

DISTRICT OF COLUMBIA
OFFICE OF ADMINISTRATIVE HEARINGS
One Judiciary Square
441 Fourth Street, NW
Washington, DC 20001-2714
TEL: (202) 442-9094
FAX: (202) 442-9451

DISTRICT OF COLUMBIA
OFFICE OF
ADMINISTRATIVE HEARINGS

2010 MAY 13 P 1:57

MARY ANN CARTER,
Tenant/Petitioner,

v.

BEA PAGET,
Housing Provider/Respondent.

Case No.: RH-TP-09-29517

In re: 258 M Street, SW

FINAL ORDER

I. Introduction

On January 12, 2009, Tenant/Petitioner Mary Ann Carter filed Tenant Petition 29,517 alleging the following violations of the Rental Housing Act of 1985 ("Rental Housing Act" or "the Act"): (1) the housing accommodation was not properly registered; (2) Housing Provider/Respondent, Bea Paget, did not file the proper rent increase forms with the Rental Accommodations Division ("RAD") of the Department of Housing and Community Development ("DHCD"); (3) the rent exceeded the legally calculated rent ceiling for the unit; (4) she did not receive a proper 30-day notice of rent increase; (5) the rent was increased while her unit was not in substantial compliance with the Housing Regulations; (6) a notice to vacate was served in violation of the Act; (7) services and facilities were substantially reduced; and (8) Housing Provider took retaliatory action against Tenant in violation of section 502 of Act.

For the reasons set forth below, I find that Tenant has met her burden of proving that the property was not properly registered, there was no proper 30-day notice of rent increase, and that housing provider failed to file the correct rent increase forms. Tenant is awarded a rent refund of \$400 plus interest.

II. Procedural History

On April 15, 2009, Housing Provider filed a motion to dismiss this case, or in the alternative, to limit the scope of Tenant's claims, on the basis that Tenant was barred by the doctrine of *res judicata* from pursuing the claims in the petition and because Housing Provider is a small landlord, exempt from the Rental Housing Act. An evidentiary hearing was held on Housing Provider's motion on July 1, 2009.

On July 31, 2009, I issued an Order granting in part, and denying in part, Housing Provider's motion to dismiss. Specifically, I found that Tenant was barred by the doctrine of *res judicata* from pursuing the following claims: (1) the rent was increased while Tenant unit was not in substantial compliance with the housing regulations; (2) services and facilities were reduced (to the extent they were housing code violations); (3) Housing Provider took retaliatory action against Tenant; and (4) a notice to vacate was served in violation of the Act. I further found that although Housing Provider was a small landlord under the Act, she failed to establish that special circumstances existed such that she was excused from filing a claim of exemption with the RAD. Therefore, I found that Housing Provider was not entitled to the small landlord exemption for the period February 2007 through September 4, 2008. The findings of fact and conclusions of law in the July 31, 2009, "Order on Housing Provider's Motion to Dismiss" ("Order on Motion to Dismiss") is herein incorporated by reference.

On September 9, 2009, an evidentiary hearing was held to adjudicate the following remaining issues: whether, **between February 2007 and September 4, 2008**: (1) the housing accommodation was properly registered; (2) Tenant received a proper 30-day notice of rent increase; (3) Housing Provider/Respondent filed the proper rent increase forms; and (4) whether the rent exceeded the legally calculated rent ceiling for the unit. Tenant/Petitioner Mary Ann Carter appeared at the hearing and was represented by Lisa A. Jones, Esquire. Ms. Carter testified on her own behalf. Morris R. Battino, Esquire, appeared on behalf of Housing Provider. Housing Provider/Respondent, Bea Paget, who resides in Florida, testified on her own behalf by telephone. During the hearing, I admitted into evidence Respondent/Housing Provider's exhibits ("RX") 201, 203, 204, 205, 206 and Petitioner/Tenant's exhibits ("PX") 100, 101, 102, and 106. During the July 1, 2009, hearing on Housing Provider's motion to dismiss, I admitted into evidence RXs 201M, 202M and PXs 100M, 101M, and 102M.¹

