DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION

TP 27,661

In re: 1364 Randolph Street, N.W., Unit 1

Ward Five (5)

CLAYTON T. SMITH
Housing Provider/Appellant

v.

WILLIAM CHRISTIAN
Tenant/Appellee

DECISION AND ORDER

September 23, 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

William Christian filed Tenant Petition (TP) 27,661 on October 28, 2002. The housing provider, Clayton Smith, owns and manages the housing accommodation located at 1364 Randolph Street, N.W. In the petition, the tenant alleged that the housing provider: 1) implemented a rent increase that was larger than the amount of any increase permitted by the Act; 2) failed to file the proper rent increase forms with the RACD; 3)

charged rent that exceeded the legally calculated rent ceiling; 4) failed to properly register the housing accommodation; and 5) directed retaliatory action against him.

Hearing Examiner Keith Anderson held the evidentiary hearing on May 12, 2003. The tenant and the housing provider were represented by counsel at the hearing. After receiving oral and documentary evidence, the hearing examiner invited the parties to file proposed decisions and orders. The attorneys for both parties filed proposed decisions and orders. On November 12, 2003, the hearing examiner issued the decision and order, which contained the following findings of fact and conclusions of law.

Findings of Fact

After a careful evaluation and analysis of the evidence presented at the May 12, 2003 hearing, the Examiner finds as matters of fact:

1. Respondent filed a claim of exemption on January 19, 2001 and was assigned Exemption # 528615.

2. Petitioner is a tenant at 1364 Randolph Street[,] NW, #1 and has been since June 1, 2000.

3. Respondent did not notify Petitioner of his claim of exemption prior to, during, or after the execution of the lease.

4. Respondent did not satisfy the posting and mailing requirements of the Act regarding the claim of exemption he filed.

5. Respondent has rented out six rooms as residential rental units at 1364 Randolph Street[,] NW.

6. The housing accommodation at 1364 Randolph Street[,] NW contains six rooms that Respondent uses or has used as rental units for purposes of this petition.

7. Respondent increased Petitioner's monthly rent from $440 to $800 effective September 1, 2002. Respondent never received proper authorization from RACD for the rent increase above $440 per month.

8. Respondent filed a small claims suit in DC Superior Court, SC 10299-1, to recover rent from Petitioner within the relevant time frame for issues in this petition.

9. In SC 10299-01, Petitioner received a monthly rent abatement of $440.00 and a set-off of $355.00.

10. Respondent filed two landlord and tenant suits in DC Superior Court, (1) LT 52045-01; and (2) LT 12272-02, against Petitioner to recover possession of the unit on two occasions within the relevant time frame for issues in this petition.

11. Respondent received Petitioner's $440 monthly rent payments for September 2002 and October 2002 and returned them to Petitioner uncashed [sic].

12. Respondent filed a second small claims suit in DC Superior Court, SC 15835-02, to recover the $440 rent he had refused for September 2002 and October 2002 plus the $360 increased amount.

13. Petitioner's rent was $440.00 at the beginning of his tenancy and remained at that level until Respondent served him with a notice of increase in July 2002.

14. On July 14, 2002, Respondent sent Petitioner a notice of rent increase to $800.00 per month.

15. Respondent demanded the increased rent of $800.00 per month from September 1, 2002 until the increase was withdrawn in late April 2003.

16. Respondent raised Petitioner's rent by 82% without sufficient explanation of his increased costs of operation.

17. Respondent raised Petitioner's rent after Petitioner successfully defended himself in landlord and tenant court and in small claims court.

18. All other findings made by the Examiner in this decision are incorporated by reference in this Findings of Fact section.

Conclusions of Law

After careful evaluation of the evidence and findings of fact, the Examiner concludes as a matter of law the following:

1. Respondent's claim of exemption is void *ab initio* and invalid because he did not notify Petitioner of it prior to his signing the lease.

2. Respondent's claim of exemption is void and invalid because Respondent owns and rents six (6) rental units in the housing accommodation, not three (3) as misstated on the Registration/Claim of Exemption Form filed with RACD.

3. The housing accommodation is not properly registered with RACD in accordance with D.C. Code § 42-3502.05(f) (2001) because (1) Respondent owns and rented more than four (4) rental units in the housing accommodation; and (2) Respondent failed to notify Petitioner of the exemption for his rental unit under the Act pursuant to D.C. Code § 42-3502.05(d).

