DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION

TP 11,924

ROY T. OSBURN, Tenant-Appellant

v.

CHARLES E. SMITH MANAGEMENT COMPANY,
Landlord-Appellee

On Appeal from a Decision and Order of the
Rent Administrator of the District of Columbia

Decided June 11, 1986

DECISION AND ORDER

Creswell, Commissioner: Tenant Roy T. Osburn has appealed a Decision and Order of the Rent Administrator[1/] which dismissed with prejudice his complaint that his landlord, appellee Charles E. Smith Management Co., demanded and received rent in excess of the rent ceiling beginning August 1, 1981, for Apt. No. 1014 at 4545 Connecticut Avenue, N.W. Finding no reversible error, we affirm.

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1. Roy T. Osburn v. Charles E. Smith Co., TP 11,924 (RACD, June 20, 1985).

I. Background

Appellant first occupied the subject rental unit on August 1, 1981, under a month-to-month lease that initially fixed his monthly rent at $516.00. On June 1, 1982, the landlord increased Mr. Osburn's rent to $562.00. There were several subsequent increases in 1983 and 1984 which ultimately raised petitioner's rent to $618.00.

In June of 1984, prior to the filing of the tenant petition in this case, the landlord voluntarily refunded to Mr. Osburn $188.00 for rent overcharges (plus interest) paid over four months from the inception of his tenancy through November 31, 1981. These rent overcharge were discovered in a landlord-initiated review of the rent history for the unit apparently undertaken in anticipation of requesting a rent ceiling adjustment pursuant to a voluntary agreement of 70% or more of the tenants under §216 of the 1980 Act.

Following the hearing, the Rent Administrator found, and the record supports, that the rent overcharge occurred in this manner: In June 1981 prior to Osburn's occupancy, the landlord raised the rent and the rent ceiling for Apt. 1014 to $469.00 under the 1981 certified CPI increase of general applicability. Subsequently, Apt. 1014 became vacant and appellant Osburn moved in on August 1. At that time, the landlord had the right to take a 10% vacancy rent ceiling adjustment under §214(a)(1) of the Act, D.C.Code 1981 Ed. §45-1524(a)(1), raising the ceiling to $516.00. But on August 1, the actual rent could NOT have been increased to

$516.00 becasue of the prohibition against increasing rents sooner that 180 days following the last rent increase, §209(g), D.C.Code, 1981 Ed. §45-1519(g). Nevertheless, on August 1, 1981, contrary to §209(g), the landlord demanded and the tenant paid $516.00 or $47.00 a month excess rent. Under §209(g), Mr. Osburn's rent could not have been increased to $516.00 until December 1, 1981, six months after the June 1 automatic CPI rent increase.

On October 29, 1981, the landlord filed an amended registration statement notifying the Rent Administrator of the vacancy adjustment. Although this filing was required to "take" or "perfect" the vacancy ceiling adjustment to which the landlord had a right as of August 1, 1981, it did not cure the §209(g) violation. That violation consisted of raising the rent for the unit on August 1 just two months after a previous rent increase on June 1. It resulted in an overcharge to appellant of $47.00 a month from June 1 to December 1, 1981. The overcharge was not corrected until June 20, 1984, when the landlord discovered his error and refunded to the tenant the full amount of the rent overcharge.

In his decision, the Rent Administrator concluded, contrary to appellant's argument, that the landlord could legally increase appellant's rent from $469.00 to $516.00 on December 1 because the landlord had "saved" or perfected his right to the 10% vacancy adjustment. In addition, the Rent Administrator reconstructed the rent ceiling history for the appellant's unit and concluded that: "At no time did Peti-

tioner's rent exceed the rent ceiling, except during the first few months of Petitioner's tenancy when Respondent could not keep its records straight. However, Respondent corrected the overcharge for that period." 2/ Giving the landlord credit for the rent overcharge refund, the Rent Administrator found that the "Respondent did not demand rent higher than the rent ceiling for the subject rental unit" 3/ during appellant's tenancy, and dismissed with prejudice the appellant's petition. This appeal followed.

