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BYRON BECKFORD & TESAE HARRINGTON Tenants/Petitioners, v. DREYFUSS MANAGEMENT, LLC., Housing Provider/Respondent.	Case No.: RH-TP-07-28895 *In re* 6645 Georgia Avenue, NW Unit 211

FINAL ORDER

I. Introduction

On February 12, 2007, Byron Beckford and Tesae Harrington ("Tenants/Petitioners") filed Tenant Petition 28,895, against Dreyfuss Management, LLC ("Housing Provider"), alleging violations of the Rental Housing Act of 1985 (D.C. Official Code §§ 42-3501.01 – 42-3509.07) ("Act"). The Tenants/Petitioners alleged that a proper 30-day notice of rent increase was not provided before the rent increase became effective; that a rent increase was taken while their unit was not in substantial compliance with the D.C. Housing Regulations; that services or facilities related to the unit were substantially reduced; that the Housing Provider took retaliatory action against them; and that a Notice to Vacate was served in violation of Section 501 of the Act. D.C. Official Code § 42-3505.01 of the Act. A hearing was held on April 21, 2008.

The housing accommodation at issue is 6645 Georgia Avenue, NW, Unit Number 211 (the "Property").

As of October 1, 2006, the Office of Administrative Hearings (hereinafter "OAH") holds hearings and issues decisions in cases that previously were heard and decided by the Rent Administrator. D.C. Official Code § 2-1831.03(b-1).

By Order entered May 9, 2007, this administrative court initially set this matter for an evidentiary hearing on June 5, 2007. After the Housing Provider's motion for continuance was granted, this case was continued to August 6, 2007, by Order entered on June 11, 2007. Both parties failed to appear for the hearing. Therefore, a Final Order was issued dismissing the case with prejudice for failure to prosecute. The Tenants/Petitioners sought reconsideration of the Final Order because they received no notice of the hearing date. The Order scheduling the August 6, 2007 hearing date was sent to the Tenants/Petitioners at the incorrect zip code.

By Order entered November 2, 2007, the Final Order was vacated and a hearing date was re-scheduled for December 19, 2007. Only one of the Tenants/Petitioners, Byron Beckford, was present for the hearing. After the Tenants/Petitioner's motion for continuance was granted, a status conference was scheduled on January 31, 2008, by Order entered December 21, 2007. Housing Provider failed to appear. Therefore, a second Case Management Order was entered on February 1, 2008, setting this case for an evidentiary hearing on March 7, 2008. As a result of a scheduling conflict, a Notice of Rescheduling was entered on March 7, 2008, and the hearing was rescheduled for April 21, 2008. All parties were present for the hearing. Tenants/Petitioners Byron Beckford and Tesae Harrington were present. Kevin Kane, Esquire, appeared as the attorney for Housing Provider/Respondent. In addition, Kim Sperling was present as a witness on behalf of the Housing Provider/Respondent.

For the reasons set forth below, only Tenants/Petitioners' claim of a rent increase being taken while the unit was not in substantial compliance with the D.C. housing regulations, and their claim of retaliation and claim of services or facilities being substantially reduced are sustained. The remaining claims are dismissed with prejudice.

II. Findings of Fact

A. Byron Beckford's Status as a Tenant

1. Tesae Harrington and Katesae Harrington began leasing Unit 211 at the Property from a previous housing provider in July 1995. The Lease Agreement prohibits the subleasing of the apartment. Respondent's Exhibit "RX" 200, page 1.
2. Byron Beckford was previously married to Tesae Harrington and they began living in the apartment in 1998.
3. Tesae Harrington (hereinafter "Harrington") moved out of Unit 211 of the Property in 2006, making her primary residence elsewhere.
4. Harrington called an inspector from the Department of Consumer and Regulatory Affairs ("DCRA") to inspect the apartment, which took place on February 2, 2007. Petitioners' Exhibit "PX" 103.
5. Harrington attended the introductory seminar in which she was given the Information Binder concerning the conversion of the property to condominiums on November 29, 2005. Harrington also attended the progress meeting concerning the upgrade options within each unit of the Property on December 20, 2005. RXs 201 and 202.

