DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION

TP 24,302

In re: 1100 6th Street, S.W., Apt. 209

Ward Two (2)

WONDIMU MERSHA
Tenant/Appellant

v.

MARINA VIEW TOWER APARTMENTS
Housing Provider/Appellee

**DECISION AND ORDER**

May 9, 2000

**LONG, COMMISSIONER.** This case is on appeal from the District of Columbia Department of Consumer and Regulatory Affairs (DCRA), Rental Accommodations and Conversion Division (RACD), through the Office of Adjudication (OAD), to the Rental Housing Commission (Commission), pursuant to the Rental Housing Act of 1985 (Act), D.C. Law 6-10, D.C. Code § 45-2501 et seq., and the District of Columbia Administrative Procedure Act (DCAPA), D.C. Code § 1-1501, et seq. The regulations, 14 DCMR 3800 et seq., also apply.

## I. PROCEDURAL HISTORY

Wondimu Mersha, tenant/appellant, filed Tenant Petition (TP) 24,302 with RACD on February 20, 1997. In the petition, the tenant alleged: 1) the rent was increased above the amount allowed by any applicable provision of the Act; 2) a proper thirty days notice of the rent increase was not provided before the rent increase became effective; 3) the housing provider failed to file proper rent increase forms with RACD; 4) the rent being

charged exceeded the legally calculated rent ceiling; 5) the rent ceiling filed with RACD was improper; 6) a rent increase was taken while the unit was not in substantial compliance with the housing code; 7) the building was not properly registered with RACD; 8) services and/or facilities provided in connection with the rental unit were substantially reduced and permanently eliminated; 9) retaliatory action was directed against the tenant in violation of § 502 of the Act; and 10) the housing provider violated § 206(b) of the Act.

Hearing Examiner Carl Bradford presided at the adjudicatory hearing on May 8, 1997. The housing provider and tenant appeared, represented by counsel. In response to the hearing examiner's request, each party's attorney filed a proposed decision and order. On August 27, 1997, the hearing examiner issued the decision and order, in which he adopted verbatim, the housing provider's summaries of the testimony. The hearing examiner dismissed the petition with prejudice, after reaching the following conclusions of law:

1. Petitioner did not sustain his burden of proof by demonstrating that the Respondent substantially reduced services and facilities in violation of D.C. Code Section 45-2511 [sic] (1990).
2. Respondent did not fail to properly register the property, in violation of D.C. Code Section 45-2515 (1990).[1]
4. Petitioner did not meet his burden of proving Respondent failed to correct housing code violations pursuant to D.C. Code Section 45-2521 [sic].
5. Petitioner failed to meet his burden of proving that Respondent increased her [sic] rent [sic] violation of D.C. Code 25-2518 [sic].

On September 8, 1997, the tenant's attorney filed a notice of appeal that raised four issues. On December 5, 1997, the tenant's attorney filed a brief on appeal, which raised registration and licensing issues that were not raised in the notice of appeal. The

[1] The hearing examiner did not include the number "3" in the conclusions of law.

Commission held the hearing on appeal on December 9, 1997, and issued its decision and order on July 23, 1999. The Commission limited its review to the issues raised in the notice of appeal and did not consider the registration and licensing issues that were first raised in the tenant's brief.[2] The Commission denied three of the four issues raised in the notice of appeal. However, the Commission reversed the hearing examiner on the reduction in services and facilities issue. The Commission's review of the record revealed the hearing examiner copied the housing provider's partial summary of the evidence on the issue of reduction in services and facilities, and he failed to consider the substantial record evidence on that issue. The Commission instructed the hearing examiner to review all of the evidence concerning the reduction in services and facilities, and to issue findings of fact and conclusions of law in accordance with the substantial evidence concerning the reduction in services and facilities issue. See Mersha v. Marina View Tower Apartments, TP 24,302 (RHC July 23, 1999).