4. Because the housing accommodation is not properly registered with RACD, it is covered under the rent stabilization program. Thus, (1) the legally calculated rent ceiling is $440, the amount equivalent to the monthly rent set in the lease between Respondent and Petitioner, pursuant to 14 DCMR Sect. 4201.1 (1991); (2) the rent increase implemented by Respondent was larger than the amount of increase allowed by any applicable provision of the Act, D.C. Code § 42-3501.01 *et seq.* and exceeded the $440 rent ceiling set in the lease between Respondent and Petitioner; (3) Respondent failed to file the proper rent increase forms with RACD as required by 14 DCMR § 4205.4; and (4) the $800 monthly rent charged exceeded the $440 legally calculated rent ceiling for that rental unit.

5. Respondent has directed retaliatory action against Petitioner in violation of D.C. Code § 42-3505.02(b).

6. Respondent is subject to the following penalties pursuant to DC Official Code Sects. 42-3509.01(a) and (b) (2001): (1) a trebled rent refund including interest in the amount of Nine Thousand One Hundred Seventeen Dollars and No Cents, $9,117.00, based on the invalid claim of exemption and invalid increase in Petitioner's monthly rent; and (2) a civil fine in the amount of One Hundred Dollars, $100.00, for retaliating against Petitioner in violation of Sect. 43-3505.02 [sic]. Respondent shall also rollback the monthly rent for Petitioner's unit from $800 to $440.

7. All other conclusions of law made by the Examiner in this decision and order are incorporated by reference into this **Conclusions of Law** section.

Christian v. Smith, TP 27,661 (RACD Nov. 12, 2003) at 17-19.

On November 26, 2003, the housing provider, through counsel, filed a notice of appeal and motion to stay fines and penalties. On December 16, 2003, the Commission ruled that the hearing examiner's decision was automatically stayed until the resolution of all appeals. Thereafter, the housing provider filed a brief and the tenant, through counsel, filed a responsive brief. The Commission held the appellate hearing on March 30, 2004.

II. ISSUES

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

A. Appellant respectfully avers that the Rent Administrator erred in his conclusion that the Claim of Exemption is void and invalid. The Rent Administrator erred by concluding that the claim of exemption misstates the number of rooms used as rental units. In counting the number of rental units for the purpose of determining appellant's eligibility for exemption, the Rent Administrator erred by including units that [sic] permanently removed and withdrawn from the market.

B. Appellant respectfully asserts that the Rent Administrator erred in his determination that the Claim of Exemption was void *ab initio* due to appellant's alleged failure to notify the appellee that the subject property was exempt from rent control.

C. Appellant respectfully contends that the Rent Administrator erred in his conclusion that the rent increase is larger than the amount of increase allowable under any applicable [sic] of the Rental Housing Act. This conclusion is incorrect because appellant is exempt from rent control. The appellant never owned more than four rental units at one time, and he filed a claim of exemption.

D. Appellant respectfully asserts that the Rent Administrator erred in his conclusion that the rent increase exceeds the legally calculated rent ceiling for the rent. This conclusion is incorrect because appellant is exempt from rent control. The appellant never owned more than four rental units at one time, and he filed a claim of exemption.

E. Appellant respectfully asserts that the Rent Administrator erred in his conclusion that the appellant failed to file the proper rent increase forms with the Rental Accommodations and Conversion Division. This conclusion is incorrect because appellant is exempt

from rent control. The appellant never owned more than four rental units at one time, and he filed a claim of exemption.

F. Appellant respectfully asserts that the Rent Administrator erred by awarding treble damages. The appellant met the four unit limitation to exempt his property from rent control. There was no evidence introduced at trial to prove that appellant knew that he was required to give tenants notice of the property's exempt status prior to executing the lease. In sum, there was no knowing violation of the Act.

G. Appellant respectfully avers that the Rent Administrator erred by awarding a rent refund. This conclusion is incorrect because appellant is exempt from rent control. The appellant never owned more than four rental units at one time, and he filed a claim of exemption.

H. Appellant advances that the Rent Administrator erred in concluding that Appellant's actions were committed in retaliation.

II. DISCUSSSION

A. Whether the Rent Administrator erred by including units that were permanently removed and withdrawn from the market and concluding that the claim of exemption is void and invalid and misstates the number of rooms used as rental units.

This case concerns what is commonly known as the small landlord exemption from the rent control provisions of the Act. The Act permits housing providers to claim an exemption for "[a]ny rental unit in any housing accommodation of 4 or fewer rental units," provided that the housing provider meets additional criteria set forth in the Act. D.C. OFFICIAL CODE § 42-3502.05(a) (2001). On appeal, the housing provider maintains that the hearing examiner erred when he concluded that the housing provider rented more than four rental units, because the hearing examiner counted units that were permanently withdrawn from the market.

