DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION

TP 27,644

In re: 5111 Ayers Place, S.E., Unit 7

Ward Seven (7)

GABRIEL BONEY
Housing Provider/Appellant

v.

DAWN LOCKE
Tenant/Appellee

DECISION AND ORDER

November 30, 2005

LONG, COMMISSIONER. This case is on appeal from the Department of Consumer and Regulatory Affairs (DCRA), Rental Accommodations and Conversion Division (RACD), 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 (DCMR), 14 DCMR §§ 3800-4399 (2004), govern the proceedings.

I. PROCEDURAL HISTORY

This matter was initiated by Dawn Locke when she filed Tenant Petition (TP) 27,644 on October 8, 2002. She retained counsel and filed an amended petition on February 3, 2003. The petition concerned her tenancy at 5111 Ayers Place, S.E., unit 7, where she has resided since July 2001. The housing provider, Gabriel Boney, owned and managed the housing accommodation. In the petition, the tenant alleged that the housing

provider failed to file the proper rent increase forms with RACD; demanded a rent increase that exceeded the legally calculated rent ceiling; filed an improper rent ceiling with RACD; failed to properly register the housing accommodation; and retaliated against her.

Hearing Examiner Saundra McNair presided at the evidentiary hearing on April 10, 2003. The tenant appeared with counsel, and the housing provider appeared pro se. During the hearing, the tenant's counsel withdrew the claims concerning the rent ceiling and the claim that the housing provider did not possess a housing business license when he increased the tenant's rent. Following the hearing, the hearing examiner issued the decision and order, which contained the following findings of fact and conclusions of law:

> Findings of Fact
>
> 1. The Petitioner took possession of apartment # 7 on July 6, 2001, and has resided at the subject premises at all relevant times, without interruption.
>
> 2. The Respondent, Gabriel Boney, owns and manages the subject property.
>
> 3. The Examiner has jurisdiction to address the Petitioner's claims concerning the rental increases and retaliation since the [h]ousing [a]ccommodation is not exempt pursuant to the Rental Housing Act of 1985.
>
> 4. The Petitioner has proven by a preponderance of the evidence that the building in which her rental unit is located is not properly registered with the Rental Accommodations and Conversion Division in accordance with the requirements of the Act.
>
> 5. The Petitioner has proven by a preponderance of the evidence that the Respondent has retaliated against her in violation of D.C. Official Code § 42-3505.02.

Locke v. Boney, TP 27,644 (RACD Mar. 23, 2004) at 5-6.

Conclusions of Law

1. The Petitioner has proven by a preponderance of the evidence that the building in which the Petitioner's rental unit is located is not properly registered with the Rental Accommodations and Conversion Division, thereby violating § 42-3505.05(f) (2001 Ed.).

2. The Petitioner has proven by a preponderance of evidence that the Respondent has retaliated against her in violation of D.C. Official Code § 42-3505.02 and the Respondent has failed to rebut the presumption of retaliation.

3. The Petitioner is entitled to a rent rollback for the Respondent's illegal rent increase and the Notice to Vacate which were the result of retaliation by the Respondent.

4. The Respondent violated D.C. Official Code § 42-3502.05 (2001) by failing to renew the Registration and pay the Registration fees for operating rental property in the District of Columbia. The Respondent's lack of a Registration Form does not permit him to have a certificate of occupancy, a property registration number, or a landlord registration/exemption number. Respondent also does not have a current Housing License. Each of the above is required to operate a rental property business in the District of Columbia.

Id. at 11. The hearing examiner granted the petition, and rolled the tenant's rent back from $500.00 per month to $425.00 until the housing provider implemented a legal rent increase. The hearing examiner also ruled that the housing provider served an improper notice to correct or vacate, and she imposed a $250.00 fine for retaliating against the tenant. Finally, the hearing examiner ordered the housing provider to pay a fine in the amount of $100.00 for violating § 42-3502.05 by failing, within the proper time, to renew the registration and pay the registration fees for operating rental property in the District of Columbia. Id.