III. Findings of Fact

A. Registration

Tenant Mary Ann Carter resided at 258 M Street, SW, a single family townhouse in the District of Columbia, from February 2007 until sometime in early 2009. Housing Provider Bea Paget is the sole owner of the property and has owned the property since sometime in 2000. Tenant signed a lease on February 20, 2007, agreeing to pay monthly rent in the amount of \$2,100. PX. 100. Although the lease indicated that the property was exempt from rent control, Housing Provider did not file a claim of exemption for property until September 4, 2008. RX

¹ Both parties submitted exhibits for the July 1 hearing and the September 9th hearing that contained the same numbering. Therefore, to avoid confusion and to distinguish the documents, I have renumbered the documents from the July 1st hearing to include the letter M, i.e. PX 100M.

204. Housing Provider is a small landlord who owns fewer than four rental properties. Housing Provider failed to establish the existence of special circumstances such that she should be relieved from the requirement to register the property.² Between February 2007 and September 4, 2008, the property was not registered. A proper claim of exemption was filed as of September 4, 2008. RX 204, PX 102.

On October 17, 2008, DCRA, Business License Division, certified that a search of the official licensing records in the Business License Division for Bea Paget revealed that "A Basic Business Housing: Residential license endorsement for 'One Family Rental' has not been issued for the premise 258 M Street, S.W., Washington, DC 20024 for the period of March 1, 2007 to present." PXs 101M, 101.

B. Rent

In December 2007, Housing Provider sent Tenant an email stating that she was not going to renew Tenant's lease and directing Tenant to vacate the premises by February 2008. Housing Provider did not give Tenant a reason for not renewing the lease. Tenant did not vacate the premises in February 2008 and on April 7, 2008, after Tenant failed to pay her rent, Housing Provider sent Tenant an email informing her that the property was being sold and requesting that Tenant cooperate with the real estate agent to show the property. The email also advised Tenant that effective May 15, 2008, the rent would be increased by \$100 per month. RX 203. The email stated, "Therefore, the rent due 5/1/2008 [is] 2150.00." *Id.* The amount due on May 1,

² The July 31, 2009, Order on Motion to Dismiss, which has been incorporated by reference, discusses at length, Housing Provider's lack of entitlement to the small landlord exemption due to exceptional circumstances.

2008, was \$2,150, rather than \$2,200, because Housing Provider prorated the rent increase consistent with the May 15, 2008, effective date.

IV. Discussion and Conclusions of Law

A. Jurisdiction

This matter is governed by the Rental Housing Act of 1985 (D.C. Official Code §§ 42-3501.01 *et. seq.*), Chapters 38-43 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.*).

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

In the July 31, 2009, Order on Motion to Dismiss, I found that Housing Provider was not entitled to the benefits of the small landlord exemption prior to registering the property on September 4, 2008. *Order on Motion to Dismiss* at 15. Therefore, Tenant has met her burden of proving that the property was not registered between April 2007 and September 2008. There remains a question of whether the housing accommodation was properly registered after September 4, 2008, because Housing Provider did not obtain a business license.

Small Landlords are exempt from the rent stabilization provisions of the Act which are found at Sections **42-3502.05(f) through 42-3502.19**. See D.C. Official Code § 42-3502.04(a)(3). The requirement to have a business license, as part of the registration requirements, 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. That provision

requires non-exempt 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.

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. P'ship v. 1736 18th Street Tenants Assc'n*, TP 11,537 (RHC Dec. 26, 1996) at 19. In this case, Housing Provider was properly exempt from the rent stabilization provisions of the Act as of September 4, 2008, when she satisfied the registration requirements by filing a claim of exemption, even though she did not have a business license.

There is however a requirement, outside the Rental Housing Act, for Housing Provider to have 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.