On January 11, 2000, the hearing examiner issued the decision and order following the Commission's remand. In accordance with the Commission's instructions on remand, the hearing examiner only considered the reduction in services and facilities issue. The decision contained a recitation of the evidence offered by both parties on the reduction in services and facilities issue. The hearing examiner dismissed TP 24,302, after reaching the following conclusions of law:

1. Petitioner did not sustain his burden of proof by demonstrating that the Respondent substantially reduced services and facilities in violation of D.C. Code Section 45-2511 [sic] (1990).

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[2] "Review by the Commission shall be limited to the issues raised in the notice of appeal." 14 DCMR 3807.4. The use of the brief as a means of advancing issues that were not raised in the notice of appeal "exceeds the permissible scope of the ... brief." Joyner v. Jonathan Woodner Co., 479 A.2d 308, 312 (D.C. 1984) cited in Johnson v. District of Columbia, 728 A.2d 70 (D.C. 1999); Frye & Welch Assocs , P.C. v. District of Columbia Contract Appeals Bd., 664 A.2d 1230, 1233 (D.C. 1995).

2. Petitioner did not meet his burden of proving Respondent failed to correct housing code violations pursuant to D.C. Code Section 45-2515 [sic] (1990).
3. Respondent did not reduce Petitioner's service[s] and facilities under D.C. Code Section 45-2521 (1990).

The tenant, pro se, filed Petitioner's Brief in Support of Appeal on January 28, 2000 and a Petition for Rehearing in Support of Appeal on January 31, 2000. The tenant did not file a document entitled "Notice of Appeal." The housing provider, through counsel, filed its Answer to the Petition for Rehearing in Support of Appeal (Answer) on March 1, 2000. On March 8, 2000, the tenant filed a Notice to the Commission in Opposition [sic] Answer to Petition for Rehearing in Support of Appeal (Opposition).[3] The Commission held the hearing on appeal on March 30, 2000.

## II. PRELIMINARY ISSUES

In its Answer, the housing provider moved for the dismissal of the appeal. The housing provider argued the Petition for Rehearing in Support of Appeal was not filed in accordance with 14 DCMR 3802.5, because it did not contain the tenant's address and telephone number or a clear and concise statement of the alleged errors. In addition, the housing provider argued the tenant's appeal was "beyond the scope of the proceedings from which the appeal allegedly arises and has already been ruled upon by th[e] [C]ommission."

The regulation, 14 DCMR 3802.5, provides:

The notice of appeal shall contain the following:

(a) The name and address of the appellant and the status of the appellant (e.g.,

[3] Attached to the Opposition was a document titled "Petition." In this document, the tenant attempted to introduce new evidence in violation of 14 DCMR 3807.5; and he raised issues that the Commission decided in the initial appeal. In addition, the tenant raised discrimination and other issues that were outside the Commission's statutory powers. See D.C. Code § 45-2512 (1996). Pursuant to 14 DCMR 3802, the Commission's review is limited to the issues raised in the appeal. Accordingly, the Commission was precluded from considering the issues raised in the "Petition."

housing provider, tenant or intervenor);
(b) The Rental Accommodations and Conversion Division (RACD) case number, the date of the Rent Administrator's decision appealed from, and a clear and concise statement of the alleged error(s) in the decision of the Rent Administrator;
(c) The signature of the appellant or the appellant's attorney, or other person authorized to represent the appellant; and
(d) The signatory's address and telephone number.

"The Commission may dismiss the appeal for failure to comply with the requirements of §3802.5." 14 DCMR 3802.13. However, since a dismissal of an appeal is a "drastic remedy,"[4] the Commission must take a "hard look"[5] at the pleadings, statute and regulations before dismissing an appeal.