The housing accommodation is a single family home that contains several rental units. The tenant maintains that the housing provider is subject to the rent stabilization

provisions of the Act, because there are six rental units in the housing accommodation. The housing provider, on the other hand, argues that he is exempt from the rent stabilization provisions of the Act, because there are only three rental units in the housing accommodation. On January 19, 2001, the housing provider filed a Registration/Claim of Exemption Form and indicated that he qualified for the small landlord exemption, pursuant to D.C. OFFICIAL CODE § 42-3502.05(a) (2001).

During the hearing the tenant, William Christian, testified that he has resided in the housing accommodation since July 2000. When Mr. Christian moved into the housing accommodation, there were six tenants residing in six units. The tenant testified that one tenant lived on the first floor in the area that the housing provider occupied, one tenant lived in the attic, one lived in the basement, and three tenants, including Mr. Christian, lived on the second floor. On cross-examination, the housing provider's attorney asked Mr. Christian to identify the tenants who lived in the housing accommodation. Mr. Christian stated that Adam lived in the attic. The tenant stated that the housing provided split the unit where the housing provider resided into two sections. The tenant stated that Joseph Harris lived in the front portion of the unit, and the housing provider lived in the back of the unit. The tenant could not provide the names of the tenants who rented the other four units; however, he described their physical appearances.

The tenant testified that five tenants lived in the housing accommodation in January 2001 and February 2001, which was the period immediately preceding and following the date that the housing provider filed the claim of exemption. The tenant stated that he lived in one unit on the second floor, Ms. Broadnax rented the second unit

on the second floor, and Joe Harris rented the third unit. The tenant also testified that an unnamed gentleman and his son lived in the basement, and Mr. Dyson lived in the attic.

Housing Inspector Booth testified that she inspected the attic of the housing accommodation on October 12, 2001. She testified that Robert Dyson lived in the attic, and he informed her that there were six units in the building. She acknowledged that she did not visit any other units in the housing accommodation, and she did not talk to any other tenants.

Finally, the housing provider, Clayton T. Smith, testified that he owns and manages the housing accommodation, which he described as a row house. He began renting the property in January 1999. The housing provider testified that he rented three units on the second floor of the housing accommodation, when he filed the claim of exemption on January 19, 2001. He stated that he lives on the first floor. However, he rented the front room on the first floor to Joseph Harris for five to six months, until Mr. Harris moved to a smaller room on the second floor. The housing provider also stated that he rented the attic and the basement, but not at the same time. The housing provider testified that the attic and basement were not in condition to rent when he filed claim of exemption.

The housing provider stated that he did not know if he rented the attic at the time that he filed the claim of exemption in 2001. However, he rented the attic to two different people at two different times. The housing provider testified that he rented the attic to one person for five months, and he rented to the attic to another person for three or four months. The housing provider stated that the attic was unfinished; however, he plans to convert the attic to a fourth rental unit. In addition, the housing provider stated

that someone, who paid rent, lived in the basement for a while. He described the basement as an open area with a full bath; however, there is no kitchen in the basement. The housing provider testified that the basement was too low to be a rental unit.

After evaluating the evidence, the hearing examiner issued the following finding of fact and conclusion of law:

> Respondent has rented out six rooms as residential rental units at 1364 Randolph Street[,] NW.

Finding of Fact 5.

> Respondent's claim of exemption is void and invalid because Respondent owns and rents six (6) rental units in the housing accommodation, not three (3) as misstated on the Registration/Claim of Exemption Form filed with RACD.

Conclusion of Law 2.

The Act defines a rental unit as any part of a housing accommodation ... which is rented or offered for rent for residential occupancy and includes any apartment, efficiency apartment, room, single-family house and the land appurtenant thereto, suite of rooms, or duplex." D.C. OFFICIAL CODE § 42-3501.03(33) (2001). In determining whether the housing provider rents four or fewer rental units, the Commission counts all rental units, "whether occupied, vacant, or temporarily withdrawn from the market. The burden of proof of exemption is on the landlord ... and the statutory exemptions are to be narrowly construed." Blacknall v. District of Columbia Rental Hous. Comm'n, 544 A.2d 710, 712, 713 (D.C. 1988); see also Revithes v. District of Columbia Rental Hous. Comm'n 536 A.2d 1007 (D.C. 1887); Cambridge Mgmt. Co. v. District of Columbia Rental Hous. Comm'n, 515 A.2d 721 (D.C. 1986); Remin v. District of Columbia Rental Hous. Comm'n, 471 A.2d 275 (D.C. 1984).