The housing provider appealed the hearing examiner's decision to the Commission on April 5, 2004, and the Commission held the appellate hearing on July 15, 2004.

II. ISSUES ON APPEAL

The housing provider raised the following issues in the notice of appeal:

> The Hearing Examiner base [sic] her Decision in Part, that the Respondent/Housing Provider had not [r]egistered the rental property, [d]oes not have [a] housing license, [and] [t]he rent increase was not legal. At the time of the [h]earing the Respondent/Housing Provider offered his License and Amended Registration form at the [h]earing [sic] April 10, 2003.
>
> The Hearing Examiner also states that she investigated the records with the Business Regulation Administration and found the property not properly register and had not paid licensing fees. The Respondent/ Housing Provider [h]as, and has maintain [sic] a [l]icense, has checked with the Rental Accommodations and Conversion Division before the [h]earing and received copies of his [r]egistration.
>
> The Hearing Examiners [sic] finding of retaliatory action against the Petitioner/Tenant are erred and misleading; 1. The only action the Petitioner/Tenant took against the Respondent/Housing Provider was in February 2002, the rent increase did not take place until November 2002, eight months later. 2. The Tenant was receiving a special rate of $425.00 and was told in February 2002 her rent would be going up, in May 2002 the Filing for Adjustment of General Applicability took place, as in most cases, rents do not go up until after the first year, and that is what happened in this case.
>
> The Hearing Examiner All so [sic] states in her Decision that the rent increase took place after a Superior [C]ourt Judge [d]ismissed the Respondent's L&T case, when in Fact 1, [i]t was the Respondent whom [sic] ask [sic] the Court to [d]ismiss his case, 2, This did not take place until December 2, 2002 the rent increase was already in effect.

Notice of Appeal at 1-2.

III. DISCUSSION

A. <u>Whether the hearing examiner erred when she found that the housing provider did not register the property or have a housing business license.</u>

The tenant's attorney, Scott Grogan, filed an amended tenant petition on February 3, 2003. In the section for complaints concerning rent increases, Mr. Grogan placed an X in the box next to the claim that the housing accommodation was not properly registered

with RACD. In the section provided to describe the details of the claim, the tenant's attorney wrote, "The [h]ousing [p]rovider did not have a valid Housing Business License at the time of the rent increase." Amended Tenant Petition at 3, Record at 67. When the hearing examiner convened the evidentiary hearing, the tenant's attorney made an opening statement, in which he outlined the claims that the tenant intended to pursue at the hearing. Mr. Grogan stated that the tenant's claim involved three challenges to the $75.00 rent increase that the housing provider implemented on November 1, 2002, and he recited the claims as follows:

> 1. The housing provider did not have a housing business license at the time of the rent increase.
>
> 2. The May 29, 2002 filing with RACD was inaccurate and therefore the rent increase based on it was invalid. It indicated that the rent increase would be effective August 1, 2002 and that service of notice on the tenant would be June 30, 2002. ....
>
> 3. The rent increase or a portion of the rent increase was in retaliation for the tenant asserting her rights.

Hearing Tape (RACD Apr. 10, 2003) (emphasis added).

It is well established that the proponent of the rule or order, who was the tenant in the instant case, bears the burden of proving the claims presented in the tenant petition. See D.C. OFFICIAL CODE § 2-509(b) (2001); 14 DCMR § 4003 (2004). When the tenant presented her case, she testified concerning the rent increase and a series of events which she believed led to the rent increase and supported her retaliation claim. However, the tenant offered no evidence concerning the registration of the property or the housing business license. After the tenant concluded her case in chief, the housing provider cross-examined the tenant on the claims presented during direct examination, and then he offered testimony in response to the tenant's claims. After the housing provider

presented his case, the tenant's attorney requested a brief recess. When the tape recording resumed, the tenant's counsel asked the housing provider for the housing business license. The housing provider complied and presented the housing business license. The tape recording of the hearing captured the following exchange:

> Mr. Grogan: Mr. Boney we had asked for the current business license in our subpoena, do you have that?
>
> Mr. Boney: Here it is.
>
> Mr. Grogan: Let the record reflect that he handed me a business license for the license period November 1, 2001 to October 31, 2003. Since the rent increase at issue in this case was noticed September 2002 and went into effect November 2002, he did in fact have a license at the time. So that at this time Petitioner withdraws that claim and is returning the license to the Respondent.

