DISTRICT OF COLUMBIA
OFFICE OF ADMINISTRATIVE HEARINGS
941 North Capitol Street, N.E., Suite 9100
Washington, DC 20002
TEL: (202) 442-9094
FAX: (202) 442-9451

YVONNE SMITH, Tenant/Petitioner, v. ADOLPHE J. EDWARDS,[1] Housing Provider/Respondent.	Case No.: RH-TP-06-28828 *In re:* 409 V Street, N.E. Unit #1

FINAL ORDER

I. Introduction

This Order concludes that the Respondent, Adolphe J. Edwards, must roll back the rent on the apartment rented by Petitioner Yvonne Smith at 409 V Street, N.E. to $250 per month, and must refund Ms. Smith rent overcharges plus interest in the total amount of $2,748.75. Ms. Smith's request for treble damages will be denied.

II. Procedural Background

On November 2, 2006, Petitioner Yvonne Smith filed a tenant petition with the Rent Administrator. The Office of Administrative Hearings has jurisdiction of this matter pursuant to D.C. Official Code § 2-1831.03(b-1)(1). On January 25, 2007, Ms. Smith, through counsel,

[1] Ms. Smith named "A.J. Edwards Realty" as the Respondent. Mr. Edwards uses "A.J. Edwards Realty" as a trade name, but that is not a separate legal entity. Mr. Edwards is the housing provider named on the registration statement for the housing accommodation at issue, Petitioner's Exhibit ("PX") 10, and he is named as the landlord on the lease. PX 26. Pursuant to OAH Rule 2924.4, 1 DCMR 2924.4, Mr. Edwards is named as Respondent in the caption.

amended her tenant petition. The amended petition alleges that Ms. Smith rents an apartment from Respondent Adolphe J. Edwards at 409 V Street, N.E. Ms. Smith asserts two claims: that the housing provider failed to file proper rent increase forms with the Rental Accommodations and Conversion Division, and that the rent being charged exceeds the legally calculated rent ceiling.

The parties appeared for a hearing on April 17, 2007. Karl Blanke, student counsel, and Joanna Day, Esq., appeared for Ms. Smith, and Mr. Edwards appeared on his own behalf. Based upon the testimony of the witnesses, my evaluation of their credibility, and the exhibits admitted into evidence, I now make the following findings of fact and conclusions of law.

II. Findings of Fact

Mr. Edwards owns a four-unit apartment building at 409 V Street, N.E. On August 24, 2005, Ms. Smith and Arthur Haynes entered into a lease with Mr. Edwards for Apartment 1 in that building, effective September 1, 2005.[2] The lease provided for a monthly rent of $375. Petitioner's Exhibit ("PX") 26. Ms. Smith and Mr. Haynes did not receive any documents from Mr. Edwards in connection with the rental of the apartment other than the lease. In particular, they did not receive any statement from him showing the amount of the lawful rent or any increases in the rent or rent ceiling that had occurred before they occupied the apartment.

The Rent Administrator's files contain registration statements and other documents that Mr. Edwards filed for this building. The earliest is a registration statement dated December 19, 1977. PX 14. The documents in evidence show a steady stream of filings by Mr. Edwards

[2] Although both Ms. Smith and Mr. Haynes are tenants on the lease, and both testified at the hearing, Ms. Smith alone filed the tenant petition and is the only tenant party to this case.

between 1977 and 2005. Over the years, Mr. Edwards sought to increase the rent ceilings and the rents on the apartments by taking advantage of several annual adjustments of general applicability. There is no evidence, however, that he ever filed any documents in an effort to take a vacancy increase authorized by § 213(a) of the Rental Housing Act, D.C. Official Code § 42-3502.13(a).[3]

Mr. Edwards' last filing for Apartment 1 before Ms. Smith and Mr. Haynes moved in was PX 19, a certificate of election of the adjustment of general applicability, filed on August 30, 2004. It increased the rent ceiling for the apartment from $ 291 to $299, and the rent charged from $240 to $250. Until at least the date of the hearing, Mr. Edwards did not file any further amended registration statements or other documents to increase the rent ceiling or the rent charged for Apartment 1.