6. Both the 120-day Notice of Condominium Conversion and the Notice of Rent Increase was addressed to Harrington. PXs 101, and 104, page 2. Tesae and Katasae Harrington signed the Relocation Agreement dated February 26, 2006, opting to take the buy- out and vacate the Property. RX 209.

7. A relocation check in the amount of $5,000 was made payable to the order of Tesae and Katasae Harrington, and they both endorsed the check. RX 211.

8. Byron Beckford has been making rental payments for use of Unit 211 for ten years. He provided proof that he paid $650 for rent in March of 2006. He also provided proof of payments of $652 for the months of January and February of 2007. All checks were made payable to Dreyfuss Management. PX 100.

B. Rent Increases

9. Tesae Harrington signed a lease agreement with the previous Housing Provider on July 27, 2005 to pay rent of $595 a month. RX 200, page 1.

10. In October 2005, Housing Provider/Respondent purchased the property, and the rent increased to $652 by at least February 2006, as evidenced by Byron Beckford's rent receipt dated March 29, 2006 in the amount of $650, and the rent payment ledger. PX 100, page 3 and PX 105.

11. On January 26, 2007, Housing Provider/Respondent sent Tenant/Petitioner a Notice of Increase of Rent Charged, to become effective on March 1, 2007. The rent increased from $652 to $692, and was based on Section 208(h)(2) of the Act pertaining to the Consumer Price Index. PX 101.

C. Housing Code Violations and Reduction in Services and/or Facilities Claims

12. The Property consists of a building with three floors and a basement.

13. Housing Provider/Respondent purchased the Property in October 2005.

14. Kim Sperling is the Senior Project manager of Tenacity Group and has been working on this Property since October 2005. She and Charles Thomas, the property manager for the Housing Provider/Respondent, inspected the Unit in late November to early December of 2005. There was no specific testimony as to what problems were identified in that inspection, and what conditions in the unit were fixed as a result of the inspection.

15. The Housing Provider/Respondent contracts with a pest control company that sprays the Property twice a month. The company sprayed the common area and one different floor every time they visited.

16. Tenants/Petitioners noticed rats in the unit in December 2005. Harrington immediately informed landlord of this problem. The landlord laid traps, put black boxes inside the unit as well as outside of the building, and sprayed foam inside the unit. This did not immediately quell the infestation, but the rats eventually went away. There was no testimony as to the duration of the infestation.

17. In late January to early February of 2006, the Housing Provider hired a construction company to renovate the Property in preparation of the condominium conversion. The construction company began the onsite construction in late January to early February of 2006, and completed construction in 12 to 16 months. The construction company was also

responsible for fixing any repairs that tenants requested. Tenants had to make the request to property management, and management would then instruct the construction workers to complete the repairs. Kim Sperling oversaw the construction.

18. As part of the condominium conversion, there were renovations of the common areas. New plumbing risers and new mailboxes for the tenants were installed. The common area was repainted and new carpet installed. Old laundry machines were replaced with newer machines within the Property's laundry facility. Also a new front door and an automated system in the entranceway of the Property were installed.

19. On March 4, 2006 Harrington signed the Relocation Agreement opting to take the buy out and vacate the property by May 23, 2006. RX 209

20. In April 2006, Harrington asked the Housing Provider whether the Housing Provider would fix the ceilings within her unit, and that person told her not to worry about that because she was leaving.

21. On May 19, 2006 Harrington informed Lula Quadros, the customer service representative for the Housing Provider, about some of the problems in her apartment. Specifically, Tenant/Petitioner told Quadros about the mold growing in the bathroom, the plastic in the kitchen that was coming up, the mold growing under the window of one of the bedrooms, and told her that the refrigerator needed to be replaced. She also complained about the water leaks in the unit. The landlord said they were going to schedule someone to come up and look at the unit, but no one ever showed up.

