

DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION

TP 27,179

In re: 1708 Newton Street, N.W., Unit 16

Ward One (1)

MASSOUD HEIDARY
Housing Provider/Appellant

v.

YANINA GOMEZ
Tenant/Appellee

DECISION AND ORDER

October 24, 2003

LONG, COMMISSIONER. This case is on appeal from the Department of Consumer and Regulatory Affairs (DCRA), Office of Adjudication (OAD), to the Rental Housing Commission (Commission). The applicable provisions of the Rental Housing Act of 1985 (Act), D.C. OFFICIAL CODE §§ 42-3501.01-3509.07 (2001), the District of Columbia Administrative Procedure Act (DCAPA), D.C. OFFICIAL CODE §§ 2-501-510 (2001), and the District of Columbia Municipal Regulations, 14 DCMR §§ 3800-4399 (1991), govern the proceedings.

I. PROCEDURAL HISTORY

On June 29, 2001, Yanina Gomez filed Tenant Petition (TP) 27,179 with the Rental Accommodations and Conversion Division (RACD). The petition concerned unit 16 and the common areas of the housing accommodation located at 1708 Newton Street, N.W. The tenant alleged that the housing provider, Massoud Heidary, implemented a rent increase that was larger than any increase permitted by the Act; failed to provide a

proper thirty day notice before increasing the rent; failed to file the proper rent increase forms with the RACD; charged a rent that exceeded the legally calculated rent ceiling; filed an improper rent ceiling with the RACD; increased the rent when there were substantial housing code violations; and served an improper notice to vacate. Prior to the hearing the tenant, through counsel, withdrew the following claims: The housing provider failed to file the proper rent increase forms with the RACD; charged a rent that exceeded the legally calculated rent ceiling; and filed an improper rent ceiling with the RACD.

Administrative Law Judge (ALJ) Rohulamin Quander held the evidentiary hearing on November 29, 2001. The tenant appeared with counsel, Doreen Haney, Esquire. The housing provider appeared pro se. On August 15, 2002, the ALJ issued the decision and order, which contained the following conclusions of law:

1. Respondent increased the rent ceiling for Petitioner's rental unit by \$16.53, from \$787.50 to \$804.03, in violation of D.C. Code 42-3502.08(h).
2. Respondent demanded an increase in Petitioner's monthly rent from \$525.00 to \$787.50, effective April 1, 2001, without serving Petitioner with a valid 30-day notice of increase, in violation of 14 DCMR 4205.4.
3. Respondent demanded an increase in Petitioner's monthly rent from \$525.00 to \$787.50 effective April 1, 2001, without adhering to the implementation of adjustment in rent provisions, in violation of 14 DCMR 4205.7.
4. Respondent demanded an increase in Petitioner's rent while the unit was in substantial non-compliance with the D.C. Housing Regulations, in violation of D.C. Code Sect. 42-3502.08(a)(1)(A) and 14 DCMR 4205.5(a).
5. Respondent knowingly violated the Act with his pattern of conduct throughout the handling of this matter, in violation of D.C. Code, Sec. 42-3509.01(a), and, pursuant to that provision of the law, Petitioner is entitled

to a monthly rent refund for Respondent's unlawful demand of a month increase for her unit.

6. Despite the errors committed by Respondent, there is no evidence to indicate that Respondent acted in bad faith, and no treble damages should be awarded, an option authorized by D.C. Code, Sec. 42-3509.01(a).
7. A civil fine in the amount of \$1500.00 should be imposed at the rate of \$500.00 per violation, for each of the three (3) specific violations of the law committed by Respondent, i.e., improper notice to vacate; rent increase larger than any amount allowed by any applicable provisions of the Act; and rent increase taken while rental unit was not in substantial compliance with the D.C. housing regulations.

Gomez v. Heidary, TP 27,179 (OAD Aug. 15, 2002) at 11-12. The ALJ ordered the housing provider to refund \$4583.50 to the tenant and imposed three fines in the total amount of \$1500.00.

On August 27, 2002, the housing provider appealed the ALJ's decision to the Commission. The Commission held the appellate hearing on December 17, 2002.