We understand Mr. Osburn's appeal to raise two issues for review. First, appellant challenges the timing of the 1981 rent increases which the Rent Administrator apparently approved, stating in his notice of appeal that ". . . the landlord incorrectly took 2 increases for vacancies that occurred less than 12 months apart. Also two increases were made of rent . . . with less than 6 months interval." Next, appellant challenges the allowance of the December 1 rent adjustment since it was not taken "in accordance with the current procedures, such as proper notice, etc. . . ." While we find no reversible error in the Rent Administrator's ultimate decision not to hold the landlord liable for rent ceiling violations or rent overcharges, we note in his decision certain apparent contradictions and an imprecise use of terms that obscure the rationale of the decision.

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2. Id., page 7, sec. D. Rent History.

3. Id., page 8, Findings of Fact.

II. The August 1 Rent Increase

On the issue of the timing of the rent increases, the evidence in the hearing record (including the landlord registration file) supports the Rent Administrator's finding that the landlord properly increased both the rent and the rent ceiling for the subject unit on June 1, 1981; and that these actions reflected a CPI increase of general applicability under §207(b), not a vacancy adjustment under §214. Therefore, we reject as unsupported by the record appellant's claim that the Rent Administrator erroneously allowed two vacancy rent increases within a twelve month period.

The evidentiary record compels three additional findings of fact: 1) that the landlord increased the rent on the subject unit by $47.00 two months later on August 1; 2) that the landlord filed an amended registration in October to officially increase the rent ceiling by 10% under §214 of the Act; and 3) that two years later the landlord voluntarily refunded to the appellant $188.00 in excess rent collected.

Based on the second of these three findings--that of the August 1 rent increase--we believe that the Rent Administrator should have stated in his decision, as formal conclusions of law, that the landlord had thus violated §209(g) of the Act by increasing the rent for the unit before the expiration of 180 days from the last rent increase, and §207(a) by charging rent in excess of the adjusted base rent (i.e., the current rent ceiling). Instead, the Rent Administrator mentioned the later-corrected rent overcharge in his discus-

sion of the ceiling history (Decision, page 7), but stated in apparent contradiction on the next page his conclusion of law that the landlord had not charged rent in excess of the ceiling. We view the record as establishing quite clearly that the landlord had not only charged rent in excess of the ceiling (albeit for four months only) but had also increased the rent during a prohibited period. While we view this deficiency in the decision as error, we do not consider it reversible error for the following reasons.

If the Rent Administrator had properly concluded in his decision that the landlord violated two provisions of the 1980 Act with the August 1 rent increase, he might still have reached the same ultimate disposition of the complaint: that no liability for monetary damages should be imposed on the landlord in the circumstances of this case.

Both the Commission and the D.C. Court of Appeals view the penalty provisions of the 1980 Act as mandatory, requiring the imposition of a penalty whenever a violation of the Act occurs. Sec. 901(a) of the Act, D.C. Code, 1981 Ed. §45-1591(a), provides that a person who knowingly violates the Act "shall be held liable by the Rent Administrator" for a statutorily prescribed penalty. But the Act gives the Rent Administrator considerable discretion in imposing a mandatory penalty. The penalty may be an award of monetary damages in the amount of illegal rent collected or three times that amount if circumstances warrant, or it may be a rent roll back (a prospective reduction in allowable rent), or it may

be both. Delwin Realty Co. v. D.C. Rental Housing Comm'n., 458 A.2d 59 (D.C.App. 1983), and Interstate General Corp. v. D.C. Rental Housing Com'n, 501 A.2d 1261 (D.C.App. 1985). Since the record compels the conclusion that the landlord violated the Act by the August 1 rent increased and collected &188.00 in illegal rent, the Rent Administrator was required to impose one or both of the statutorily prescribed penalties.

The Commission has discussed the circumstances which may justify either a single or trebled monetary award. "Ordinarily damages are trebled in the absence of a finding of exceptional or mitigating circumstances which justify a single award." Guerra v. Shannon & Luchs Co., TP 10,939 (RHC April 2, 1986) at 14, citing Yasuna v. Simmons, TP 10,824 (RHC, July 13, 1984). In Ponte et al. v. Flasar, TP 11,609 (RHC, January 29, 1986), the Commission gave examples of actions that might constitute mitigating circumstances for §901(a) purposes (in the context of discussing when monetary damages would be awarded for a mere demand of excess rent without actual collection). The Commission held that "[mitigating] circumstances might be found, for example, . . . where the landlord takes timely action to rescind the demand or otherwise neutralize its effectiveness." Id. at 26. In the present case, the hearing record supports a finding that the landlord voluntarily refunded the rent overcharge to the tenant, i.e., that he took adequate steps to rescind the overcharge or otherwise neutralize its effectiveness. In

150

other words, the record here supports a finding of mitigating circumstances sufficient to justify a single damages monetary award of $188.00, the amount of the rent overcharge.