22. As previously mentioned, on January 26, 2007, a Notice of Increase in Rent Charged was sent to Tenant/Petitioner, increasing the rent of the unit from $652 to $692. The rent was also increased from $595 in 1995 to $652 in February 2006. PX 105.

23. On February 2, 2007, DCRA Inspector Stephanie Dodson conducted an inspection of the Tenants/Petitioners' unit.

24. As a result of that inspection, the inspector issued a notice of housing violation (No. 11507115) to the Housing Provider to correct cracks in the ceilings of the cooking room, bathroom, rear sleeping room, and the eating room. Loose or peeling paint in the ceiling needed to be repainted. Also the Housing Provider was to correct a hole in the wall of the bathroom, and another hole in the ceiling of the eating room. A cabinet and a baseboard in the cooking room had broken or had missing parts that needed to be repaired. The Housing Provider was given 15 days to correct theses violations before re-inspection and further action would be taken. PX 103, page 1-3.

25. On February 2, 2007, the inspector issued a second notice of violation (No. 1150717) to the Housing Provider to correct a defective electrical light ceiling fixture. The Housing Provider was given 7 days to correct this violation before re-inspection and further action would be taken. PX 103, page 4-5.

26. On February 2, 2007, the inspector issued a third notice of violation (No. 1150711) to the Housing Provider to correct the quantity of water in the bathroom of the unit, as it was not being provided in the quantity necessary for normal occupancy. The defective cooking facility also needed to be

corrected. The Housing Provider was given 1 day to correct these violations before re-inspection and further action would be taken. PX 103, page 6-7.

27. In May 2007, the leakage from the ceilings stopped.

28. On March 7, 2008, Tenant/Petitioner Harrington took photographs of the conditions within the apartment. PX 102. Tenant/Petitioner Harrington represented that the pictures show the missing floorboards and the cracks in the wall that DCRA inspector Dodson identified in her notices of violations issued on February 2, 2007. I find that the pictures accurately depict the existing conditions of the unit on February 2, 2007, the day of Inspector Dodson's inspection. I also find that the conditions existed for a prolonged period of time, i.e. eleven months since the rent increased as of February 1, 2006 to $652. PX 105.

D. Improper Thirty-Day Notice of Rent Increase

29. The January 26, 2007 Notice of Increase did not become effective until March 1, 2007. PX 101. Tenants/Petitioners received this notice. The rent increase was based on Section 208(h)(2) of the Act pertaining to the Consumer Price Index.

E. Tenant/Petitioner's Claims of Retaliation

30. On March 4, 2006, Tenant/Petitioner Harrington signed a Relocation Agreement, opting to take the buy-out and vacate the Property, in anticipation of the Property's conversion into condominiums. RX 209.

31. In April 2006, Tenant/Petitioner Harrington asked the Housing Provider whether the construction workers were going to fix the ceilings within the unit while the on-site construction was taking place on the property. Housing Provider told her not to worry about the conditions because Harrington was leaving.

32. On May 19, 2006, Tenant Petitioner Harrington complained to Lula Quadros, the customer service representative about the conditions within her unit. (See Findings of Fact Paragraph No. 21.)

33. On January 26, 2007, Housing Provider sent Tenant/Petitioner a Notice of Increase of Rent Charged, increasing the rent from $652 to $692. PX 101.

F. Improper Notice to Vacate Given in Violation of Section 501 of Act

34. On June 19, 2006, Tenant/Petitioner received a Notice of Condominium Conversion from Housing Provider. The notice served as the Tenant/Petitioner's 120-day Notice of Intent to Convert.

35. According to the language of the notice, Tenant/Petitioner had 60 days to decide whether to enter into contract and purchase the apartment. If Tenant/Petitioner decided not to purchase the unit in which they resided, the Notice of Intent to Convert then served as a 30-day Notice to Vacate. The 30-day Notice to Vacate began on the 91st day of the Notice of Intent to Convert.

36. Tenant/Petitioner Harrington chose to sign a relocation agreement and accept payment of $5,000 from Housing Provider/Respondent. RX 209-210.