Hearing Tape (RACD Apr. 10, 2003) (emphasis added).

When the hearing examiner issued the decision and order, she stated that the tenant presented testimonial and documentary evidence to prove her claims that the housing provider did not have a valid housing business license when he increased her rent, and the housing provider failed to file the Registration/Claim of Exemption forms in a timely manner. The hearing examiner also stated that the tenant provided testimony concerning a RACD registration filed on May 29, 2002. However, the document dated May 29, 2002 was a notice of rent increase, not a registration form, and the tenant presented no evidence concerning the registration claim. In direct contravention of evidence to the contrary, the hearing examiner also stated that the housing provider did not refute the tenant's allegations or present proof that he was properly registered and possessed a valid housing business license. Locke v. Boney, TP 27,644 (RACD Mar. 23, 2004) at 6 and 7.

As reflected in the quoted statements from the hearing, the tenant withdrew the claim that the housing provider did not have a housing business license when he increased the tenant's rent, because the housing provider presented a valid housing business license in response to the tenant's subpoena. Moreover, the tenant petition, Mr. Grogan's opening statement, and the evidence presented during the hearing, revealed that the tenant's registration claim consisted solely of the allegation that the housing provider did not possess a valid housing business license when he increased the tenant's rent.

In the face of the substantial record evidence, the hearing examiner ignored the limited nature of the registration issue and disregarded the fact that the tenant withdrew the sole registration claim, which was the allegation that the housing provider did not have a housing business license when he increased the tenant's rent. The hearing examiner inexplicably determined that the housing provider "did not properly register the subject property within the statutory time requirement, ... has not paid the annual registration renewal and licensing renewal fees required by law to operate a rental housing business in the District of Columbia within 120 days of renting the unit to Petitioner ... [and] failed to secure a current Rental Property License." Decision at 7. Finally, the hearing examiner imposed a $100.00 fine for the registration violations.

In Parreco v. District of Columbia Rental Hous. Comm'n, No. 03-AA-1488, 2005 D.C. App. LEXIS 540, at *2 (D.C. Oct. 27, 2005), the court ruled that neither the hearing examiner nor the Commission may decide an issue and impose a fine based on an issue that the tenant did not raise and of which the housing provider did not receive adequate notice. The court's decision in Parreco is born out of the well settled principle that all parties shall receive notice of the contested issues and the parties shall be afforded a

meaningful opportunity to present evidence and argument with respect to the noticed issues. D.C. OFFICIAL CODE § 2-509(a) (2001).

The tenant petition provided the housing provider with notice of the claim that his property was not properly registered, because he did not have a valid housing business license when he increased the tenant's rent. During the hearing, the tenant withdrew the sole registration claim, because the housing provider presented a valid housing business license during the hearing. When the hearing examiner issued the decision and order, she ignored the fact that the tenant withdrew the narrow registration issue, expanded the registration issue, and ruled upon several issues that the tenant did not notice in the petition or present during the hearing.

The Act empowers the Commission to affirm a hearing examiner's decision or reverse a decision that is arbitrary, capricious, not in accordance with the law, or unsupported by the substantial evidence on the record of the proceedings. D.C. OFFICIAL CODE § 42-3502.16(h) (2001). In the instant case, the hearing examiner erred when she raised and ruled upon registration issues, which the tenant did not notice or pursue during the hearing, and when she ruled upon the claim concerning the housing business license, which the tenant withdrew at the hearing.