II. ISSUES ON APPEAL

The housing provider filed the notice of appeal in the form of a two-page letter to the Commission. The notice of appeal, which was in narrative form, contained several issues and arguments. The Commission extracted the following issues:

- A. Whether the ALJ erred when he ordered a \$4583.50 rent refund to the tenant even though there was no actual rent paid above what the ALJ determined was the appropriate rent.
- B. Whether the ALJ erred when he found that the tenant's unit was not in substantial compliance with the Act and the housing code regulations.
- C. Whether the ALJ abused his discretion by labeling minor violations as substantial because it was speculated that abatement of these minor violations were not remedied until a few weeks before the hearing.
- D. Whether the ALJ erred when he imposed a \$500.00 per offense civil penalty for a total of \$1500.00.

- E. Whether the fine imposed is excessive and therefore an abuse of discretion because the ALJ found that the housing provider's inexperience, and not bad faith, caused this situation.
- F. Whether the ALJ's decision to reduce the CPI ceiling of \$787.50, which was established in 1995 to \$600.00 is illegal and an abuse of discretion.
- G. Whether the ALJ's decision to deny the 2.1% CPI rent increase of \$16.53 because it did not comply with the notice process of § 42-3505.01(b) [sic] is misplaced.

See Notice of Appeal at 1-2.

III. DISCUSSION

A. Whether the ALJ erred when he ordered a \$4583.50 rent refund to the tenant even though there was no actual rent paid above what the ALJ determined was the appropriate rent.

The ALJ did not err when he ordered the housing provider to refund a rent overcharge, which the housing provider demanded, but the tenant did not pay. However, the ALJ erred in the calculation of the rent refund.

On March 19, 2001, the housing provider filed a Certificate of Election of Adjustment of General Applicability with the RACD. The housing provider's filing reflected a 2.1% increase in the tenant's rent ceiling based on the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W).¹ The tenant's rent ceiling,

¹ The Act, D.C. OFFICIAL CODE § 42-3502.05(b), provides:

(b) On an annual basis, the Rental Housing Commission shall determine an adjustment of general applicability in the rent ceiling established by subsection (a) of this section. This adjustment of general applicability shall be equal to the change during the previous calendar year, ending each December 31, in the Washington, D.C., Standard Metropolitan Statistical Area Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W) for all items during the preceding calendar year. No adjustment of general applicability shall exceed 10%. A housing provider may not implement an adjustment of general applicability, or an adjustment permitted by subsection (c) of this section for a rental unit within 12 months of the effective date of the previous adjustment of general applicability, or instead, an adjustment permitted by subsection (c) of this section in the rent ceiling for that unit.

which was \$787.50 before the housing provider implemented the 2.1% rent ceiling adjustment, was increased by \$16.53 to \$804.03. The housing provider increased the tenant's rent from \$525.00 to \$787.50, which resulted in a rent increase of \$262.50. The certificate of election, which the housing provider filed on March 19, 2001, reflected that the increase was effective on April 1, 2001. See Tenant's Exhibit (T. Exh.) 11.

The tenant testified that she continued to pay \$525.00 per month, despite the housing provider's notice that the rent was increased to \$787.50 on April 1, 2001. When the tenant refused to pay the increased rent, the housing provider issued a Late Charge Notice on April 10, 2001. In the notice, the housing provider advised the tenant that she was in violation of her lease because she failed to pay the \$262.50 increase, and the housing provider imposed a late fee. T. Exh. 14. On April 26, 2001, the housing provider issued a Notice to Correct or Vacate. Thereafter, the housing provider filed a Complaint for Possession of Real Estate in the Superior Court of the District of Columbia. In the complaint filed on June 2, 2001, the housing provider listed the monthly rent as \$787.50, and stated that the tenant owed rent for April 2001 through June 30, 2001. T. Exh. 15.

On June 29, 2001, the tenant filed the instant petition. In the petition, the tenant alleged that the rent increase was improper. During the evidentiary hearing, the tenant presented oral and documentary evidence to support her claim, and the housing provider offered evidence to counter the tenant's claim. After evaluating the evidence, the ALJ rendered the following conclusions of law:

8. Respondent demanded an increase in Petitioner's monthly rent from \$525.00 to \$787.50, effective April 1, 2001, without serving Petitioner with a valid 30-day notice of increase, in violation of 14 DCMR 4205.4.