During the evidentiary hearing, the housing provider testified that he rented the first floor unit, three units on the second floor, the attic, and the basement for residential occupancy, at various times. Consequently, he rented six rental units. Since occupied, vacant, and units temporarily withdrawn from the market are counted, the housing provider cannot claim a small landlord exemption from the Act unless he proved, during the evidentiary hearing, that at least two of the six units were permanently withdrawn from the rental housing market.

It is not disputed that the three units on the second floor are rental units. To properly claim a small landlord exemption the housing provider had to prove, that the attic, basement, and first floor units were permanently withdrawn from the market. First, we will consider the attic unit.

The housing provider, tenant, and the housing inspector testified that the housing provider rented the attic. The tenant, William Christian, and the housing provider identified individuals who rented the attic at two different times. Mr. Christian testified that Adam lived in the attic when the Mr. Christian began his tenancy in 2000. Mr. Christian testified that Robert Dyson lived in the attic in January 2001, and the housing inspector testified that Robert Dyson was the tenant living in the attic in October 2001, when she inspected the unit. Finally, the housing provider testified that the attic is unfinished; however, he plans to convert the attic to a fourth rental unit. Consequently, the attic is a rental unit. The housing provider offered the unit for rent and his testimony revealed that he does not intend to permanently withdraw the unit from the housing market. Consequently, the housing provider has a minimum of four rental units: the attic and the three units on the second floor.

We now turn to the basement. It is undisputed that the housing provider rented the basement unit. Mr. Christian testified that a gentleman lived in the basement when he began his tenancy. He also testified that another gentleman and his son lived in the basement in the beginning of 2001. The housing provider, who testified that the basement was not a rental unit because the ceiling was too low to meet the regulatory requirements, acknowledged that he permitted someone to live in the basement in exchange for rent. The Act defines a rental unit as "any part of a housing accommodation ... which is rented or offered for rent for residential occupancy." D.C. OFFICIAL CODE § 42-3501.03(33) (2001). Since the housing provider testified that he rented the basement, the basement is a rental unit as defined in § 42-3501.03(33).

Moreover, the housing provider did not offer the necessary quantum of evidence to prove that the basement unit was permanently withdrawn from the market. In Goodman v. District of Columbia Rental Hous. Comm'n, 573 A.2d 1293, 1296 (D.C. 1990), the court ruled that the housing provider proved that a basement unit was permanently withdrawn by presenting evidence that the unit was continuously vacant for more than four years, and that it was not rented or offered for rent during that time. The court noted that the tenant did not introduce evidence that the vacancy was temporary, not continuous, or maintained in bad faith.

During the hearing in the instant case, the housing provider testified that he used the basement for his personal use, and he could not rent the basement because the ceiling was too low. However, the record evidence shows that he rented the basement and there was no evidence that the basement was permanently eliminated from the housing market. See Blacknall, 544 A.2d at 713 (holding that all units will be counted whether occupied,

vacant, or temporarily withheld from the market). The housing provider did not meet his evidentiary burden of showing that the basement was continuously vacant for a significant period of time and that he did not rent or offer it for rent during that period. See Goodman, 573 A.2d at 1296. Since the housing provider did not meet his burden of proving that the basement unit was permanently withdrawn from the market, the basement unit constituted the fifth rental unit. The housing provider offered five units for rent, three units on the second floor, the attic, and the basement; and there is no evidence that the units were permanently removed from the market. Consequently, the housing provider is not eligible for the small landlord exemption from the rent stabilization provisions of the Act.

Finally, the hearing examiner found that there was a sixth rental unit on the first floor. It is undisputed that the housing provider rented a portion of the first floor and the tenant who rented the first floor moved into a unit on the second floor. The parties also agree that the housing provider began using the portion of the first floor, which he previously rented, as an office. On appeal, the housing provider maintains that he permanently removed the unit from the rental market. In Blacknall v. District of Columbia Rental Hous. Comm'n, 544 A.2d 710 (D.C. 1988), the court found that a unit, which was converted to an office, was permanently removed from the market, because the record contained credible evidence "that there has been a 'permanent change of use' of one unit." Id. at 712. The housing provider, in Blacknall, proved that the fifth unit was permanently withdrawn by presenting oral and documentary evidence so show that "the office has been in continuous use as such" for more than six years. Id. at 711. In the instant case the housing provider testified that he rented the front room on the first

floor to a tenant for five or six months. He testified that he converted the unit to an office. However, he did not state that there had been a "permanent change of use." Moreover, he did testify to the length of time that the unit was in continuous use as an office.