The hearing examiner's decision to review issues that were not pursued by the tenant was not in accordance with the DCAPA, fundamental principles of due process, or the spirit of the court's decision in Parreco. Moreover, the hearing examiner's statement that the tenant presented evidence to support the registration and license issues was not supported by the substantial evidence on the record of the proceedings. Accordingly, the Commission reverses Conclusions of Law 1 and 4 wherein the hearing examiner

improperly ruled that the housing provider violated D.C. OFFICIAL CODE § 42-3502.05 (2001) because the housing accommodation was not properly registered and the housing provider did not possess a valid housing business license. Finally, the Commission vacates the $100.00 fine, which the hearing examiner improperly imposed for the registration violations.

B. Whether the hearing examiner erred when she found that the housing provider retaliated against the tenant.

At the heart of the tenant's retaliation claim is the assertion that the housing provider engaged in a course of conduct that was designed to remove her from the rental unit because she was pregnant and gave birth to a second child.

The retaliation provision of the Act, D.C. OFFICIAL CODE § 42-3505.02 (2001), provides:

> (a) No housing provider shall take any retaliatory action against any tenant who exercises any right conferred upon the tenant by this chapter, by any rule or order issued pursuant to this chapter, or by any other provision of law. Retaliatory action may include any action or proceeding not otherwise permitted by law which seeks to recover possession of a rental unit, action which would unlawfully increase rent, decrease services, increase the obligation of a tenant, or constitute undue or unavoidable inconvenience, violate the privacy of the tenant, harass, reduce the quality or quantity of service, any refusal to honor a lease or rental agreement or any provision of a lease or rental agreement, refusal to renew a lease or rental agreement, termination of a tenancy without cause, or any other form of threat or coercion.
>
> (b) In determining whether an action taken by a housing provider against a tenant is retaliatory action, the trier of fact shall presume retaliatory action has been taken, and shall enter judgment in the tenant's favor unless the housing provider comes forward with clear and convincing evidence to rebut this presumption, if within the 6 months preceding the housing provider's action, the tenant:
>
> (1) Has made a witnessed oral or written request to the housing provider

to make repairs which are necessary to bring the housing accommodation or the rental unit into compliance with the housing regulations;

(2) Contacted appropriate officials of the District government, either orally in the presence of a witness or in writing, concerning existing violations of the housing regulations in the rental unit the tenant occupies or pertaining to the housing accommodation in which the rental unit is located, or reported to the officials suspected violations which, if confirmed, would render the rental unit or housing accommodation in noncompliance with the housing regulations;

(3) Legally withheld all or part of the tenant's rent after having given a reasonable notice to the housing provider, either orally in the presence of a witness or in writing, of a violation of the housing regulations;

(4) Organized, been a member of, or been involved in any lawful activities pertaining to a tenant organization;

(5) Made an effort to secure or enforce any of the tenant's rights under the tenant's lease or contract with the housing provider; or

(6) Brought legal action against the housing provider.

In the notice of appeal, the housing provider stated the following:

The Hearing Examiners [sic] finding of retaliatory action against the Petitioner/Tenant are erred and misleading; 1. The only action the Petitioner/Tenant took against the Respondent/Housing Provider was in February 2002, the rent increase did not take place until November 2002, eight months later. 2. The Tenant was receiving a special rate of $425.00 and was told in February 2002 her rent would be going up, in May 2002 the Filing for Adjustment of General Applicability took place, as in most cases, rents do not go up until after the first year, and that is what happened in this case.

The Hearing Examiner All so [sic] states in her Decision that the rent increase took place after a Superior [C]ourt Judge [d]ismissed the Respondent's L&T case, when in Fact 1, It was the Respondent whom [sic] ask [sic] the Court to [d]ismiss his case, 2, This did not take place until December 2, 2002 the rent increase was already in effect.

Notice of Appeal at 1-2.

The hearing examiner properly noted that the tenant "offered testimony that the [housing provider] retaliated against her by implementing a rent increase larger than any amount issued for any other tenant residing at the subject property and by serving her with a ... Notice to Cure or Vacate after she gave birth to her child." Decision at 9.