The only remaining issue therefore, is what remedy, if any, Tenant may be entitled to for Housing Provider's failure to register the property between February 2007 and September 2008. The Rental Housing Act and housing regulations provide that a housing provider who fails to properly register the property is prohibited from increasing the rent. D.C. Official Code § 42-3502.08(a); 14 DCMR § 4104.2. Therefore, Housing Provider was prohibited from

increasing Tenant's rent between April 2007 and September 4, 2008. The only rent increase was effective on May 15, 2008. Therefore, the increased rent demanded in May, June, July, and August 2008 (four months) was invalid.

Accordingly, Tenant is awarded a rent refund of \$400, plus interest, for the months of May, June, July, and August 2008. Housing Provider was permitted to increase the rent as of the date she registered the property on September 4, 2008.

Although the evidence shows Tenant never paid the increased rent amount, 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).

C. Tenant's allegations that she did not receive a proper 30-day notice of rent increase and that Housing Provider failed to file the correct rent increase forms with the RAD.

The Rental Housing Act sets forth requirements for providing a tenant with notice of a rent increase. However, because those requirements are found in the rent stabilization provisions of the Act, they do not apply to exempt properties. *See* D.C. Official Code § 42-3502.08(f); 14 DCMR 4205.4. Because the property was not exempt when the increase was demanded on April 7, 2008, Housing Provider was required to comply with the Act.

In order to increase a Tenant's rent, the Act requires a Housing Provider: (a) provide the tenant with at least 30 days written notice; (b) certify that the unit and common elements are in substantial compliance with the housing regulations; (c) provide the tenant with a notice of rent adjustment filed with the RAD; (d) provide the tenant with a summary of tenant rights under the Act; and (e) simultaneously file with the RAD, a sample copy of the notice of rent adjustment along with an affidavit of service. D.C. Official Code § 42-3502.08(f); 14 DCMR 4205.4. A rent adjustment is not deemed properly implemented unless the notice contains: (1) a statement of the current rent; (2) the increased rent; (3) the date upon which the adjusted rent shall be due; and (4) the date and authorization for the rent adjustment. D.C. Official Code § 42-3502.08(f); 14 DCMR 4205.4.

The only notice of rent increase provided to Tenant was the April 7, 2008, email, informing Tenant that the rent was increased effective May 15, 2008. The Act provides that "no rent increase . . . shall be effective until the first day on which rent is normally paid occurring more than 30 days after the notice of increase is given to the tenant." D.C. Official Code § 42-3509.04. Under Tenant's lease agreement, rent was due on the first of each month. Therefore, based on the April 7, 2008, notice, the earliest the increased rent amount could be due was June 1, 2008. Tenant has met her burden of proving that Housing Provider did not provide a proper 30-day notice of rent increase. However, as I have found the rent increase invalid for other reasons, no additional remedy is available for Tenant.

Housing Provider acknowledged at the hearing that she did not file any rent increase forms with the RAD. Therefore, Tenant has also met her burden of proving that Housing Provider did not file the correct rent increase forms with RAD.

D. Tenant's allegation that the rent exceeded the legally calculated rent ceiling.

Under the Rental Housing Act of 1985, Rent ceilings established the maximum amount of rent that a housing provider may legally demand or receive for a rental unit covered by the rent stabilization provisions of the Act. 14 DCMR 4200.1 (2004). Rent ceilings were abolished in the District of Columbia effective August 6, 2006. D. C. Official Code § 42-3502.06 (a). All of Tenant's allegations occurred between February 2007 and September 2008, after rent ceilings were abolished. When rent ceilings were abolished, the maximum allowable rent for a housing accommodation became the last legally established rent charged. The Act provides, in pertinent part:

(a) Rent ceilings are abolished. . . . Except to the extent provided in subsections (b) and (c) of this section, no housing provider of any rental unit subject to this chapter may charge or collect rent for the rental unit in excess of the amount computed by adding to the base rent not more than all rent increases authorized after April 30, 1985, for the rental unit by this chapter, by prior rent control laws and any administrative decision under those laws, and by a court of competent jurisdiction. . . .