9. Respondent demanded an increase in Petitioner's monthly rent from \$525.00 to \$787.50 effective April 1, 2001, without adhering to the implementation of adjustment in rent provisions, in violation of 14 DCMR 4205.7.
10. Respondent demanded an increase in Petitioner's rent while the unit was in substantial non-compliance with the D.C. Housing Regulations, in violation of D.C. Code Sect. 42-3502.08(a)(1)(A) and 14 DCMR 4205.5(a).
11. Respondent knowingly violated the Act with his pattern of conduct throughout the handling of this matter, in violation of D.C. Code, Sec. 42-3509.01(a), and, pursuant to that provision of the law, Petitioner is entitled to a monthly rent refund for Respondent's unlawful demand of a month increase for her unit.

Decision at 11-12.

The ALJ ordered the housing provider to refund \$4583.50 to the tenant, because the housing provider failed to adhere to the statutory provisions for increasing the tenant's rent. The ALJ held, "[t]he refund shall be computed, based upon the \$262.50 monthly overcharge demanded for the period April 1, 2001 through July 31, 2002." Decision at 10. However, when the ALJ computed the rent overcharge he identified the refund period as April 2001 through August 2002, and ordered the housing provider to refund \$262.50 per month for a seventeen-month period, which resulted in a refund of \$4462.50. Decision at 11. In addition, the ALJ imposed interest through August 2002 in the amount of \$120.50. The total refund for the rent overcharge and interest was \$4583.50. Id.

On appeal, the housing provider maintains that the ALJ erred when he imposed the rent refund, because the tenant never paid the rent increase. The housing provider's "contention ignores the meaning of 'rent,' which is a term of art." Kapusta v. District of Columbia Rental Hous. Comm'n, 704 A.2d 286, 287 (D.C. 1997). The Act defines rent

as "the entire amount of money ... demanded, received, or charged by a housing provider as a condition of occupancy or use of a rental unit, its related services, and its related facilities." D.C. OFFICIAL CODE § 42-3501.03(28) (2001) (emphasis added). The housing provider is liable for the entire amount of money demanded, received, or charged in excess of the rent ceiling. D.C. OFFICIAL CODE § 42-3509.01(a) (2001). The fact that the tenant did not actually tender the rent that the housing provider charged or demanded does not reduce or limit the housing provider's legal responsibility.

In Kapusta, the housing provider demanded an improper rent for a nine-month period. However, the tenant only paid the rent for one of the nine months. The hearing examiner awarded a rent refund for the entire nine-month period that the housing provider demanded rent in excess of the rent ceiling. The housing provider appealed the hearing examiner's decision to the Commission. In accordance with § 42-3509.01(a),² the Commission affirmed the hearing examiner's decision. In Kapusta, the Court affirmed the Commission's decision to award a refund for rent that the housing provider charged, but never collected. The Court held:

Thus the Commission's order for a "rent refund" of money demanded but never received comports with the language of the statute. When read with the definition of rent, the statute commands that a violator "shall be held liable . . . for the amount by which the ["entire amount of money . . . demanded, received or charged"] exceeds the applicable rent ceiling" [D.C. OFFICIAL CODE § 42-3509.1(a) (2001); D.C. OFFICIAL CODE § 42-3501(28) (2001).] ... Thus, we reject Kapusta's contention and conclude

² D.C. OFFICIAL CODE § 42-3509.01(a) provides:

Any person who knowingly (1) demands or receives any rent for a rental unit in excess of the maximum allowable rent applicable to that rental unit under the provisions of subchapter II of this chapter, or (2) substantially reduces or eliminates related services previously provided for a rental unit, shall be held liable by the Rent Administrator or Rental Housing Commission, as applicable, for the amount by which the rent exceeds the applicable rent ceiling or for treble that amount (in the event of bad faith) and/or for a roll back of the rent to the amount the Rent Administrator or Rental Housing Commission determines.

the Commission did not err in ordering a rent refund based on the amount of money that Kapusta demanded in excess of the rent ceiling.

Id. at 287. Similarly, the Commission affirms the refund of the rent that the housing provider in the instant case overcharged, but never collected. However, the Commission corrects the plain error³ in the calculation of the refund.