In the notice of appeal, the housing provider provided two arguments to support his position that the hearing examiner erred when she ruled that the housing provider retaliated against the tenant. In the first argument the housing provider stated, "The only action the Petitioner/Tenant took against the Respondent/Housing Provider was in February 2002, the rent increase did not take place until November 2002, eight months later." Notice of Appeal at 2. The housing provider correctly noted that the tenant took action against the housing provider in February 2002, when she contacted the Department of Consumer and Regulatory Affairs, Housing Regulation Administration (HRA). However, the presumption of retaliation was first triggered when the housing provider issued a Notice to Correct or Vacate in May 2002, which was less than six months after the tenant contacted HRA. In September 2002, the housing provider issued the notice of the rent increase, which he intended to implement on November 1, 2002. The presumption of retaliation was triggered a second time, when the housing provider noticed the rent increase in September 2002, which was less than six months after the tenant appeared in court on August 27, 2002 and contested the housing provider's efforts to evict her for failing to vacate or correct having a third person in her unit, when she gave birth to her child.

The following events chronicle the tenant's retaliation claim and the housing provider's actions, which led to the claim.

In July 2001, the tenant signed a lease and an addendum to the parties' rental agreement. The addendum stated that the number of occupants in the tenant's unit shall not exceed two persons. On January 1, 2002, the tenant received a letter from the housing provider. The stated purpose of the letter was to update the tenants on a number of matters related to their tenancies and the housing accommodation. The letter also stated that no unit should have more than two tenants without the prior approval of management. The housing provider testified that he gave the letter to all of the tenants. The tenant testified that she believed the provision concerning the number of persons in a unit was directed at her, because she was visibly pregnant and the birth of her second child would result in three tenants in her unit. When she received the letter on January 1, 2002, the tenant called the housing provider and asked if remaining after the baby was born was going to present a problem. The tenant testified that the housing provider asked when the baby was due, and he asked what she was having. She said the baby was due in May, and he told her that she was irresponsible. The tenant testified that the housing provider stated he would get back to her. She informed him that he could not evict her because she was having a baby. The tenant testified that the housing provider said I want you out and hung up the telephone.

In a letter dated February 7, 2002, the housing provider informed the tenant that he was not able to approve her request for an additional person, and he included the following three statements as the reasons for denying her request: "1. This is not what we had in mind when we rented to you. 2. Our goal is the have the least amount of people in the building as posible [sic]. 3. You have not shown that you are as responsible

as we would like." Pet. Exh. 3. The housing provider concluded the letter by informing the tenant that he was going to increase her rent in May.

When the tenant received the letter dated February 7, 2002, she contacted the Department of Consumer and Regulatory Affairs, Housing Regulation Administration and provided the agency with a copy of the February 7, 2002 letter. On February 12, 2002, the Housing Regulation Administration issued a Notice of Non-Compliance to the housing provider, and advised him that the February 7, 2002 letter violated § 501(a) of Act. See Pet. Exh. 4.

The tenant gave birth in April 2002. In May 2002, which was less than six months after the tenant contacted DCRA in February 2002, the housing provider served the tenant with a thirty day Notice to Correct or Vacate as she entered the apartment building with her two children. The Notice to Correct or Vacate, accused the tenant of violating the obligations of her tenancy by having an additional person living in her apartment. See Pet. Exh. 4. The additional person was the new born baby. The tenant maintains that she was entitled to the presumption of retaliation, because the housing provider served the Notice to Correct or Vacate less than six months after she reported the housing provider to DCRA on February 12, 2002. The Commission agrees.

The tenant did not simply rest on the presumption of retaliation. The tenant also demonstrated that the housing provider was retaliating against her for having a baby, because the housing provider permitted other tenants, who happened to be couples, to have more than two tenants in their rental units. On cross-examination the housing provider testified that he permitted two adults and one child to live in unit 9, after Mr. Holmes and Ms. Coles had a baby. The housing provider testified that they were the best

tenants he ever had; he had no problems from them, and they always paid their rent on time. The housing provider also acknowledged that three tenants lived in unit 1, and there were three individuals in unit 12, when a child periodically visited the couple that resided there.