37. However, Tenant/Petitioner Byron Beckford continued to make rental payments to Housing Provider/Respondent, which Housing

Provider/Respondent accepted and cashed. Beckford continues to reside in Unit 211.

III. Conclusions of Law

A. Byron's Standing as a Tenant

The Housing Provider/Respondent asserts that Byron Beckford does not have standing in these proceedings and therefore is not entitled to the relief he requests. I conclude that Beckford is protected under the Act as a tenant. The Act defines a tenant as a "tenant, subtenant, lessee, sublesee, or other person entitled to the possession, occupancy, or the benefits of any rental unit owned by another person." D. C. Official Code § 42-3501.03(36). A landlord-tenant relationship does not arise by mere occupancy of the premises. There must exist an express or implied contractual agreement, with both privity of estate and privity of contract. *Nicholas v. Howard*, 459 A.2d 1039, 1040 (D.C. 1983). Rent payment and receipt is evidence of an implied contractual agreement between a landlord and tenant. *Dias v. Perry*, TP 24,379 (RHC Apr. 20, 2001). To determine whether a landlord-tenant relationship exists, the trier of fact must consider all of the circumstances surrounding the use and occupancy of the property. *Young v. District of Columbia*, 75 A.2d 138,143 (D.C. 2000). These circumstances include the lease agreement, the payment of rent, and other conditions of the occupancy between the parties. *Anderson v. William J. Davis, Inc.*, 553 A.2d 648, 649 (D.C. 1989).

As noted, Byron Beckford is a tenant as defined within the Act. The evidence to support his contention that he is a tenant are three rent payment receipts from March of 2006, and January and February of 2007. The production of three rent receipts is sufficient evidence to support the existence of a landlord-tenant relationship. Beckford

also testified that he lived in Unit 211 since 1998 and has been paying rent for the unit for over ten years.

Furthermore, Beckford is a former spouse living with his wife. Tesae and Ketasae Harrington signed the lease agreement, and they are tenants as well within the meaning of the Act until 2006 when Harrington moved out. However, when the husband and wife separated, Beckford remained a lawful tenant of the subject premises because he continued to occupy Unit 211 and pay rent, which the Housing Provider/Respondent accepted, including the rent increases from $595 to $652. PX 100 and 105 containing Housing Provider's rent payment ledger.

B. Tenant's Claim of an Improper 30-Day Notice of Rent Increase

Tenant/Petitioner's first claim that a proper 30-day Notice of Rent Increase was not provided before the rent increase became effective was dismissed on the record. At the end of Tenant/Petitioner's case, the Housing Provider requested judgment on the first claim of an improper 30-Day Notice of Rent Increase. I construed that request as a motion to dismiss that claim, and I granted the motion to dismiss on the record.

The controlling regulation that governs this claim is 14 DCMR 4205.4(a), which states in pertinent part:

> 4205.4 A housing provider shall implement a rent adjustment by taking the following actions, and no rent adjustment shall be deemed properly implemented unless the following actions have been taken:
>
> > (a) The housing provider shall provide the tenant of the rental unit not less than thirty (30) days written notice, pursuant to § 904 of the Act, in which the following items shall be included:
> >
> > (1) The amount of the rent adjustment;
> >
> > (2) The amount of the adjusted rent;

> (3) The date upon which the adjusted rent shall be due; and
>
> (4) The date and authorization for the rent ceiling adjustment taken and perfected pursuant to § 4204.9.

Also § 42-3509.04(b) of the D.C. Official Code provides:

> (b) No rent increases, whether under this chapter, the Rental Accommodations Act of 1975, the Rental Housing Act of 1977, the Rental Housing Act of 1980, or any administrative decisions issued under these act, shall be effective until the first day on which rent is normally paid occurring more than 30 days after notice of the increase is given to the tenant.