D. C. Official Code § 42-3502.06 (a). Prior to renting the property to Tenant, Housing Provider lived in the property as her primary residence. As a result, prior to filing the claim of exemption on September 4, 2008, there was no rent level established for the housing accommodation. Therefore, I find that the maximum allowable rent was \$2,100 per month, the amount Tenant agreed to pay when she signed the lease for the housing accommodation. *See Smith v. Christian*, TP 27,661 (RHC Sept. 23, 2005) at 17 (Where housing provider claimed an exemption to which he was not entitled and therefore did not establish a rent ceiling, the Commission found it proper, in the absence of a legally established rent ceiling, to set the rent at the amount charged when the lease was signed). Further, there was no evidence that the rent charged was unreasonable.

Tenant testified that she thought the rent was reasonable at the time she rented the housing accommodation, but she did not do any market research.

Tenant has failed to meet her burden of establishing that the rent exceeded the maximum allowable rent.

V. Remedies

Tenant is awarded a rent refund of **\$400** for rent demanded in violation of the Act in May, June, July, and August 2008.

Tenant is also awarded interest in the amount of **\$22.91**. 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 3% per annum. Interest has been calculated in *Appendix A* attached to this Order.

VI. Order

Therefore, it is this 13th day of May 2010:

ORDERED, that Housing Provider, Bea Paget, shall pay Mary Ann Carter **FOUR HUNDRED TWENTY TWO AND NINETY-ONE CENTS (\$422.91)**; 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

Appendix A: Interest Award and Chart					
A	B	C	D	E	F
Dates of Overcharges	Amount of Overcharge	Months Held by Housing Provider	Monthly Interest Rate	Interest Factor (C x D)	Interest Due (B x E)
May-08	\$ 100.00	24.41	0.0025	0.061025	\$ 6.10
Jun-08	\$ 100.00	23.41	0.0025	0.058525	\$ 5.85
Jul-08	\$ 100.00	22.41	0.0025	0.056025	\$ 5.60
Aug-08	\$ 100.00	21.41	0.0025	0.053525	\$ 5.35
Sep-08		20.41	0.0025	0.051025	\$ -
Oct-08		19.41	0.0025	0.048525	\$ -
Nov-08		18.41	0.0025	0.046025	\$ -
Dec-08		17.41	0.0025	0.043525	\$ -
Jan-09		16.41	0.0025	0.041025	\$ -
Feb-09		15.41	0.0025	0.038525	\$ -
Mar-09		14.41	0.0025	0.036025	\$ -
Apr-09		13.41	0.0025	0.033525	\$ -
May-09		12.41	0.0025	0.031025	\$ -
Jun-09		11.41	0.0025	0.028525	\$ -
Jul-09		10.41	0.0025	0.026025	\$ -
Aug-09		9.41	0.0025	0.023525	\$ -
Sep-09		8.41	0.0025	0.021025	\$ -
Oct-09		7.41	0.0025	0.018525	\$ -
Nov-09		6.41	0.0025	0.016025	\$ -
Dec-09		5.41	0.0025	0.013525	\$ -
Jan-10		4.41	0.0025	0.011025	\$ -
Feb-10		3.41	0.0025	0.008525	\$ -
Mar-10		2.41	0.0025	0.006025	\$ -
Apr-10		1.41	0.0025	0.003525	\$ -
May-10		0.41	0.0025	0.001025	\$ -
					\$ -
Total	\$ 400.00				\$ 22.91

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
441 4th Street, NW
Suite 1140N
Washington, D.C. 20001
(202) 442-8949

Certificate of Service:

By First Class Mail (Postage Paid):

Lisa A. Jones, Esquire
1200 G Street, NW
Suite 800
Washington, DC 20005


Morris R. Battino, Esquire
Law Office of Morris R. Battino
1200 Perry Street, NE, #100
Washington, DC 20017

By Inter-Agency Mail:

District of Columbia Rental Housing
Commission
441 4th Street, NW
Suite 1140N
Washington, DC 20001

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

I hereby certify that on 5-13,
2010, 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