The Act empowers the Commission to review the hearing examiner's decisions. The Commission may reverse a decision that it finds to be arbitrary, capricious, an abuse of discretion or which contains conclusions of law that are not in accordance with the Act or findings of fact that are unsupported by the substantial evidence on the record of the proceedings. D.C. OFFICIAL CODE § 42-3502.16(h) (2001); 14 DCMR § 3807.1 (2004). In the instant case, the hearing examiner found that the housing provider rented six rooms as residential rental units. Finding of Fact 5. This finding was supported by the substantial record evidence. The hearing examiner also concluded that the housing provider's claim of exemption was void and invalid because he owned and rented six rental units, not three as misstated on the Registration/Claim of Exemption Form. Conclusion of Law 2. This conclusion of law was in accordance with the Act. Accordingly, the Commission affirms the hearing examiner's decision. The housing provider rented six units, and he did not prove that he permanently removed at least two units from the rental market.[1]

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[1] The hearing examiner asked the parties to submit proposed decisions and orders and responses to the opposing party's proposed decision and order, after the hearing. Each party submitted a proposed decision and order and a response to their opponent's proposed decision and order. The housing provider also submitted an affidavit in response to the tenant's proposed decision and order. In the affidavit, the housing provider attested that he owned only three rental units and permanently withdrew the other units from the rental market. During the Commission's hearing, the housing provider's attorney argued that the hearing examiner erred, because he did not consider the affidavit as "evidence." The Commission cannot consider this issue, because the housing provider did not raise the issue in the notice of appeal. Moreover, documents submitted after the evidentiary hearing, such as the housing provider's affidavit, cannot be admitted into the record or serve as the basis for the Rent Administrator's decision. Harris v. District of Columbia Rental Hous. Comm'n, 505 A.2d 66 (D.C. 1986); King v. McKinney, TP 27,264 (RHC June 17,

B. Whether the Rent Administrator erred when she determined that the claim of exemption was void *ab initio* due to the housing provider's alleged failure to notify the tenant that the subject property was exempt from rent control.

The Rent Administrator did not err when she determined that the claim of exemption was void ab initio. The provision of the Act, which requires housing providers to give prospective tenants prior notice of a claim of exemption, provides:

> Prior to the execution of a lease or other rental agreement after July 17, 1985, a prospective tenant of any unit exempted under subsection (a) of this section shall receive a notice in writing advising the prospective tenant that rent increases for the accommodation are not regulated by the rent stabilization program.

D.C. OFFICIAL CODE § 42-3502.05(d) (2001).

The housing provider, who attempted to claim an exemption, did not file the claim of exemption until after he rented the unit to the tenant. The hearing examiner found that the housing provider did not notify the tenant of his claim of exemption before, during, or after they executed the lease, and the housing provider did not satisfy the Act's posting and mailing requirements for the claim of exemption. Findings of Fact 3 and 4. These findings were supported by the substantial evidence on the record of the proceedings. For the foregoing reasons, and those stated in Issue A supra, the Commission denies Issue B.

C. Whether the Rent Administrator erred in concluding that the rent increase is larger than the amount of increase allowable under any applicable provision of the Act, because appellant is exempt from rent control, never owned more than four rental units at one time, and he filed a claim of exemption.

2005). The DCAPA grants each party the right to present oral and documentary evidence, submit rebuttal evidence, and conduct cross-examination for the full and true disclosure of the facts. D.C. OFFICIAL CODE § 2-509(b) (2001). An opposing party cannot conduct cross-examination or offer rebuttal evidence, when his opponent submits evidence after the hearing.

D. Whether the Rent Administrator erred in her conclusion that the housing provider failed to file the proper rent increase forms with the Rental Accommodations and Conversion Division, because the housing provider is exempt from rent control, never owned more than four rental units at one time, and he filed a claim of exemption.