The record revealed that the housing provider increased the tenant's rent by \$262.50 on April 1, 2001. The ALJ ordered the housing provider to refund \$4462.50, which represented a refund of \$262.50 per month for the seventeen-month period beginning on April 1, 2001 and ending in August 2002. The ALJ erred when he ordered a refund through August 2002, because the record closed at the conclusion of the evidentiary hearing on November 29, 2001. Consequently, there was no record evidence of a rent overcharge through August 2002. See Harris v. District of Columbia Rental Hous. Comm'n, 505 A.2d 66, 69 (D.C. 1986) (holding that an administrative decision should be based solely on the evidence that appears in the public record of the agency proceeding); see also Jenkins v. Johnson, TP 23,410 (RHC Jan. 4, 1995) (holding that the agency may order a rent refund up to the date the record closed, when there is evidence of a continuing violation) cited in Linen v. Lanford, TP 27,150 (RHC Sept. 29, 2003) at 7.

The ALJ's award of a rent refund beyond the date the record closed constituted plain error. The Commission corrected this plain error by recalculating the rent refund. The Commission calculated the rent refund for the eight-month period of April 1, 2001, which was the effective date of the rent increase, through November 29, 2001, which was the date the record closed. The Commission calculated the refund by multiplying the

³ "Review by the Commission shall be limited to the issues raised in the notice of appeal; Provided, that the Commission may correct plain error." 14 DCMR § 3807.4 (1991).

amount of the monthly rent overcharge, which was \$262.50, by the period the housing provider demanded the overcharge, which was 8 months, $(\$262.50 \times 8) = \2100.00 .

In accordance with 14 DCMR § 3826 (1991),⁴ the ALJ imposed simple interest on the rent refund from the date of the violation to the date the ALJ issued the decision and order. 14 DCMR § 3826.2 (1991). The interest for this period, April 1, 2001 through August 15, 2002, was \$120.50. In order to award interest for the entire adjudicatory period, the Commission calculated interest from the date of the ALJ's decision to the date that the Commission issued the final decision and order. The interest from August 16, 2002 through October 24, 2003 is \$74.88. The Commission used the following equation to calculate the interest: $\$2100.00$ (principal) $\times .03$ (rate)⁵ \times 1 year 2 months and 8 days

⁴ "The Rent Administrator or the Rental Housing Commission may impose simple interest on rent refunds, or treble that amount under § 901(a) or § 901(f) of the Act." 14 DCMR § 3826.1 (1991). "Interest is calculated from the date of the violation ... to the date of the issuance of the decision." 14 DCMR § 3826.2 (1991). "The interest rate imposed on rent refunds ... shall be the judgment interest rate used by the Superior Court of the District of Columbia ... on the date of the issuance of the decision." 14 DCMR § 3826.3 (1991).

⁵ The judgment interest rate on October 24, 2003 was 3%.

(time) = \$74.88.⁶ The total interest from April 1, 2001 through October 24, 2003 is \$195.38.⁷

Accordingly, the housing provider shall refund \$2295.38 to the tenant for the rent overcharge. This figure represents a rent refund of \$2100.00 and interest in the amount of \$195.38.

B. Whether the ALJ erred when he found that the tenant's unit was not in substantial compliance with the Act and the housing code regulations.

The ALJ did not err when he found that the housing accommodation was not in substantial compliance with the housing code. “Substantial compliance with the housing code’ means the absence of ... [a] frequent lack of sufficient water supply; frequent lack of hot water; leaks in the roof or walls; defective drains, sewage system, or toilet facilities; infestation of insects or rodents; doors or windows which are not sufficiently tight to maintain the required temperature or to prevent excessive heat loss; and doors lacking required locks.” 14 DCMR § 4216.2 (1991). The tenant offered oral and documentary evidence that the housing accommodation and common elements were not

⁶ The Commission calculated interest for 1 year, 2 months and 8 days in the following manner:

The Commission used the following formula to calculate interest for 1 year: $(\$2100.00 \times .03 \times 1) = \63.00 .

In order to calculate interest for 2 months, the Commission divided the annual interest rate, 3%, by 12 in order to determine the monthly interest rate: $.03 / 12 = .0025$. The Commission calculated the interest for 2 months using the following equation: $\$2100.00 \times .0025 \times 2 = \10.50

The Commission divided the annual interest rate by 365 days to determine the daily rate using the following equation: $.03 / 365 = .0000821$. The Commission used the following equation to calculate interest for 8 days: $\$2100.00 \times .0000821 \times 8 = \1.38 .

The Commission added the figures, $(\$63.00 + \$10.50 + 1.38)$ to arrive at the total interest, \$74.88, for the period, August 16, 2002 through October 24, 2003.

