 4/30/08	\$598	17 months	\$10,166	\$1016.60
5/1/08 – 11/1/08	\$658	7 months	\$ 4,606	\$ 460.60
			\$16,407	\$1,640.70

C. Rent Rollback

In addition to rent refunds for improper rent increases and reductions in services and facilities, the Rental Housing Act provides for a roll back of illegal rent increases. D.C. Official Code § 42-3509.01(a); *Redmond v. Marjele Mgmt., Inc.*, TP-23,146 (RHC March 26, 2002) at 48. The Rental Housing Commission has held that rent rollbacks can be applied prospectively. *See Grayson v. Welch*, TP 10,878 (RHC June 30, 1989) at 13 (holding that where a landlord failed to properly register the property, the Rent Administrator could roll back the rent to the last date when the landlord legally registered and order the tenants to pay the reduced rent henceforth until the landlord properly registers). The District of Columbia Court of Appeals describes the roll back as “a mysterious creature” that “appears to be an equitable measure akin to the reformation of a contract.” *Ashfar v. D.C. Rental Hous. Comm'n*, 504 A.2d 1105, 1108 (D.C. 1986). The Court noted that the roll back “directly affects the terms of the existing lease,” and “alters the amount of rent on which the landlord and the tenant have already agreed.” *Id.* It follows that this administrative court may apply the roll back retroactively to reform the lease as of the date of the hearing.

Because Housing Provider increased Tenant’s rent when substantial housing code violations existed in the apartment that resulted in a reduction in services and facilities, **I direct Housing Provider to roll back Mr. Hatcher’s current rent to \$491/month, effective December 1, 2008 (the first month after the hearing).** This amount represents the last rent charged Tenant prior to the two improper rent increases (\$545) reduced by 10% (\$54). The roll back will continue until such time as all housing code violations are abated and Housing Provider implements a legal and permissible rent increase under the Act.

D. 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 overcharges that have been refunded. Housing Provider shall pay Tenant **\$78.54 in interest** from December 1, 2006, through March 17, 2009, for improper rent increases due to housing code violations. *See Appendix 2* for calculations.

Housing Provider shall also pay Tenant **\$93.85 in interest** from September 1, 2006, through March 17, 2009, for reductions in services and facilities. *See Appendix 2* for calculations. Tenant's total award is as follows:

Housing Code Violations	\$1,692.00	Chart B
Interest	\$ 78.54	Appendix 2
Services & Facilities	\$1,640.70	Chart C
Interest	\$ 93.85	Appendix 3
TOTAL	\$3,505.09	

VI. Order


Therefore, it is this 17th day of **March 2009**:

ORDERED, that Housing Provider, Elsinor Courtyard Apartments, shall pay Otis V. Hatcher **THREE THOUSAND FIVE HUNDRED AND FIVE DOLLARS AND NINE CENTS (\$3,505.09)**; and it is further

ORDERED, that Housing Provider may not charge Otis V. Hatcher a monthly rent in excess of **FOUR HUNDRED AND NINETY ONE DOLLARS (\$491) per month**, as of December 1, 2008, until all housing code violations have been abated; and it is further

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
Administrative Law Judge

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

APPENDIX 1: EXHIBITS IN EVIDENCE	
PX 100	October 27, 2008, Notice of Violation
PX 101	October 27, 2008, Notice of Violation
PX 102	October 27, 2008, Notice of Violation
PX 103	LIHTC 60 Day Recertification Notice
PX 104	LIHTC 90 Day Recertification Notice
PX 105	October 27, 2008, Notice of Violation
PX 106	October 27, 2008, Notice of Violation
PX 108	Social Security Letter
PX 109	Lease
PX 111A	Photograph of Tenant's Apartment
PX 111B	Photograph of Tenant's Apartment
PX 112A	Photograph of Tenant's Apartment
PX 112B	Photograph of Tenant's Apartment
PX 113	Photograph of Tenant's Apartment
PX 114	Photograph of Tenant's Apartment
PX 115	Photograph of Tenant's Apartment
PX 116	Photograph of Tenant's Apartment
PX 117	Photograph of Tenant's Apartment
PX 118	Photograph of Tenant's Apartment
PX 119	LIHTC 120 Day Recertification Notice
PX 120	Complaint for Possession of Real Estate
PX 122	Money Order \$500
PX 123	Money Order \$598
PX 124	Check \$1316.00
PX 125	Resident Ledger