Within the time for filing a notice of appeal of the January 11, 2000 decision and order, the pro se tenant filed Petitioner's Brief in Support of Appeal and a Petition for Rehearing in Support of Appeal. The tenant signed each pleading; however, he did not include his address and telephone number. In Goodman v. District of Columbia Rental Housing Comm'n, 573 A.2d 1293 (D.C. 1990), the District of Columbia Court of Appeals (Court) cautioned the agency to be mindful of the remedial nature of the Act, and the important role lay litigants play in its enforcement. The Court stated:

> [M]any complainants in cases brought under the Act are not affluent, nor are they in a position to afford to retain private counsel to conduct protracted proceedings before the Commission and the courts. ... [T]he Act relies largely on lay persons, operating without legal assistance, to initiate and litigate administrative and judicial proceedings. ... Although neither this court nor the Commission can overlook jurisdictional requirements in order to vindicate subjective notions of 'fairness,' it is appropriate for this court, in resolving procedural issues with respect to which reasonable people might differ, to keep in mind the remedial character of the statute and the important role lay litigants play in its enforcement.

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[4] Mullin v. District of Columbia Rental Housing Comm'n, 747 A.2d 135, 136 (D.C. 2000).

[5] Coumaris v. District of Columbia Alcoholic Beverage Control Bd., 660 A.2d 896, 902 (D.C. 1995) quoting Kleppe v. Sierra Club, 427 U.S. 390, 410 n.21 (1976).

The Commission, ever mindful of the Court's decision in Goodman, is not inclined to dismiss an appeal, because the appellant failed to include his address and telephone number in his appeal. The Commission does not condone the omissions and recognizes that 14 DCMR 3802.5 requires the appealing party to include its address and telephone number in its appeal. However, a dismissal of the appeal based upon the omission of the address and telephone number is not warranted in the instant case. The tenant's address, which is the address of the subject housing accommodation, appears throughout the record. Moreover, the housing provider has not alleged an inability to serve the tenant as a result of the omissions.

Similarly, the Commission is not inclined to dismiss the instant appeal because the appellant did not file a pleading entitled "Notice of Appeal." Since the tenant filed the Petitioner's Brief in Support of Appeal and Petition for Rehearing in Support of Appeal within the appeal period, the Commission construed these pleadings as the tenant's appeal. In conducting its review of the tenant's pleadings filed on appeal, the Commission must be able to find clear and concise statements of the alleged errors in the decision and order that is subject to appeal. The housing provider maintains the tenant did not provide a clear and concise statement of the alleged errors in the decision and order issued by the hearing examiner on January 11, 2000. The housing provider also moves for dismissal, because the tenant's appeal was "beyond the scope of the proceedings from which the appeal allegedly arises and has already been ruled upon by this [C]ommission." Answer at 2.

A party aggrieved by a final decision of the Rent Administrator may obtain review of that decision by filing a notice of appeal with the Commission. See D.C. Code

§ 45-2526(h) (1996); 14 DCMR 3802.1. The Commission's review is limited to the issues raised in the notice of appeal. See 14 DCMR 3807.4. The issues raised on appeal must be raised with respect to the alleged errors found in the decision and order that is subject to review.

On September 8, 1997, the tenant appealed the initial decision and order issued by the hearing examiner on August 27, 1997. The Commission reviewed and rejected all of the issues raised in the tenant's initial appeal, except the reduction in services and facilities issue. See Mersha v. Marina View Tower Apartments, TP 24,302 (RHC July 23, 1999). The Commission reversed and remanded the case solely on the reduction in services and facilities issue. The hearing examiner issued the second decision and order on January 11, 2000, following the remand by the Commission. In accordance with the Commission's remand order, the hearing examiner's January 11, 2000 decision and order related only to the reduction in services and facilities issue.

When the Commission reviewed the tenant's instant appeal of the hearing examiner's January 11, 2000 decision and order, the Commission discovered the tenant raised registration, licensing, and a host of other issues, which the Commission rejected in its July 23, 1999 decision and order. Instead of referencing errors in the decision and order issued on January 11, 2000, the tenant alleged errors in the findings of fact and conclusions of law found in the hearing examiner's August 27, 1997 decision and order. The tenant enumerated the alleged errors in the findings of fact and quoted those findings and their corresponding numbers. The numbers and quoted language corresponded to the findings of fact in the decision and order issued on August 27, 1997. The tenant

indicated a conclusion of law was "missing in its entirety."[6] The hearing examiner did not include the number "3" in the conclusions of law cited in the decision and order issued on August 27, 1997. See infra note 1. However, the Commission did not discover a similar omission in the sequentially numbered conclusions of law contained in the decision and order issued on January 11, 2000.