⁷ In order to compute the total amount of interest, the Commission added the interest from the April 1, 2001 through August 15, 2002 to the interest from August 16, 2002 through October 24, 2003, using the following equation: $\$120.50 + \$74.88 = \$195.38$.

in substantial compliance with the housing regulations, when the housing provider increased the rent. See D.C. OFFICIAL CODE § 42-3502.08(a)(1)(A) (2001).⁸

During the hearing the tenant offered oral and documentary evidence to support her claim that there were substantial housing code violations when the housing provider increased her rent on April 1, 2001. The tenant testified that water from the roof leaked into her unit through the kitchen ceiling, hot water leaked from the bathtub and bathroom sink, the bathroom sink drained slowly, and cold air entered the unit through the broken bathroom window. In addition, the tenant testified that she was not able to take a shower or wash dishes because the housing provider installed a ten-gallon hot water tank, which does not supply an adequate amount of hot water for the tenant's apartment. The tenant introduced a letter to the housing provider dated April 6, 2001. In the letter, the tenant described her on-going complaints concerning a lack of sufficient hot water. T. Exh. 12.

⁸ § 42-3502.08. Increases above base rent.

(a) (1) Notwithstanding any provision of this chapter, the rent for any rental unit shall not be increased above the base rent unless:

(A) The rental unit and the common elements are in substantial compliance with the housing regulations, if noncompliance is not the result of tenant neglect or misconduct. Evidence of substantial noncompliance shall be limited to housing regulations violation notices issued by the District of Columbia Department of Consumer and Regulatory Affairs and other offers of proof the Rental Housing Commission shall consider acceptable through its rulemaking procedures;

(B) The housing accommodation is registered in accordance with § 42-3502.05;

(C) The housing provider of the housing accommodation is properly licensed under a statute or regulations if the statute or regulations require licensing;

(D) The manager of the accommodation, when other than the housing provider, is properly registered under the housing regulations if the regulations require registration; and

(E) Notice of the increase complies with § 42-3509.04.

(2) Where the Rent Administrator finds there have been excessive and prolonged violations of the housing regulations affecting the health, safety, and security of the tenants or the habitability of the housing accommodation in which the tenants reside and that the housing provider has failed to correct the violations, the Rent Administrator may roll back the rents for the affected rental units to an amount which shall not be less than the September 1, 1983, base rent for the rental units until the violations have been abated.

The tenant also testified concerning the common areas of the housing accommodation. The tenant testified that the housing accommodation is not safe because non-residents frequently enter the housing accommodation through the laundry room and front entrance doors, which are not secure.

In response to the tenant's evidence, the housing provider testified to the myriad repairs he made in the housing accommodation and the tenant's unit. The housing provider testified that he changed the front door on two occasions and replaced two hot water heaters in the tenant's unit. The housing provider testified that he believed the tenant's complaints were lodged in response to his decision to increase the tenant's rent.

The ALJ determined that the tenant "established via credible testimony buttressed with two enumerated housing violation notices that substantial housing code violations ... existed at the premises on March 6, 2001 ... [and the] increase, effective April 1, 2001, was taken when Petitioner's rental until was not in substantial compliance with the Act and the housing code regulations." Decision at 7. After evaluating the evidence, the ALJ rendered the following findings of fact and conclusion of law:

8. Prior to Respondent's March 19, 2001 filing of the Certificate of Election for the apartment, Respondent was made aware of the existence of housing code violations in the rental unit. On March 6, 2001, Rene Marquez, a D.C. housing inspector, conducted a personal inspection of the exterior of the premises and of Petitioner's rental unit. As a result of the inspection, Mr. Marquez noted: a) a lack of sufficient hot water in both the Petitioner's bathroom and kitchen; b) a leaking faucet in her lavatory; c) insect infestation in her unit; d) assorted discarded solid waste or trash in the exterior side yard; and e) rat burrows in the exterior common areas.
9. Marquez personally served Housing Violation Notices #588054 and #588055 at 5225 Wisconsin Avenue, N.W., Washington, D.C., listing the responsible party as the Newton Design Center, LLC. Although the signature of the person upon whom personal service was achieved

was illegible, that individual listed himself as “owner” of the realty in question. (Ten. Pet. – case file pp 1-3).

Decision at 4, Findings of Fact 8 & 9.