When the tenant refused to correct, having more than two individuals in her apartment because she had a baby, or vacate, the housing provider filed a Complaint for Possession in the Superior Court of the District of Columbia, Civil Division, Landlord and Tenant Branch. On August 27, 2002 the tenant appeared in court and challenged the housing provider's efforts to evict her. On September 29, 2002, which was less than six months after the tenant appeared in court, the housing provider issued a Tenant Notice of Increase of General Applicability, which triggered the second statutory presumption of retaliation. See D.C. OFFICIAL CODE § 42-3505.02(b) (2001). The notice reflected an increase in the tenant's rent from $425.00 to $500.00, effective November 1, 2002. The tenant maintains that the housing provider retaliated against her by increasing her rent by $75.00, because she asserted her rights in court and asked for a trial. The tenant argued that she was entitled to the statutory presumption of retaliation because the housing provider served her with the September 29, 2002 notice of the November 1, 2002 rent increase, less than six months after she appeared in court on August 27, 2002 and opposed his efforts to evict her.[1] The Commission agrees.

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[1] In the notice of appeal, that housing provider stated that the decision and order improperly reflects that he increased the tenant's rent after the Superior Court judge dismissed the Landlord and Tenant action. The housing provider maintains that he asked the judge to dismiss the case, and the dismissal did not occur until December 2002, which was after he increased the tenant's rent. On page eight of the decision and order, the hearing examiner stated that the tenant claimed that the housing provider retaliated against her by increasing her rent after he received a notice of non-compliance and after a Superior Court Judge issued an order dismissing the Landlord and Tenant case. On page nine of the decision and order, the hearing examiner properly noted that the tenant offered testimony that the housing provider retaliated against her by serving her with a notice to vacate and implementing a rent increase that was larger than the rent increases

During the hearing, the Ms. Locke testified that the tenant who lived in unit 9 for two years received a rent increase in the amount of $15.00 or $20.00. However, the housing provider increased the tenant's rent by $75.00 in one year. In an effort to show that the housing provider retaliated against the tenant by increasing her rent by $75.00, the tenant's attorney questioned the housing provider about the rent increases he imposed upon the other tenants. On cross-examination, the housing provider testified that he increased the rent for the majority of the tenants by $9.00, $12.00, $20.00, and $40.00, he increased the rents of two tenants by $60.00, and he decreased one tenant's rent by $40.00. He testified that Ms. Locke, who he described as the worst tenant he had in the last two years, received an increase of $75.00 because she was not responsible.

In an unsuccessful effort to rebut the presumption of retaliation, the housing provider testified that he did not agree to allow Ms. Locke, her daughter, and new born baby to remain in the housing accommodation, because he believed Ms. Locke was not responsible. After first testifying that she pays her rent timely, Mr. Boney testified that Ms. Locke was not responsible because she paid her rent between the second and the fifth days of the month, instead of on the first. He acknowledged that he never imposed a late fee or filed a possessory action for non-payment of rent, because the tenant always paid the rent before the fifth day of the month. The housing provider also indicated that the tenant was not responsible, because she failed to report what he described as a leak in her bathtub. The tenant testified that the faucet was dripping into the bathtub, and she did not notice it until the housing provider came into her unit looking for the source of a leak.

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issued for the other tenants. The improper statement on page eight was harmless error, because it did not affect the outcome of the case. The hearing examiner correctly recited the tenant's retaliation claim, and the hearing examiner based her decision on the substantial record evidence that the tenant introduced to support her claims. See Negley v. Hubley, TP 27,175 (RHC Aug. 26, 2004); Killingham v. Wilshire Investment Corp., TP 23,881 (RHC Sept. 30, 1999).

The housing provider also described the tenant as irresponsible because her kitchen drain was clogged. Finally, the housing provider argued that the tenant was irresponsible because a man, who was visiting the tenant at a time when she was not at home, was seen opening the common area door to admit a visitor, while wearing only boxer shorts, and talking through an open window.

In the notice of appeal, the housing provider also provided a second statement to support his assertion that the hearing examiner erred when she ruled that the housing provider retaliated against the tenant. The housing provider stated that the tenant was receiving a special rate of $425.00, and he informed her, in February 2002, that he intended to increase her rent. He further stated that he filed for the adjustment of general applicability in May, and he increased the tenant's rent after the first year of her tenancy.