Mr. Edwards admitted that he did not file any forms to increase the rent for Apartment 1 beyond $250. He believed that he was entitled to a vacancy increase for Apartment 1, and charged $375 to Ms. Smith and Mr. Haynes because it was the rent charged for another apartment in the building that he believed was a comparable unit. He contended that it was not necessary for him to make any filing to effectuate the vacancy increase. In his view, any filing requirement was excused because there was no tenant in the apartment to receive any documentation from him.

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[3] Documents in evidence show that Mr. Edwards took the adjustment of general applicability for one or more of the apartments in the building during at least the following years:

1983 (PX 13)	1993 (PX 1,2)
1985 (PX 12)	2002 (PX 16, 17, 18)
1989 (PX 8, 9)	2003 (PX 20)
1990 (PX 5, 6,7)	2004 (PX 19, 21)
1992 (PX 3,4)	2005 (PX 22, 23, 24)

Sometime after the commencement of the lease, a dispute arose between the tenants and the housing provider concerning conditions in the apartment. For some period, Ms. Smith and Mr. Haynes did not pay rent to Mr. Edwards. As explained below, the specifics of that dispute, and the amount of any non-payment of the rent, are not relevant to any issue in this case

IV. Conclusions of Law

A. What Was the Lawful Rent For Apartment 1?

Mr. Edwards contended that the $375 rent was lawful because he was entitled to a vacancy increase in the rent ceiling when the apartment became vacant, and he was then entitled to increase the rent charged, based upon that increase in the rent ceiling. Section 213(a) of the Act, D.C. Official Code § 42-3502.13(a), authorized a housing provider to increase the rent ceiling "[w]hen a tenant vacates a rental unit on the tenant's own initiative or as a result of a notice to vacate for nonpayment of rent, violation of an obligation of the tenant's tenancy, or use of the rental unit for illegal purpose or purposes as determined by a court of competent jurisdiction."[4] Section 213(a) authorized an increase to the ceiling of a substantially identical unit in the housing accommodation.

Mr. Edwards appears to have decided to increase both the rent ceiling and the rent charged for Apartment 1 to $375. As discussed below, the increase in the rent charged was illegal, and that is a sufficient basis for deciding this case.

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[4] Because rent ceilings were abolished, effective August 5, 2006, D.C. Official Code § 42-3502.06(a), the current version of the law authorizes an increase in the actual rent charged, not an increase in the rent ceiling, when a vacancy occurs. When Ms. Smith and Mr. Haynes signed the lease in 2005, however, § 213(a) authorized a rent ceiling increase, not an increase in the rent charged.

A housing provider who raises the rent charged based upon a vacancy increase must file certain information with the Rent Administrator. Specifically, 14 DCMR 4103.1 provides:

> Each housing provider of a rental unit or units covered by the Act shall file an amendment to the Registration/Claim of Exemption form provided by the Rent Administrator, in the following circumstances:
>
> * * *
>
> (e) Within thirty (30) days after the implementation of any vacant accommodation rent increase pursuant to § 213 of the Act.

Thus, Mr. Edwards' claim that he didn't have to do anything to implement a vacancy increase is wrong. Even if there were no tenants to serve, he still had to file an amended registration statement with the Rent Administrator.[5] Because he did not do so, the increase to $375 was unlawful and the lawful rent for Apartment 1 remained at $250.

B. Remedy for the Violation

The next question to consider is the appropriate remedy for Mr. Edwards' unlawful rent charge. A rent rollback and a refund of the excess amount charged are available remedies if Mr. Edwards acted knowingly. D.C. Official Code § 42-3509.01(a). A housing provider acts "knowingly" within the meaning of §42-3509.01(a) if the housing provider knows the nature and consequences of its actions. Knowledge that conduct violated the law is not necessary for a housing provider to act "knowingly" under § 42-3509.01(a). It is sufficient that the housing provider understood the actions that it took, *i.e.,* that its actions were not the product of mistake,

[5] D.C. Official Code § 42-3502.13(d) requires disclosure to a new tenant of the lawful rent for the housing accommodation and of any rent increases during the previous three years and the basis for them. Therefore, even if there were no tenants in the apartment when Mr. Edwards decided to take a vacancy increase, he still had to inform Ms. Smith and Mr. Haynes of the increase when they moved into the apartment. As discussed above, he did not do so.

inadvertence or ignorance of a material fact. *Quality Mgmt. Inc. v. District of Columbia Rental Hous. Comm'n,* 505 A.2d 73, 75-76 (D.C. 1986); *See also Miller v. District of Columbia Rental Hous. Comm'n,* 870 A.2d 556, 558 (D.C. 2005) (distinguishing between "knowing" and "willful" violations.)