4. Respondent demanded an increase in Petitioner’s rent while the unit was in substantial non-compliance with the D.C. Housing Regulations, in violation of D.C. Code Sect. 42-3502.08(a)(1)(A) and 14 DCMR 4205.5(a).

Id. at 12, Conclusion of Law 4.

The ALJ, who is empowered to determine the credibility of witnesses, made a credibility determination in favor of the tenant. In spite of the fact that there was conflicting testimony, the ALJ did not abuse his discretion when he accepted the tenant’s testimony over the housing provider’s testimony, because there is substantial evidence to support the ALJ’s findings. See Fazekas v. Dreyfuss, TP 20,394 (RHC Apr. 14, 1989) at 14.

As indicated in Issue C below, the record supports the ALJ’s determination that the housing code violations that existed in the tenant’s unit on April 1, 2001 constituted substantial violations of the housing code. Accordingly, the ALJ did not err when he concluded that the housing accommodation was not in substantial compliance with the housing regulations when the housing provider increased the rent on April 1, 2001.

C. Whether the ALJ abused his discretion by labeling minor violations as substantial because it was speculated that abatement of these minor violations were not remedied until a few weeks before the hearing.

The regulation, 14 DCMR § 4216.2 (1991), contains a list of housing code violations that are deemed substantial. Many of the violations about which the tenant complained appear in § 4216.2, including a frequent lack of sufficient water supply, a frequent lack of hot water, a leak in the roof, a defective drain, a broken window, and

doors lacking required locks. 14 DCMR § 4216.2 (1991). Moreover, 14 DCMR § 4216.2(u) provides that a housing accommodation is not in substantial compliance with the housing code when it contains a “large number of housing code violations, each of which may be either substantial or non-substantial.”

The ALJ did not abuse his discretion when he concluded that the violations were substantial, because the violations in the tenant’s unit met the regulatory definition of substantial housing code violations.

D. Whether the ALJ erred when he imposed a \$500.00 per offense civil penalty for a total of \$1500.00.

E. Whether the fine imposed is excessive and therefore an abuse of discretion because the ALJ found that the housing provider’s inexperience, and not bad faith, caused this situation.

The Act empowers the ALJ to impose fines for willful violations of the Act. The penalty provision of the Act provides:

(b) Any person who wilfully (1) collects a rent increase after it has been disapproved under this chapter, until and unless the disapproval has been reversed by a court of competent jurisdiction, (2) makes a false statement in any document filed under this chapter, (3) commits any other act in violation of any provision of this chapter or of any final administrative order issued under this chapter, or (4) fails to meet obligations required under this chapter shall be subject to a civil fine of not more than \$5,000 for each violation.

D.C. OFFICIAL CODE § 42-3509.01(b) (2001) (emphasis added). A prerequisite to the imposition of a fine is a finding of willful conduct. In Quality Mgmt., Inc. v. District of Columbia Rental Housing Comm’n, 505 A.2d 73 (D.C. 1986), the court discussed the meaning of the term willful. The court stated:

Section [42-3509.01(b)] prohibits anybody from collecting rent increases that have been disapproved, making false statements in filing rent control documents, or otherwise behaving in a manner contrary to the rent control statute. A \$5,000 fine is provided for each occasion on which [§ 42-3509.01(b)] is "willfully" violated. From the context it is clear that the

word "willfully" as used in [§ 42-3509.01(b)] demands a more culpable mental state than the word "knowingly" as used in [§ 42-3509.01(a)].

....

"Willfully" goes to intent to violate the law. "Knowingly" is simply that you know what you are doing. A different standard. If you know that you are increasing the rent, the fact that you don't intend to violate the law would be "knowingly ". If you also intended to violate the law, that would be "willfully".

Id. at 76 n.6 (quoting Council of the District of Columbia, Council Period 3, Second Session, 43rd Legislative Session at 88-93 (Nov. 14, 1980).

The ALJ imposed three \$500.00 fines against the housing provider. The ALJ fined the housing provider for serving an improper thirty day notice, improperly increasing the rent, and increasing the rent when there were substantial housing code violations. However, the ALJ did not find that the housing provider intentionally violated the provisions of the Act. Instead, the "ALJ determine[d] that [the housing provider] knowingly violated the Act, and further determine[d] that his actions were not conducted in bad faith, but were the result of inexperience in owning and administering rental property in the District of Columbia." Decision at 9.