As noted above, the housing provider informed the tenant of his intent to increase her rent in the February 7, 2002 letter, in which he informed her that he would not allow her unborn child to live in the rental unit. He concluded the letter with the following statement, "Regardless of your request to add a person, in May we will be increasing your rent." P. Exh. 3. Notwithstanding the statement to the contrary, the housing provider's decision to use the February 7, 2002 letter to inform the tenant that he was increasing her rent in May, served to bolster the hearing examiner's ruling that the housing provider retaliated against the tenant. The validity of the hearing examiner's decision is further supported by the fact that the tenant began her tenancy in July 2001, and as the housing provider stated in the notice of appeal, "rents do not go up until after the first year." Notice of Appeal at 2. Since the housing provider could not increase the tenant's rent in May 2002, the February 7, 2002 statement that he was going to increase

her rent in May, "regardless of [her] request to add a person," evidenced retaliatory action.

The Act defines retaliatory action as "any action or proceeding not otherwise permitted by law which seeks to recover possession of a rental unit, action which would unlawfully increase rent, ... increase the obligation of a tenant, or constitute undue or unavoidable inconvenience, violate the privacy of the tenant, harass, reduce the quality or quantity of service, ... refusal to renew a lease or rental agreement, termination of a tenancy without cause, or any other form of threat or coercion." D.C. OFFICIAL CODE § 42-3505.02(a) (2001).

The hearing examiner found that the tenant offered credible testimonial and documentary evidence that the housing provider's actions of issuing the notice to vacate and increasing the tenant's rent occurred less than six months after the tenant exercised rights that are protected by the Act. As a result, the hearing examiner presumed retaliatory conduct in accordance with § 42-3505.02(b). The hearing examiner held that the housing provider failed to rebut the presumption by clear and convincing evidence. The Commission affirms the hearing examiner's finding of retaliation, because the substantial evidence on the record of the proceedings, as chronicled above, supported the finding of retaliation.

IV. CONCLUSION

For the foregoing reasons, the Commission grants Issue A, reverses the hearing examiner's finding that the property was not properly registered, and vacates the $100.00 fine.

The Commission denies Issue B, and affirms the hearing examiner's ruling that the housing provider directed retaliatory action against the tenant. The Commission orders Gabriel Boney to pay the fine in the amount of $250.00, which the hearing examiner imposed in the decision and order dated March 23, 2004. The payment of the fine shall be made by cash, certified check, or money order payable to the D.C. Treasurer at:

Office of the Chief Financial Officer
Economic Development and Regulation Center
Shared Service Center
941 North Capitol Street, N.E.
Suite 1400
Washington, D.C. 20002

or

Office of the Chief Financial Officer
Accounting Division
941 North Capitol Street, N.E.
Suite 9607
Washington, D.C. 20002

The housing provider shall file proof of payment in the Commission within thirty (30) days of the date of this decision and order at:

Rental Housing Commission
941 North Capitol Street, N.E.
Suite 9200
Washington, D.C. 20002

SO ORDERED.

RUTH R. BANKS, CHAIRPERSON

RONALD A. YOUNG, COMMISSIONER

JENNIFER M. LONG, COMMISSIONER

MOTIONS FOR RECONSIDERATION

Pursuant to 14 DCMR § 3823 (2004), final decisions of the Commission are subject to reconsideration or modification. The Commission's rule, 14 DCMR § 3823.1 (2004), 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 District of Columbia Court of Appeals. The court may be contacted at the following address and telephone 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 27,644 was mailed by priority mail with delivery confirmation, postage prepaid, this 30th day of November 2005 to:

Gabriel Boney
5111 Ayers Place, S.E.
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Washington, D.C. 20019

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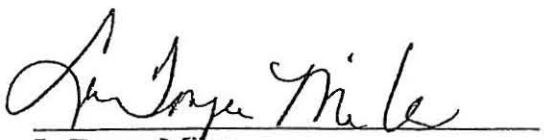

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