Tenant/Petitioner offered no testimony in support of this claim. To the contrary, the Notice of Increase in Rent Charged was served on January 26, 2007, and it did not go into effect until March 1, 2007. PX 101. Tenant/Petitioner conceded that she received the Notice before the rent increase went into effect on March 1, 2007. The notice included all of the required information pursuant to 14 DCMR 4205.05(a). Moreover, Tenant/Petitioner offered the Notice of Increase of Rent Charged as an exhibit, thus supporting my finding that she received a 30-day notice before the rent increase became effective. Therefore, this claim is dismissed with prejudice and judgment is entered in favor of the Housing Provider/Respondent on this claim.

C. Tenant's Claim that a Rent Increase was Taken While the Unit Was Not in Substantial Compliance with the D.C. Housing Regulations.

Tenants/Petitioners have sufficiently proven their second claim that a rent increase was taken while the unit was not in substantial compliance with the D.C.

Housing Regulations. The controlling statute that governs this claim is D.C. Official Code § 42-3502.08 (a)(1), which states:

> (a)(1) Notwithstanding any provision of this chapter, the rent for any rental unit shall not be increased above the base rent unless:
>
> > (A) The rental unit and the common elements are in substantial compliance with the housing regulations, if noncompliance is not the result of tenant neglect or misconduct. Evidence of substantial noncompliance shall be limited to housing regulation violation notices issued by the District of Columbia Department of Consumer and Regulatory Affairs and other offers of proof the Rental Housing Commission shall consider acceptable through its rulemaking procedures.

D.C. Official Code § 42-3501.03(35) defines a substantial violation as "the presence of any housing condition, the existence of which violates the housing regulations or any other statute or regulation relative to the condition of residential premises and may endanger or materially impair the health and safety of any tenant or person occupying the property."

Also 14 DCMR 1416.2 states:

> For purposes of this subtitle, "substantial compliance with the housing code" means the absence of any substantial housing violations as defined in § 103(35) of the Act including, but not limited to, the following:
>
> (a) Frequent lack of sufficient water supply;
> (b) Frequent lack of hot water;
> (c) Frequent lack of sufficient heat;
> (d) Curtailment of utility service, such as gas or electricity;
> (e) Defective electrical wiring, outlets, or fixtures;
> (f) Exposed electrical wiring or outlets not properly covered;
> (g) Leaks in the roof or walls;
> (h) Defective drains, sewage system, or toilet facilities;
> (i) Infestation of insects or rodents;
> (j) Lead paint on the interior of the dwelling, or on the exterior of the dwelling where the paint is in a location or in a condition which

creates a hazard of lead poisoning to children or the occupants;
(k) Insufficient number of acceptable exits for a dwelling, or from each Floor of a rooming house;
(l) Obstructed exits;
(m) Accumulation of garbage or rubbish in common areas;
(n) Plaster falling or in immediate danger of falling;
(o) Dangerous porches, stairs, or railings;
(p) Floor, wall, or ceilings with substantial holes;
(q) Doors, or windows insufficiently tight to maintain the required temperature or to prevent excessive heat loss;
(r) Doors lacking required locks;
(s) Fire hazards or absence of required fire prevention or fire control;
(t) Inadequate ventilation of interior bathrooms; and
(u) Large number of housing code violations, each of which may be either substantial or non-substantial, the aggregate of which is substantial, because of the number of violations.

4216.4 For the purposes of § 4216.3(a), the Rent Administrator [now Administrative Law Judge] shall find abatement of all substantial housing code violations upon certification of abatement by the housing inspector, or the affected tenant, or the housing provider; provided, that upon that certification of abatement by the housing provider the affected tenant has been given ten (10) days notice of and opportunity to contest the certification.

4216.5 Evidence of substantial violations of the housing code may be presented to a hearing examiner by the testimony of parties, except that no tenant complaints of substantial violations shall be received in evidence in any hearing if the conditions giving rise to the complaint occurred and were abated more than twelve (12) months previously.

4216.6 Tenant testimony may be supported by photographs or other documentary evidence, written Department of Consumer and Regulatory Affairs violation notice(s), or the testimony of a Department of Consumer and Regulatory Affairs official who has personally inspected the rental property.