The regulation, 14 DCMR 3802.5, requires the appellant to allege errors in the decision and order that is subject to review. Moreover, the "law of the case" principle precludes the appellant from reopening questions resolved by an earlier appeal. See Lynn v. Lynn, 617 A.2d 963, 969 (D.C. 1992); Kleinbart v. United States, 604 A.2d 861, 866 (D.C. 1992); see also Lehrman v. Gulf Oil Corp., 500 F.2d 659, 662-63 (5th Cir. 1974), cert. denied, 420 U.S. 929 (1995). "The general rule is that 'if the issues were decided, either expressly or by necessary implication, those determinations of law will be binding on remand and on a subsequent appeal.'" Lynn, 617 A.2d at 969; Lehrman, 500 F.2d at 663. Since the tenant raised issues that were previously decided and alleged errors in the hearing examiner's initial decision and order, which was not subject to review, the Commission grants the housing provider's motion and dismisses the appeal of errors alleged in the decision and order issued on August 27, 1997.

In the concluding paragraph of the Petition for Rehearing in Support of Appeal, the tenant stated "there was a substantial reduction in services and facilities that were [sic] not timely abartede a bated [sic] under D.C. Code Section 45-2521, 2511 [sic] and 2515 [sic] (1990)." In accordance with Goodman and Slaby v. Mizrahi, TP 23,167 (RHC Aug. 14, 1996), the Commission considers the pro se tenant's challenge to the hearing

[6] Petitioner's Brief in Support of Appeal at 2; Petition for Rehearing in Support of Appeal at 3.

examiner's finding on the reduction in services and facilities issue. In Slaby, the pro se appellant filed an appeal that was not in conformity with 14 DCMR 3802.5. The Commission rejected the portion of the pleading that challenged the hearing examiner's denial of the motion for reconsideration, because the denial of the motion was not subject to appeal. See 14 DCMR 4013. In accordance with Goodman, however, the Commission reviewed the portions of Ms. Slaby's notice of appeal that were properly before the Commission. Similarly, the Commission rejected the portions of the instant appeal that were not subject to appeal, and reviewed the reduction in services and facilities issue raised by the pro se tenant in the instant case.

## III. DISCUSSION OF THE ISSUE

**Whether there was a substantial reduction in services and facilities that was not timely abated under the Act.**

Hearing Examiner Bradford followed the Commission's directions on remand, and reviewed the evidence offered by the tenant and housing provider on the reduction in services and facilities issue. The decision contains a recitation of the substantial record evidence offered during the hearing. Citing Fazekas v. Dreyfuss, TP 20,394 (RHC Apr. 14, 1989), the hearing examiner noted the parties offered conflicting testimony, and he indicated that he was duty bound to make credibility determinations. See Citywide Learning Center v. William C. Smith, 488 A.2d 1310 (D.C. 1985). Hearing Examiner Bradford stated he weighed the evidence and "made a credibility determination in favor of the housing provider in spite of the conflicting testimony." Mersha v. Marina View Tower Apartments, TP 24,302 (OAD Jan. 11, 2000) at 5. The hearing examiner concluded the housing provider did not substantially reduce the services and facilities provided in connection with the rental unit.

D.C. Code § 45-2521 (1996) provides:

> If the Rent Administrator determines that the related services[7] or related facilities[8] supplied by a housing provider for a housing accommodation or for any rental unit in the housing accommodation are substantially increased or decreased, the Rent Administrator may increase or decrease the rent ceiling, as applicable, to reflect proportionally the value of the change in services or facilities.