The Rent Administrator did not err when she concluded that the rent increase exceeded the amount of a rent increase permitted by the Act and that the housing provider failed to file the proper rent increase forms with RACD, because the housing provider was not exempt from rent control, owned more than four rental units, and filed an invalid claim of exemption. See discussion supra Part III.A. The housing provider increased the tenant's rent from $440.00 to $800.00, which was an increase of $360.00. Since the housing provider was not exempt from rent control, he could not increase the tenant's rent by $360.00 in the absence of a previously perfected but unimplemented rent ceiling adjustment in that amount, or absent an order by the Rent Administrator. See D.C. OFFICIAL CODE § 42-3502.08 (2001);[2] 14 DCMR § 4200.8 (2004).[3]

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[2] D.C. OFFICIAL CODE § 42-3502.08(h)(1)-(2) (2001) provides:

> (1) One year from March 16, 1993, unless otherwise ordered by the Rent Administrator, each adjustment in rent charged permitted by this section may implement no more than 1 authorized and previously unimplemented rent ceiling adjustment. If the difference between the rent ceiling and the rent charged for the rental unit consists of all or a portion of 1 previously unimplemented rent ceiling adjustment, the housing provider may elect to implement all or a portion of the difference.
>
> (2) Nothing in this subchapter shall be construed to prevent a housing provider, at his or her election, from delaying the implementation of any rent ceiling adjustment, or from implementing less than the full amount of any rent ceiling adjustment. A rent ceiling adjustment, or portion thereof, which remains unimplemented shall not expire and shall not be deemed forfeited or otherwise diminished.

[3] The regulation, 14 DCMR § 4200.8 (2004), provides:

> An increase in the rent for a rental unit shall be authorized only by an increase in the rent ceiling taken and perfected pursuant to § 4204 and under the following conditions:
>
> (a) At the election of the housing provider, pursuant to §§ 4206 and 4207;

The housing provider, who continues to claim an exemption from rent control, did not present evidence of any attempts to meet the rent stabilization requirements of the Act. As a result, he did not perfect a rent ceiling adjustment in the amount of $360.00, and he did not file rent increase forms with the RACD. Accordingly, the Commission affirms the Rent Administrator and denies Issues C and D.

E. Whether the Rent Administrator erred in concluding that the rent increase exceeds the legally calculated rent ceiling for the tenant's unit, because the housing provider is exempt from rent control, never owned more than four rental units at one time, and he filed a claim of exemption.

The Rent Administrator did not err when she concluded that the rent increase exceeded the legally calculated rent ceiling for the tenant's unit. The rent ceiling establishes the maximum amount of rent that a housing provider may legally demand or receive for a rental unit covered by the Rent Stabilization Program of the Act." 14 DCMR § 4200.1 (2004). Since the housing provider was not exempt from the rent stabilization provisions of the Act, the housing provider was required to establish a rent ceiling pursuant to D.C. OFFICIAL CODE § 42-3502.06 (2001). See 14 DCMR § 4200.2 (2004). The housing provider did not establish a rent ceiling, because he claimed a small landlord exemption, to which he was not entitled. As a result, the hearing examiner established the rent ceiling for the tenant's unit.

(b) Under an order of the Rent Administrator issued pursuant to §§ 4209, 4210, 4211 or 4212; or

(c) Under a voluntary agreement approved by the Rent Administrator pursuant to § 4213; or

(d) Under any prior rent control law and the regulations, if any, promulgated under that prior law.

In the decision and order, the hearing examiner stated the following:

> According to the Act, "base rent" is the legally chargeable rent on April 30, 1985. D.C. [Official] Code § 42-3501.03(4) (2001). The "rent ceiling" is equal to the base rent plus "all [rent] increases authorized after April 30, 1985." D.C. [Official] Code § 42-3502.06 (2001); 14 DCMR Sect. 4201.1 (1991). Record evidence does not indicate what the rent ceiling would have been had Respondent properly registered the property and filed the necessary paperwork to establish a rent ceiling after April 30, 1985. Thus, the Examiner sets the legal rent ceiling at $440, the amount equivalent to the monthly rent for Petitioner's rent on June 1, 2000, the date the parties signed the lease. Because the Examiner calculated the legal rent ceiling at $440, the housing accommodation was subject to rent control, and the $360 monthly rent increase was unauthorized, the $360 increase exceeded the $440 legally calculated rent ceiling for Petitioner's unit.

Christian v. Smith, TP 27,661 (RACD Nov. 12, 2003) at 11.

The hearing examiner properly determined that the rent ceiling for the tenant's unit was $440.00. The housing provider increased the tenant's rent from $440.00 to $800.00. Since the housing provider increased the tenant's rent to $800.00, the rent exceeded the $440.00 rent ceiling, which is the maximum amount the housing provider may legally demand for rent. Accordingly, the Rent Administrator did not err when she concluded that the rent exceeded the rent ceiling.

F. Whether the Rent Administrator erred by awarding treble damages, because the housing provider met the four unit limitation to exempt his property from rent control, there was no evidence introduced at trial to prove that the housing provider knew that he was required to give tenants notice of the property's exempt status prior to executing the lease, and in sum, there was no knowing violation of the Act.