As a result of the ALJ's statement attributing the housing provider's conduct to inexperience, '[w]e do not find present the element of conscious choice necessary to sustain a finding of wilfulness. There is no doubt that the proof sustains the finding that the violations were "knowing" as that word is used in [§ 42-3509.01(a)] of the Act, but no testimony was presented to meet the heavier burden imposed by [§ 42-3509.01(b)] of showing that the [housing provider's] conduct was intentional, or deliberate or the

product of a conscious choice.” Ratner Mgmt. Co. v. Tenants of Shipley Pk., TP 11,613 (RHC Nov. 4, 1988) quoted in RECAP v. Powell, TP 27,042 (RHC Dec. 19, 2002) at 9.

In the absence of a finding that the housing provider willfully violated the Act, the Commission vacates the three \$500.00 fines.

F. Whether the ALJ’s decision to reduce the rent ceiling of \$787.50, which was established in 1995 to \$600.00 is illegal and an abuse of discretion.

The ALJ erred when he reduced the rent ceiling established in 1995, because it was established more than three years before the tenant filed the petition. Moreover, the tenant’s attorney withdrew the claims that the tenant initially raised concerning the rent ceiling. See Decision at 2; OAD Hearing Tape (Nov. 29, 2001). Consequently, the ALJ erred when he reduced the rent ceiling for the tenant’s unit, because the rent ceiling was not a contested issue.

The ALJ found that the rent ceiling was \$787.50 in 1995. The ceiling was not adjusted until April 1, 2001 when the housing provider increased the rent ceiling from \$787.50 to \$804.03.⁹ The ALJ issued his findings concerning the rent ceiling in Finding of Fact 4, where he stated the following:

On March 19, 2001, Respondent filed a Certificate of Election of Adjustment of General Applicability (Certificate of Election) with RACD, and increased the rent ceiling 2.1%, pursuant to the authorized CPI-W2 [sic] for 2001. Respondent raised the rent ceiling for unit #16 by \$16.53, from \$787.50 to \$804.03, and raised the actual monthly rent to be paid by \$262.50, from \$525.00 to \$787.50, effective April 1, 2001. (Ten. Pet. – case file pp. 7, 8, & 32-33) This increase in the rent ceiling is the only increase which has been perfected for the property since 1995.

Decision at 3.

⁹ “In calculating a rent ceiling adjustment, any fraction of a dollar of forty-nine cents (\$0.49) or less shall be rounded down to the nearest dollar, and any fraction of fifty cents (\$0.50) or more shall be rounded up to the nearest dollar.” 14 DCMR § 4204.8 (1991). Consequently, the rent ceiling was \$804.00, not \$804.03.

The ALJ erred when he reduced the rent ceiling that was established in 1995, because D.C. OFFICIAL CODE § 42-3502.06(e) (2001) proscribes any challenge to an adjustment implemented more than three years before the tenant filed the petition. Since the tenant filed the petition on June 29, 2001, the Act prohibited a review of any adjustment implemented prior to June 29, 1998. See Kennedy v. District of Columbia Rental Hous. Comm'n, 709 A.2d 94 (D.C. 1998); Compare Redmond v. Majerle Mgmt. Inc., TP 23,146 (RHC Mar. 26, 2002) (where the Commission reviewed a rent ceiling, which the housing provider established before the statutory period, but modified during the three year statutory period). Moreover, the ALJ erred when he disallowed the adjustment in the rent ceiling from \$787.50 to \$804.00, because the tenant did not challenge the rent ceiling adjustment. See Decision at 9 & 11.

Accordingly, the Commission reverses the ALJ's decision to reduce the rent ceiling to \$600.00. In the absence of a challenge by the tenant to the adjustment in the rent ceiling, the rent ceiling for the tenant's unit is \$804.00.

G. Whether the ALJ's decision to deny the 2.1% CPI rent increase of \$16.53 because it did not comply with the notice process of § 42-3505.01(b) is misplaced.