The evidence is clear that the imposition of a $375 rent charge was not inadvertent or accidental. The amount was inserted into the lease because that is the amount that Mr. Edwards wanted Ms. Smith and Mr. Haynes to pay. Thus, Mr. Edwards' violation is a knowing violation, because he knew he was demanding rent of $375 from Ms. Smith and Mr. Haynes. Pursuant to § 42-3509.01(a), a rent rollback is authorized and the lawful rent for Apartment 1 should be $250 for the period at issue in this case.

The $375 rent demanded by Mr. Edwards has been $125 above the lawful amount, beginning on September 1, 2005, and continuing at least to the date of the hearing on April 17, 2007.[6] Ms. Smith, therefore, is entitled to a refund of the excess rent that Mr. Edwards demanded. Whether or not Ms. Smith paid $375 per month throughout the refund period is not relevant. The Rental Housing Act provides that a housing provider who demands an unlawful amount of rent must pay the tenant the difference between the amount demanded and the lawful rent, regardless of whether the tenant actually paid the unlawful amount. *See, e.g., Kapusta v. District of Columbia Rental Hous. Comm'n,* 704 A.2d 286, 287 (D.C. 1997). Mr. Edwards, therefore, must pay Ms. Smith a refund of $2,500 ($125 for each month between September 2005 and April 2007), and the dispute between the parties over the amount that Ms. Smith actually paid is not material.

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[6] If Ms. Smith believes that the unlawful rent charges continued beyond the hearing date, she may file a new tenant petition for any such period.

Mr. Edwards also must pay interest on the refund amounts from the date of each unlawful demand of rent to the date of this decision. 14 DCMR 3826.2. The applicable interest rate is the judgment interest rate used by the Superior Court on the date of this decision. 14 DCMR 3826.3. For the current calendar quarter that rate is 3% annually, a monthly rate of .25%. The interest calculation is shown below.

Month	Refund Amount	Monthly Rate	# of Months	Interest Amount
Sep 05	125	0.0025	49.3	15.41
Oct 05	125	0.0025	48.3	15.09
Nov 05	125	0.0025	47.3	14.78
Dec 05	125	0.0025	46.3	14.47
Jan 06	125	0.0025	45.3	14.16
Feb 06	125	0.0025	44.3	13.84
Mar 06	125	0.0025	43.3	13.53
Apr 06	125	0.0025	42.3	13.22
May 06	125	0.0025	41.3	12.91
Jun 06	125	0.0025	40.3	12.59
Jul 06	125	0.0025	39.3	12.28
Aug 06	125	0.0025	38.3	11.97
Sep 06	125	0.0025	37.3	11.66
Oct 06	125	0.0025	36.3	11.34
Nov 06	125	0.0025	35.3	11.03
Dec 06	125	0.0025	34.3	10.72
Jan 07	125	0.0025	33.3	10.41
Feb 07	125	0.0025	32.3	10.09
May 07	125	0.0025	31.3	9.78
Apr 07	125	0.0025	30.3	9.47
	Total $2500			**Total $248.75**

Accordingly, Mr. Edwards must pay refunds and interest totaling $2,748.75.

I do not conclude that the evidence is sufficient to award treble damages, which may be imposed only if there is a finding of bad faith. D.C. Official Code § 42-3509.01(a). A finding of bad faith requires proof that Mr. Edwards acted out of "some interested or sinister motive" involving "the conscious doing of a wrong because of dishonest motive or moral obliquity."