In order to prove a claim for reduction in services and facilities, the tenant must present evidence of the existence, duration and severity of the reduced services or facilities. The tenant cannot prevail on the reduction in services or facilities claim unless the hearing examiner finds the housing provider reduced a service or facility that was previously provided and that the reduction was substantial. See Lustine Realty v. Pinson, TP 20,117 (RHC Jan. 13, 1989). In addition, the tenant cannot prevail on the reduction in services and facilities claim unless the hearing examiner finds the tenant put the housing provider "on notice of conditions existing within [the] tenant's unit which are alleged to be reductions in service." William Calomiris Investment Corp. v. Milam, TP 20,144, 20,160, 20,248 (RHC Apr. 26, 1989) quoted in Gelman Co. v. Jolly, TP 21,451 (RHC Oct. 25, 1990) at 5.

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[7] The Act, D.C. Code § 45-2503(27) (1996), provides:

> "Related services" means 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, the provision of light, heat, hot and cold water, air conditioning, telephone answering or elevator services, janitorial services, or the removal of trash and refuse.

[8] The Act, D.C. Code § 45-2503(26) (1996), provides:

> "Related facility" means any facility, furnishing, or equipment made available to a tenant by a housing provider, the use of which is authorized by the payment of the rent charged for a rental unit, including any use of a kitchen, bath, laundry facility, parking facility, or the common use of any common room, yard, or other common area.

The hearing examiner has a responsibility to weigh the record evidence. He has "discretion to reasonably reject any evidence offered," and he does not have to list every piece of evidence considered when rendering a decision. Harris v. District of Columbia Rental Housing Comm'n, 505 A.2d 66, 69 (D.C. 1986) citing Roumel v. District of Columbia Board of Zoning Adjustment, 417 A.2d 405, 408-409 (D.C. 1980); Kopff v. District of Columbia Alcoholic Beverage and Control Bd., 381 A.2d 1372, 1386 (D.C. 1977). "In rendering a decision, the Examiner is entrusted with a degree of latitude in deciding how he shall evaluate and credit the evidence presented." Harris, 505 A.2d at 69.

The hearing examiner indicated the tenant testified there were cracks and peeling paint in the common areas, a lack of elevator service at times, a hole in his kitchen wall, and leaking convector that caused water damage. The hearing examiner noted the tenant alleged the housing provider took an inordinate amount of time to make repairs, and that debris was left in his unit.

The hearing examiner indicated, and the record reflected, that Housing Inspector Patricia Thompson testified concerning the common areas of the housing accommodation. She stated she visited the housing accommodation on April 28, 1997 and noticed a defective elevator. When she returned on May 5, 1997, the elevator was not repaired. On May 22, 1995, the housing inspector noticed a defective intercom system, which was repaired when she returned on June 12, 1995. The housing inspector indicated she cited the housing provider for deficiencies in the common hall areas for a year while major repairs were being made. She indicated the cases were awaiting trial, because the abatements were not completed in a timely manner. The housing inspector

testified she never inspected the tenant's unit and she was not aware of any complaints concerning his unit. Housing Inspector Thompson testified that management was very cooperative and responded quickly when given notice of violations.

The hearing examiner summarized the testimony of Housing Inspector Linda Ellis. Inspector Ellis testified that she inspected the tenant's unit on one occasion, but she could not remember very much about the inspection, because she did not have her records. She testified she saw some dampness, cracking and peeling paint in the living room and on a desk in the living room.

The hearing examiner recounted the testimony of Marilyn Killingham. He noted Mrs. Killingham is a tenant in the subject housing accommodation and was involved in litigation with the housing provider. Mrs. Killingham testified there was a hole in the kitchen wall, water damage from the leaking convector, and roach infestation in the tenant's unit. She also testified that the elevators do not stop at the same level as the floor, and it is very difficult for her to access all of the floors in her wheelchair.