Thus, on the record in this case, the Rent Administrator should have found a violation of the Act, and could have, reasonably and with adequate justification, imposed a single damages penalty of $188.00. But, because the landlord had already refunded this amount to the tenant with interest, the net or ultimate result under the above rationale would be the same as the Rent Administrator's ultimate decision not to hold the landlord liable for further monetary damages for the rent ceiling violations or rent overcharges in the circumstances of this case.

We conclude that the ultimate decision of the Rent Administrator is neither arbitrary, capricious, an abuse of discretion, contrary to the provisions of the Act, nor unsupported by substantial evidence in the record. Under §217(g) of the Act, D.C.Code, 1981 Ed. §45-1527(g), we must make one of these finding in order to reverse. Nicholls v. Tenants of D St., S.E., TP 11,302 (RHC, September 6, 1985). However, the Rent Administrator made all of the necessary factual determinations to support a holding of no additional liability. He properly calculated the amount of the overcharge, and he carefully discussed and appreciated the mitigating effect of the landlord's rent refund. We believe he considered the appropriate factors and properly exercised his discretion in the award of damages. See McCulloch v. D.C. Rental Housing

151

Com'n., 449 A.2d 1072 (D.C.App. 1982). Since we conclude that none of the criteria for reversal is present (even though the decision has the deficiencies noted), we affirm.

III. The December 1 Rent Increase

The appellant also alleges error in the Rent Administrator's allowance of a rent increase to $516.00 effective December 1, 1981, because he received no statutory notice of the increase. We believe this contention is without merit. On December 1, and for 30 days prior to December 1, appellant was already paying $516.00 monthly rent. He had received actual notice of the landlord's intent to charge this amount when he signed his lease on August 1. His rent was not actually increased on December 1. Instead, a previously charged increase was disallowed for all months in which it was collected prior to December 1. In these circumstances, the landlord had no opportunity to send, and there is no requirement for, a seperate notice of an increase to be effective on December 1. It was almost two years later before the landlord and the tenant realized that the rent increase taken on August 1 should have been delayed to December 1.

We might reach a different conclusion on the allowance of this rent increase had the landlord failed to adjust his rent ceiling prior to December 1. But where, as here, the landlord had raised the ceiling prior to the rent increase, and had a right to the rent increase on December 1, we will not penalize the landlord for failure to send notice. This situation is akin to that presented in the Guerra case,

supra. In Guerra, the landlord had taken an illegal vacancy ceiling adjustment. Here the landlord's mistake was to take a premature vacancy rent increase. The Commission stated in the Guerra decision that it "was not inclined to further penalize a landlord for the mistake (in the absence of bad faith) by invalidating all subsequent attempts to implement otherwise valid rent [and] ceiling adjustments." Guerra v. Shannon & Luchs Co., TP 10,939 (RHC, April 2, 1986) at 9. On this rationale, we find no error in the Rent Administrator's allowance of the rent increase effective December 1, 1981.

For all of the foregoing reasons, the Decision and Order of the Rent Administrator in this matter, dated June 20, 1985, is affirmed, and it is so ordered by the Commission this 11th day of June, 1986.

Belva D. Newsome, Chairperson

Daniel B. Jordan, Commissioner

Isaiah T. Creswell, Jr., Commissioner

153

COPIES TO:

Ronald L. Ogens, Esquire
1140 Connecticut Avenue, N.W.
Suite 703
Washington, D.C. 20036

Roy T. Osburn
4545 Connecticut Avenue, N.W.
Apartment 1014
Washington, D.C. 20008

CERTIFICATE OF SERVICE

I hereby certify that on this 12th day of June, 1986, a copy of this Decision and Order was placed in the District government mailing system to the parties named above at the addresses given.

N. Stephenson

154