In the text of the decision and order, the ALJ held that the housing provider violated the notice provisions of § 42-3505.01(b), when he increased the tenant's rent by \$262.50.¹⁰ The ALJ's reference to D.C. OFFICIAL CODE § 42-3505.01(b) (2001) is misplaced, because § 42-3505.01(b) does not govern rent increases. Section § 42-3505.01(b) provides: "A housing provider may recover possession of a rental unit where

¹⁰ In the notice of appeal, the housing provider alleged that the ALJ erred when he denied the \$16.53 rent increase. There is no record evidence that the housing provider attempted to increase the tenant's rent by \$16.53. The record revealed that the housing provider increased the rent ceiling by \$16.53 and increased the tenant's rent by \$262.50 on April 1, 2001.

the tenant is violating an obligation of tenancy and fails to correct the violation within 30 days after receiving from the housing provider a notice to correct the violation or vacate.”

The ALJ’s reference to the incorrect provision of the Act is harmless error, because the ALJ disallowed the rent increase, because the “rent increase notice dated March 26, 2001, and effective as of April 1, 2001, was not in compliance with the notice provisions of the Act.” Decision at 4, Finding of Fact 10. Moreover, the ALJ properly cited 14 DCMR § 4205.4 (1991) and D.C. OFFICIAL CODE § 42-3509.04(b) (2001) which require the housing provider to give the tenant not less than thirty (30) days written notice of a rent increase. Decision at 6.

The housing provider filed a Certificate of Election of Adjustment of General Applicability with RACD on March 19, 2001. The certificate of election reflected a 2.1% increase in the rent ceiling, which resulted in a rent ceiling adjustment of \$16.53. In addition, the certificate of election showed that the housing provider intended to increase the tenant’s rent by \$262.50 on April 1, 2001. See T. Exhs. 11. By a letter dated March 26, 2001, the housing provider informed the tenant that her rent, which was \$525.00, would be increased to \$787.50 on April 1, 2001. R. at 8. When the tenant filed the petition and offered evidence during the hearing, she challenged the housing provider’s efforts to increase her rent by \$262.50.

The Commission affirms the ALJ’s decision to disallow the rent increase of \$262.50, because the housing provider did not give the tenant a proper thirty days notice of the rent increase. See also D.C. OFFICIAL CODE § 42-3502.08 (2001).

IV. CONCLUSION

For the foregoing reasons, the Commission affirms the ALJ's decision to order a rent refund and disallow the \$262.50 rent increase. However, the Commission vacates the refund of \$4583.50 and orders the housing provider to refund \$2295.38 to the tenant within thirty days of the date of this decision and order. This figure, \$2295.38, represents a rent refund of \$2100.00 and interest in the amount of \$195.38.

Further, the Commission reverses and vacates the ALJ's decision to impose three \$500.00 fines; and the Commission reverses the ALJ's decision to reduce the tenant's rent ceiling to \$600.00.

SO ORDERED.


RUTH R. BANKS, CHAIRPERSON


RONALD A. YOUNG, COMMISSIONER


JENNIFER M. LONG, COMMISSIONER

MOTIONS FOR RECONSIDERATION

Pursuant to 14 DCMR § 3823 (1991), final decisions of the Commission are subject to reconsideration or modification. The Commission's rule, 14 DCMR § 3823.1 (1991), provides, "[a]ny party adversely affected by a decision of the Commission issued to dispose of the appeal may file a motion for reconsideration or modification with the Commission within ten (10) days of receipt of the decision."

JUDICIAL REVIEW

Pursuant to D.C. OFFICIAL CODE § 42-3502.19 (2001), “[a]ny person aggrieved by a decision of the Rental Housing Commission ... may seek judicial review of the decision ... by filing a petition for review in the District of Columbia Court of Appeals.” Petitions for review of the Commission’s decisions are filed in the District of Columbia Court of Appeals and are governed by Title III of the Rules of the D.C. Court of Appeals. The Court’s Rule, D.C. App. R. 15(a), provides in part: “Review of orders and decisions of an agency shall be obtained by filing with the clerk of this court a petition for review within thirty days after notice is given, in conformance with the rules or regulations of the agency, of the order or decision sought to be reviewed ... and by tendering the prescribed docketing fee to the clerk.” The Court may be contacted at the following address and phone number:

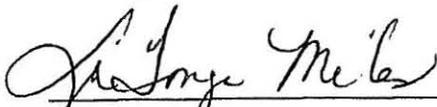
D.C. Court of Appeals
Office of the Clerk
500 Indiana Avenue, N.W., 6th Floor
Washington, D.C. 20001
(202) 879-2700

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Decision and Order in TP 27,179 was mailed by priority mail with delivery confirmation, postage prepaid, this 24th day of October 2003 to:

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LaTonya Miles
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