Third Jones Corp. v. Young, TP 20,300 (RHC Mar. 22, 1990) at 9. Ms. Smith argues that Mr. Edwards' long history of filings with the Rent Administrator shows that he was familiar with the requirements of the Rental Housing Act. She contends that I should draw the inference that he was aware that the rent of $375 was illegal and should conclude that he acted in bad faith when he demanded that amount. None of those prior filings was for a vacancy increase, however, and no evidence refutes Mr. Edwards' claim that he believed that he could take a vacancy increase without further filings or service upon the tenants. That belief was wrong, and Mr. Edwards certainly was negligent, if not reckless, in his understanding of his obligations under the Act. Nevertheless, I do not find that Mr. Edwards acted in bad faith. He honestly, but mistakenly, believed that he was acting properly. Consequently, the record does not show sufficient evidence of dishonest motive or conscious wrongdoing necessary to conclude that he acted in bad faith.

For similar reasons, I do not impose a fine upon Mr. Edwards pursuant to D.C. Official Code § 42-3509.01(b), which allows for a fine of up to $5,000 for willful violations. A violation is willful only if the housing provider intended to violate the law. *Miller, supra*, 870 A.2d at 559. Although Mr. Edwards should have been more attentive to his obligations under the law, there is no evidence that he intended to violate the law.

V. Order

Based on the foregoing findings of fact and conclusions of law, it is, this 7th day of October, 2009:

ORDERED, that the rent for Ms. Smith's apartment is **ROLLED BACK** TO $250, effective September 1, 2005; and it is further

ORDERED, that Mr. Edwards shall pay Ms. Smith a rent refund, plus interest, in the total amount of $2,748.75; and it is further

ORDERED, that any party may appeal this order, or seek reconsideration, by following the instructions below.

John P. Dean
Administrative Law Judge

MOTIONS FOR RECONSIDERATION

Any party served with a final order may file a motion for reconsideration within ten (10) days of service of the final order in accordance with 1 DCMR 2937. When the final order is served by mail, five (5) days are added to the 10 day period in accordance with 1 DCMR 2811.5.

A motion for reconsideration shall be granted only if there has been an intervening change in the law; if new evidence has been discovered that previously was not reasonably available to the party seeking reconsideration; if there is a clear error of law in the final order; if the final order contains typographical, numerical, or technical errors; or if a party shows that there was a good reason for not attending the hearing.

The Administrative Law Judge has thirty (30) days to decide a motion for reconsideration. If a timely motion for reconsideration of a final order is filed, the time to appeal shall not begin to run until the motion for reconsideration is decided or denied by operation of law. If the Judge has not ruled on the motion for reconsideration and 30 days have passed, the motion is automatically denied and the 10 day period for filing an appeal to the Rental Housing Commission begins to run.

APPEAL RIGHTS

Pursuant to D.C. Official Code §§ 2-1831.16(b) and 42-3502.16(h), any party aggrieved by a final order issued by the Office of Administrative Hearings may appeal the final order to the District of Columbia Rental Housing Commission within ten (10) business days after service of the final order, in accordance with the Commission's rule, 14 DCMR 3802. If the final order is served on the parties by mail, an additional three (3) days shall be allowed, in accordance with 14 DCMR 3802.2.

Additional important information about appeals to the Rental Housing Commission may be found in the Commission's rules, 14 DCMR 3800 et seq., or you may contact the Commission at the following address:

District of Columbia Rental Housing Commission
941 North Capitol Street, N.E.
Suite 9200
Washington, D.C. 20002
(202) 442-8949

Certificate of Service:

Sent By First-Class Mail (Postage Paid) to:

Joanna Day, Esq.
Karl Blanke
D.C. Law Students in Court Program
806 7th Street, N.W.
Suite 300
Washington, DC 20001

Adolphe J. Edwards
2412 Minnesota Avenue, S.E., #304
Washington, DC 20029

By Inter-Agency Mail:

District of Columbia Rental Housing Commission
941 North Capitol Street, NE, Suite 9200
Washington, DC 20002

Keith Anderson
Acting Rent Administrator
Rental Accommodations Division
Department of Housing and Community Development
1800 Martin Luther King Jr. Avenue SE
Washington, DC 20020

I hereby certify that on 10/8, 2009 this document was caused to be served upon the above-named parties at the addresses and by the means stated.

Clerk / Deputy Clerk