The hearing examiner also summarized the testimony of the property manager, Audrey Johnson. Ms. Johnson, who lives in the housing accommodation, testified that she is a troubleshooter hired to restore financially and structurally distressed properties. She indicated there was an avalanche of housing code violations when she arrived in May 1994. During the period covered by TP 24,302, the building was undergoing major renovations and the building was unsightly. She testified there were no obstructions that impacted the tenants' ability to enter or exit and the construction did not cause a threat to the tenants' health, safety or welfare. Ms. Johnson acknowledged that both elevators where inoperative for a short period of time.

Ms. Johnson indicated that the tenant came to her during the construction period and asked for assistance in obtaining Section 8 housing, because he could not afford the rent for unit 212. Because he was very helpful to her when she arrived at the housing accommodation, she allowed the tenant to move to unit 209, which was a less expensive unit. She testified the tenant did not move as a result of problems with the unit. She indicated that she facilitated the move, because the tenant could not afford to pay the rent. Ms. Johnson testified that the tenant did not complain of rodents or request extermination. She acknowledged the hole in the kitchen wall, and indicated it occurred during the upgrade of a lighting fixture. The property manager indicated the hole was repaired, and she received no complaints concerning the timeliness of the repairs.

The hearing examiner indicated that he was persuaded by Inspector Ellis' testimony that there were outstanding violations relating back to 1995. However, he could not find that the violations were substantial in nature, duration or severity. Id. The hearing examiner indicated the record reflected the housing provider was renovating the building and attempting to make repairs in the units and common areas of the housing accommodation. He indicated some tenants were inconvenienced more than others, but nothing in the record suggested the conditions in the building were a threat to the health, safety, or welfare of the tenants. The hearing examiner indicated the housing provider testified that there was "some notice of housing code violations as testified to by the inspectors," but there was no reduction in services because the repairs were made in a reasonable and timely manner. The hearing examiner concluded the housing provider did not substantially reduce the services and facilities provided in connection with the rental unit.

In Taylor v. Chase Manhattan Mortgage, TP 24,303 & TP 24,420 (RHC Sept. 9, 1999), the Commission noted "the standard for review of decisions by hearing examiners is set forth in the DCAPA, D.C. Code § 1-1509(e), which provides in part:"

> Every decision and order adverse to a party to the case, rendered by the Mayor or an agency in a contested case, shall be in writing and shall be accompanied by findings of fact and conclusions of law. The findings of fact shall consist of a concise statement upon each contested issue of fact. Findings of fact and conclusions of law shall be supported by and in accordance with the reliable, probative, and substantial evidence.

In order to meet the requirements of the DCAPA, D.C. Code § 1-1509, "(1) the decision must state findings of fact on each material, contested, factual issue; (2) those findings must be based on substantial evidence; and (3) the conclusions of law must follow rationally from the findings." Perkins v. District of Columbia Dep't of Employment Services, 482 A.2d 401, 402 (D.C. 1984) quoted in Nursing Services v. District of Columbia Dep't of Employment Services, 512 A.2d 301, 302-303 (D.C. 1986); Thorpe v. Independence Federal Savings Bank, TP 24,271 (Aug. 19, 1999) at 9. See also Spevak v. District of Columbia Alcoholic Beverage and Control Bd., 407 A.2d 549, 553 (D.C. 1979). In Spevak, the Court held that the standard for reviewing an agency's decision consists of the following three part test: 1) the agency must make findings on all contested issues material to the underlying substantive statute or rule; 2) its findings must be supported by substantial evidence as a whole; and 3) the agency's conclusions of law must be derived rationally from the underlying statute.

The Court has noted the limited nature of its review of administrative proceedings and recognizes that it "should not disturb a decision if it rationally flows from the facts relied upon and those facts or findings are substantially supported by the evidence of record." Selk v. District of Columbia Dep't of Employment Services, 497 A.2d 1056,

1058 (D.C. 1985) citing Washington Post v. District Unemployment Compensation Bd., 377 A.2d 436, 439 (D.C. 1977). In Shapiro and Company v. Poorazar, TP 22,427 (RHC June 10, 1996), the Commission noted the limited nature of its review, and declined to disturb the hearing examiner's finding of a substantial reduction in maintenance services. Citing Selk, the Commission affirmed the hearing examiner because his decision was supported by substantial record evidence.