The Rent Administrator did not err when she awarded treble damages. The penalty provision of the Act, D.C. OFFICIAL CODE § 42-3509.01 (2001), empowers the Rent Administrator to award treble damages when a housing provider, in bad faith, demands rent that exceeds the legally calculated rent ceiling.

The penalty provision of the Act provides:

> (a) 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 ... 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.

D.C. OFFICIAL CODE § 42-3509.01 (2001). In order to award treble damages, the hearing examiner is required to determine if the housing provider knowingly violated the Act and engaged in conduct that is sufficiently egregious to warrant a finding of bad faith. Third Jones Corp. v. Young, TP 20,300 (RHC Mar. 22, 1990); Fazekas v. Dreyfuss Brothers, Inc., TP 20,394 (RHC Apr. 14, 1989). The hearing examiner correctly enunciated the standard for the award of treble damages, and applied the standard when he stated the following in the decision and order:

> Petitioner is entitled to a treble refund because the housing provider acted knowingly and in bad faith. ...
>
> "Knowingly" is defined in the law to mean "know or should have known." .... To know in this sense requires only "knowledge of the essential facts which bring[] the conduct within reach of the Act, and from such knowledge, the law presumes knowledge of the legal consequences that result from the performance of the conduct. ... In this case the housing provider knew or should have known that he had used more than four rooms in the house as residential rental units and did not meet the four unit limitation to exempt his property from rent control. ....
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> The Examiner finds that the evidence also supports a finding that Respondent's conduct was egregious enough to warrant a finding of bad faith. The increase of $360 per month came within six months after no fewer than three separate unsuccessful lawsuits brought by Respondent against Petitioner. Respondent increased Petitioner's rent by 82% at the same time that he was increasing the rent of other units in the building by 12.5% and 15%. Respondent claims that increased costs necessitated the increase, but offers no proof of the pre-increase costs. He admits that another tenant likely uses a higher percentage of the utilities than

> Petitioner but offers no explanation for why that tenant is only paying $520.00 per month instead of Petitioner's $800.00 or why the increased costs were not spread out across all tenants in the building. Respondent's position isn't credible.

Christian v. Smith, TP 27,661 (RACD Nov. 12, 2003) at 14-15 (citations omitted).

The housing provider argues that "there was no evidence introduced at trial to prove that appellant knew that he was required to give tenants notice of the property's exempt status prior to executing the lease[;] [i]n sum, there was no knowing violation of the Act." Notice of Appeal at 2. A housing provider is imputed to have knowledge of a reasonable, prudent person involved in the business of renting properties in the District of Columbia. Reid v. Quality Mgmt. Co., TP 11,307 (RHC Feb. 7, 1985), aff'd, Quality Mgmt. v. District of Columbia Rental Hous. Comm'n, 505 A.2d 73 (D.C. 1986). The record is replete with evidence that the housing provider was involved in the business of renting several rooms in the housing accommodation since January 1999. The tenant did not have to prove that the housing provider, who was represented by counsel, had actual knowledge of the requirements of the Act. Ignorance of the law is not an excuse for failing to meet the requirements of the law. The housing provider, who is in the business of renting his property, is required to know and meet the requirements of the Act.

The tenant proved that the housing provider acted in bad faith by increasing the tenant's rent from $440.00 to $800.00 per month, after the tenant successfully challenged several actions that the housing provider filed against the tenant in the Superior Court of the District of Columbia. In addition, the tenant demonstrated that the housing provider increased the tenant's rent in bad faith by showing that two tenants, who rented rooms on the second floor where Mr. Christian lived, received lesser rent increases. The housing provider testified that he increased the rent in unit 2 to $520.00 per month, and he

increased the rent in unit 3 from $420.00 per month to $480.00. At the same time, the housing provider increased Mr. Christian's rent in unit 1 from $420.00 to $800.00.

The substantial evidence on the record of the proceedings supports the hearing examiner's decision. The housing provider knowingly violated the Act, and his conduct was sufficiently egregious to support the award of treble damages. Accordingly, the Commission denies Issue F, and affirms the Rent Administrator's decision.

G. Whether the Rent Administrator erred by awarding a rent refund, because the housing provider is exempt from rent control, never owned more than four rental units at one time, and he filed a claim of exemption.

The Rent Administrator did not err in awarding a rent refund, because the housing provider is not exempt from rent control, owned more than four rental units, filed an invalid claim of exemption, and demanded rent which was in excess of the maximum allowable rent for the tenant's unit. See discussion supra Part III.A, C-E. Accordingly, the Commission denies Issue G.