APPENDIX 2					
INTEREST: HOUSING CODE VIOLATIONS					
A	B	C	D	E	F
Dates of Overcharges	Amount of Overcharge	Months Held by Housing Provider	Monthly Interest Rate	Interest Factor (Cx D)	Interest Due (BxE)
12/1/06	\$ 53.00	27.55	0.00333	0.0917415	\$ 4.86
1/1/07	\$ 53.00	26.55	0.00333	0.0884115	\$ 4.69
2/1/07	\$ 53.00	25.55	0.00333	0.0850815	\$ 4.51
3/1/07	\$ 53.00	24.55	0.00333	0.0817515	\$ 4.33
4/1/07	\$ 53.00	23.55	0.00333	0.0784215	\$ 4.16
5/1/07	\$ 53.00	22.55	0.00333	0.0750915	\$ 3.98
6/1/07	\$ 53.00	21.55	0.00333	0.0717615	\$ 3.80
7/1/07	\$ 53.00	20.55	0.00333	0.0684315	\$ 3.63
8/1/07	\$ 53.00	19.55	0.00333	0.0651015	\$ 3.45
9/1/07	\$ 53.00	18.55	0.00333	0.0617715	\$ 3.27
10/1/07	\$ 53.00	17.55	0.00333	0.0584415	\$ 3.10
11/1/07	\$ 53.00	16.55	0.00333	0.0551115	\$ 2.92
12/1/07	\$ 53.00	15.55	0.00333	0.0517815	\$ 2.74
1/1/08	\$ 53.00	14.55	0.00333	0.0484515	\$ 2.57
2/1/08	\$ 53.00	13.55	0.00333	0.0451215	\$ 2.39
3/1/08	\$ 53.00	12.55	0.00333	0.0417915	\$ 2.21
4/1/08	\$ 53.00	11.55	0.00333	0.0384615	\$ 2.04
5/1/08	\$ 113.00	10.55	0.00333	0.0351315	\$ 3.97
6/1/08	\$ 113.00	9.55	0.00333	0.0318015	\$ 3.59
7/1/08	\$ 113.00	8.55	0.00333	0.0284715	\$ 3.22
8/1/08	\$ 113.00	7.55	0.00333	0.0251415	\$ 2.84
9/1/08	\$ 113.00	6.55	0.00333	0.0218115	\$ 2.46
10/1/08	\$ 113.00	5.55	0.00333	0.0184815	\$ 2.09
11/1/08	\$ 113.00	4.55	0.00333	0.0151515	\$ 1.71
12/1/08		3.55	0.00333	0.0118215	\$ -
1/1/09		2.55	0.00333	0.0084915	\$ -
2/1/09		1.55	0.00333	0.0051615	\$ -
3/1/09		.55	0.00333	0.0018315	\$ -
TOTAL	\$ 1,692.00				\$ 78.54

APPENDIX 3					
INTEREST: SERVICES & FACILITIES					
A	B	C	D	E	F
Dates of Overcharges	Amount of Overcharge	Months Held by Housing Provider	Monthly Interest Rate	Interest Factor (Cx D)	Interest Due (BxE)
9/1/06	\$ 54.50	30.55	0.00333	0.1017315	\$ 5.54
10/1/06	\$ 54.50	29.55	0.00333	0.0984015	\$ 5.36
11/0/06	\$ 54.50	28.55	0.00333	0.0950715	\$ 5.18
12/1/06	\$ 59.80	27.55	0.00333	0.0917415	\$ 5.49
1/1/07	\$ 59.80	26.55	0.00333	0.0884115	\$ 5.29
2/1/07	\$ 59.80	25.55	0.00333	0.0850815	\$ 5.09
3/1/07	\$ 59.80	24.55	0.00333	0.0817515	\$ 4.89
4/1/07	\$ 59.80	23.55	0.00333	0.0784215	\$ 4.69
5/1/07	\$ 59.80	22.55	0.00333	0.0750915	\$ 4.49
6/1/07	\$ 59.80	21.55	0.00333	0.0717615	\$ 4.29
7/1/07	\$ 59.80	20.55	0.00333	0.0684315	\$ 4.09
8/1/07	\$ 59.80	19.55	0.00333	0.0651015	\$ 3.89
9/1/07	\$ 59.80	18.55	0.00333	0.0617715	\$ 3.69
10/1/07	\$ 59.80	17.55	0.00333	0.0584415	\$ 3.49
11/1/07	\$ 59.80	16.55	0.00333	0.0551115	\$ 3.30
12/1/07	\$ 59.80	15.55	0.00333	0.0517815	\$ 3.10
1/1/08	\$ 59.80	14.55	0.00333	0.0484515	\$ 2.90
2/1/08	\$ 59.80	13.55	0.00333	0.0451215	\$ 2.70
3/1/08	\$ 59.80	12.55	0.00333	0.0417915	\$ 2.50
4/1/08	\$ 59.80	11.55	0.00333	0.0384615	\$ 2.30
5/1/08	\$ 65.80	10.55	0.00333	0.0351315	\$ 2.31
6/1/08	\$ 65.80	9.55	0.00333	0.0318015	\$ 2.09
7/1/08	\$ 65.80	8.55	0.00333	0.0284715	\$ 1.87
8/1/08	\$ 65.80	7.55	0.00333	0.0251415	\$ 1.65
9/1/08	\$ 65.80	6.55	0.00333	0.0218115	\$ 1.44
10/1/08	\$ 65.80	5.55	0.00333	0.0184815	\$ 1.22
11/1/08	\$ 65.80	4.55	0.00333	0.0151515	\$ 1.00
12/1/08		3.55	0.00333	0.0118215	\$ -
1/1/09		2.55	0.00333	0.0084915	\$ -
2/1/09		1.55	0.00333	0.0051615	\$ -
3/1/09		0.55	0.00333	0.0018315	\$ -
TOTAL	\$ 1,640.70				\$ 93.85

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

Otis V. Hatcher
5311 E Street, SE, Unit 105
Washington, DC 20019

Elsinor Courtyard Apartments
Attn: Property Manager
5312 E Street, SE
Washington, DC 20019

I hereby certify that on 3-17,
2009, 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
1800 Martin Luther King, Jr., Ave., SE
Washington, DC 20002