4216.7 Testimony shall be as detailed as necessary so that the hearing examiner can make findings of fact that will identify the specific violation(s), their location and duration, and whether they have been abated. Based upon such testimony, the examiner shall determine if the violations are substantial.

In order to establish this claim, Tenant/Petitioner must first prove that the Housing Provider was put on notice of the existing conditions within the unit. *William Calomiris*

Inv. Corp v. Milam, TP 20,144, 20,160, 20,248 (RHC Apr. 26, 1989) at 10; *See also Gavin v. Fred A. Smith Co.,* TP 21,918 (RHC Nov. 18, 1992) at 4.

On May 19, 2006, Tenant/Petitioner Harrington complained to customer service representative, Lula Quadros, about the conditions within the unit and requested repairs. Harrington testified that no one came up to the unit to make the repairs. Lula Quadros was not brought to testify as to what specific conditions Tenant/Petitioner complained of, but Tenant/Petitioner claims that she complained of the same conditions that were later identified by DCRA inspector Dodson in 2007. In addition to those conditions, Tenant/Petitioner Harrington complained that the water was leaking from the ceiling, that she found mold in one of the bedrooms as well as in the bathroom, and that the refrigerator in the kitchen needed to be replaced.

The rent increase that was sent to the Tenants/Petitioners was to become effective March 1, 2007. However, another rent increase took effect in February 2006, PX 105, which increased the original rent of $595 to $652. Before these rent increases became effective, DCRA Inspector Dodson identified, in three notices of violations, PX 103, the following conditions in need of repair in the unit as of February 2, 2007:

1) Wall in bathroom has crack(s) with separation of parts;
2) Floor in bathroom has hole(s);
3) Cabinet in cooking room has broken or missing parts;
4) Baseboard in cooking room has broken or missing parts;
5) Ceiling in cooking room has crack(s);
6) Wall in eating room has crack(s) with separation of parts;
7) Ceiling in eating room has hole(s);
8) Ceiling in eating room has crack(s);
9) Ceiling in rear sleeping room has loose or peeling paint or covering which shall be removed and the surface so exposed shall be repainted or recovered;
10) Ceiling in rear sleeping room has crack(s);
11) Electrical ceiling light fixture in cooking room is defective;

12) Water in bathroom is not being provided in the quantity needed for normal occupancy;
13) Cooking facility in cooking room is defective.

Tenant/Petitioner also offered photographs, PX 102, identifying them as reflecting the conditions of the unit since 2005. She also testified that the violations that the inspector identified existed in 2005. Harrington had inconsistent testimony as to whether any of the conditions she complained of were fixed. She claims numerous times in her testimony nothing was fixed, but she conceded that whenever there was a leak in the ceiling it was fixed. Harrington further stated that the leak started in 2006, and stopped in May 2007, which is after this petition was filed and after Harrington moved out of the unit. Because of these inconsistencies, I find that Harrington has not proved that there were leaks in the roof or walls. However, I also find that Tenant/Petitioner has sufficiently proved that the floor, walls and ceilings had substantial holes based on her testimony and the photographs. PX 102. Holes in the ceiling and in the floor of the bathroom were also identified by Inspector Dodson.

Additionally, Harrington testified that in 2005, she saw rats in the unit and that the Housing Provider sprayed the unit and laid traps, causing the rats to eventually go away. Because she was not specific as to the duration of the infestation, I find that Harrington has not sufficiently proven that there was an infestation of insects or rodents for a specific period of time. However, because the aforementioned housing violations that I found she has proven, and because there were 13 housing violations that the DCRA inspector found to exist, I find that the aggregated number of violations places the unit in substantial noncompliance with the housing code pursuant to 14 DCMR 1416.2.