H. Whether the Rent Administrator erred in concluding that the housing provider's actions were committed in retaliation.

The Rent Administrator did not err by concluding that the housing provider retaliated against the tenant for exercising rights that are protected by the Act. The provision of the Act, which governs retaliatory conduct, requires the trier of fact to presume retaliatory action has been taken and enter judgment in the tenant's favor unless the housing provider presents clear and convincing evidence to rebut this presumption, if within the six months preceding the housing provider's action, the tenant exercised rights

protected by the statute. D.C. OFFICIAL CODE § 42-3505.02 (2001).[4]

The tenant presented evidence that the housing provider substantially increased his rent six months after the tenant successfully defended legal actions that the housing provider filed against him. On July 14, 2002, the housing provider increased the tenant's rent from $440.00 to $800.00. During the hearing the tenant demonstrated that the housing provider increased the tenant's rent by $360.00 less than six months after the tenant successfully defended several legal actions that the housing provider filed against him.

On April 2, 2002, the housing provider filed a complaint for possession in the Superior Court of the District of Columbia, Landlord and Tenant Branch. In response,

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[4] Retaliatory action provision of the statute, D.C. OFFICIAL CODE § 42-3505.02 (2001), provides in relevant part:

> (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:
>
> .....
>
> (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.

the tenant filed a motion to quash service. On May 3, 2002, the court granted the tenant's motion and dismissed the Landlord and Tenant action. See Petitioner's Exhibit (P. Exh.) 7, Record (R.) at 106. On May 22, 2002, the court granted the tenant's motion to compel compliance with a settlement agreement in an action that the housing provider filed against the tenant in the Superior Court of the District of Columbia, Civil Division. See P. Exh. 5, R. at 71.

In accordance with § 42-3505.02, the hearing examiner presumed retaliatory action had been taken, because the housing provider increased the tenant's rent by $360.00 per month less than six months after the tenant "successfully defended himself in landlord and tenant court and in small claims court." Finding of Fact 17; see also Findings of Fact 8-10, 12-14. The hearing examiner entered judgment in the tenant's favor because the housing provider did not come forward with clear and convincing evidence to rebut the presumption of retaliation. Finding of Fact 16; see also Decision at 11-12.

In the brief filed in support of the appeal, the housing provider argues that he presented clear and convincing evidence to rebut the presumption of retaliation. In the brief, the housing provider listed the various operating expenses that he introduced during the hearing to justify the $360.00 increase in the tenant's rent. The hearing examiner considered the receipts for the mortgage, cable, utilities, insurance, and taxes that the housing provider introduced during the hearing. See Respondent's Exhibits 1-7, 8(a-c), 9(a-c). The hearing examiner noted that the housing provider testified that the expenses were for the entire building. However, the housing provider failed to demonstrate that the tenant's unit was responsible for a disproportionate amount of the expenses. The

hearing examiner stated, "To the contrary, [the housing provider] testified that his personal space and one of the other second floor units are both larger than Mr. Christian's unit and probably use more energy than Mr. Christian's unit." Decision at 13.

The hearing examiner found that the housing provider presented no credible evidence to justify the amount of Mr. Christian's monthly increase in relation to the other tenants' increased rent levels. The hearing examiner stated:

> Whereas Mr. Christian's rent was increased 82%, the other two units on the second floor received rent increases of 15% and 12.5 %. Whereas Mr. Christian's rent was $800.00, the other two units rent levels were $480.00 and $520.00. ... [The housing provider] has introduced evidence of what the current bills are for the entire housing accommodation, but has failed to demonstrate that these bills represent an increase of any prior bills or support a non-retaliatory justification for a rent increase of 82% that far exceeded the rent increase for the other tenants living in the house. The Examiner finds that Respondent did not me[e]t his burden and the rent increase is deemed declared [sic] retaliatory.

Decision at 13. The Commission agrees.

The tenant presented evidence to support the presumption of retaliation, and the housing provider failed to rebut the presumption by clear and convincing evidence. Accordingly, the Rent Administrator did not err when she concluded that the housing provider retaliated against the tenant by increasing his rent by $360.00. Therefore, the Commission denies Issue H.

IV. CONCLUSION

For the foregoing reasons, the Commission denies the housing provider's appeal, and affirms the Rent Administrator's decision and order.

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 27,661 was mailed by priority mail with delivery confirmation, postage prepaid, this 23rd day of September 2005 to:

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