The Commission cannot reverse the hearing examiner's decision unless it is unsupported by substantial evidence. See D.C. Code § 45-2526(h).[9] Substantial evidence is defined as "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." Ferreira v. District of Columbia Dep't of Employment Services, 667 A.2d 310, 311 (D.C. 1995) quoting James v. District of Columbia Dep't of Employment Services, 623 A.2d 395, 397 (D.C. 1993) (citations omitted). The Commission will affirm the hearing examiner's "findings of fact and conclusions of law as long as they are supported by 'substantial evidence' notwithstanding that there may be contrary evidence in the record (as there usually is)." (parenthetical phrase in original). Ferreira 667 A.2d at 311.

After evaluating the evidence in the instant case, the hearing examiner found the housing provider "did not substantially reduce the [tenant's] services and facilities in violation of the Rental Housing Act of 1985." Mersha (OAD Jan. 11, 2000), Finding of Fact 3. The hearing examiner determined there were violations in the tenant's unit.

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[9] The Act, D.C. Code § 45-2526(h) (1996), provides:

> The Rental Housing Commission may reverse in whole or in part, any decision of the Rent Administrator which it finds to be arbitrary, capricious, an abuse of discretion, not in accordance with the provisions of this chapter, or unsupported by the substantial evidence on the record of the proceedings before the Rent Administrator, or it may affirm, in whole or in part, the Rent Administrator's decision.

However, he indicated he was persuaded by the housing provider's testimony that repairs were made in a reasonable and timely manner whenever there was notice.

The Commission's review of the record revealed the tenant called two housing inspectors as witnesses. Inspector Thompson, who never inspected the tenant's unit, testified concerning the common areas of the housing accommodation. The Commission noted the inspections of the elevator on April 28, 1997 and May 5, 1997 occurred several months after the tenant filed the petition on February 20, 1997. Inspector Ellis, who conducted an inspection of the tenant's unit, did not provide a report, which evidenced the inspection. She indicated she did not really remember the date of the inspection, but she thought it was August of 1995. The hearing examiner noted and the record confirmed that Inspector Ellis "did not remember the leaking convector, the hole in the kitchen wall, the claimed roach infestation, the plaster debris alleged to be piled up on the floor and the security system." Id. at 5.

There was substantial record evidence to support the hearing examiner's finding of fact and conclusions of law on the reduction in services and facilities issue. The hearing examiner followed the Commission's remand instructions and weighed the evidence offered by both parties on the reduction in services and facilities issue. In accordance with the DCAPA, D.C. Code § 1-1509, he issued findings of facts and conclusions of law that were supported by and in accordance with the substantial record evidence. Since there was substantial record evidence to support his findings, the Commission will not replace its judgment for the hearing examiner's judgment. Wire Enterprises v. Ruffin, TP 20,486 (RHC Aug. 25, 1989) cited in Reid v. Hughes, TP 23,577 (RHC Aug. 31, 1998).

## IV. CONCLUSION

Accordingly, the Commission denies the tenant's challenge to the hearing examiner's determination that the housing provider did not substantially reduce services and facilities. The hearing examiner's decision and order in TP 24,302 is affirmed.

SO ORDERED.

RUTH R. BANKS, CHAIRPERSON

RONALD A. YOUNG, COMMISSIONER

JENNIFER M. LONG, COMMISSIONER

## CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Decision and Order in TP 24,302 was sent certified mail, postage prepaid, this 9th day of May 2000 to:

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[10] The tenant filed the pending appeal and subsequent pleadings pro se. However, Attorney Hurwitz, who represented the tenant during the first appeal, has not filed a motion for application to withdraw in accordance with 14 DCMR 3813.