In light of Harrington's testimony that she informed the Housing Provider of the repairs needed both in April and May of 2006, I conclude that the Housing Provider was put on notice of the conditions at the time the rent increase went into effect in February 1, 2006 and the conditions were substantial. PX 102, 103, and 105. Although witness Kim Sperling for the Housing Provider testified generally that all problems that were brought to the attention of property management were repaired within 72 hours of the request, there is no certificate of abatement to support that contention, nor did the witness offer testimony as to what conditions specifically had been repaired. Rather, there are pictures as well as testimony offered by Tenant/Petitioner Harrington supporting her assertion that nothing was fixed after the requests were made. Tenants/Petitioners have met their burden of proving by a preponderance of the evidence that a rent increase was taken while the unit was not in substantial compliance with DC Housing Regulations.

Therefore, Tenant/Petitioner Beckford is entitled to rent refunds for the illegal rent increase that was reflected in rent paid in February 2006, of $692. PX 105. This rent increase from $595, as of August 1995, to $695 as of February 1, 2006, was invalid given the substantial housing code violations. Accordingly, I am rolling back the rent beginning February 1, 2006 from $692 to $595. The rollback is effective February 1, 2006 through February 12, 2007, the date the tenant petition was filed with the Rental Accommodations Division ("RAD"). That is, Tenant/Petitioner Beckford is entitled to a rent refund of $97 x 12 months = $1,164, plus $41.71 for the prorated time period of February 1 through 12, 2007. Total rollback of rent involving this claim is $1,205.71 (rounded to $1206). Interest calculations under 14 DCMR 3826.2 are calculated from the date of the violation to the date of the issuance of the decision. 14 DCMR 3826.2.

Interest calculated from February 2006 – October 20, 2009:

February 2006 – January 2007 = 12 months

February 2007 – January 2008 = 12 months

February 2008 – January 2009 = 12 months

February 2009 – September 2009 = 8 months

October 1, 2009 – October 20, 2009 = 20/31 = .65

TOTAL = 44.65 months

Date	Amount of Overcharge	Months Held	Monthly Interest Rate	Interest Due
Feb-06	$97.00	44.65	0.0025	$10.83
Mar-06	$97.00	43.65	0.0025	$10.59
Apr-06	$97.00	42.65	0.0025	$10.34
May-06	$97.00	41.65	0.0025	$10.10
Jun-06	$97.00	40.65	0.0025	$9.86
Jul-06	$97.00	39.65	0.0025	$9.62
Aug-06	$97.00	38.65	0.0025	$9.37
Sep-06	$97.00	37.65	0.0025	$9.13
Oct-06	$97.00	36.65	0.0025	$8.89
Nov-06	$97.00	35.65	0.0025	$8.65
Dec-06	$97.00	34.65	0.0025	$8.40
Jan-07	$97.00	33.65	0.0025	$8.16
Feb. 1, 2007 - Feb. 12, 2007	$41.71	32.65	0.0025	$3.40
Total	**$1,205.71**			**$117.33**

D. Tenant's Claims that Services and/or Facilities Were Substantially Reduced in Violation of Section 211 of the Act.

Tenants' second claim is that services and/or facilities within their unit were substantially reduced. The services and facilities provision of the Act before August 2006, D.C. Official Code § 42-3502.11 (2001), provides:

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

The services and facilities provision of the Act after August 2006, D.C. Official Code § 42-3502.11 (2001), provides:

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

Also, the controlling Regulation is 14 DCMR 4211.6, which states in pertinent part:

> If related services or facilities at a rental unit or housing accommodation decrease by accident, inadvertence or neglect by the housing provider and are not promptly restored to the previous level, the housing provider shall promptly reduce the rent for the rental unit or housing accommodation by an amount which reflects the monthly value of the decrease in related services or facilities.

Also, D.C. Official Code 42-3501.03(26), (27) gives the definition of a "related facility" and "related services":

> (26) "Related facility" means any facility, furnishing, or equipment made available to a tenant by a housing provider, the use of which is authorized by the payment of the rent charged for a rental unit, including any use of a kitchen, bath, laundry facility, parking facility, or the common use of any common room, yard, or other common area.
>
> (27) "Related services" means services provided by a housing provider, required by law or by the terms of a rental agreement, to a tenant in

> connection with the use and occupancy of a rental unit, including repairs, decorating and maintenance, the provision of light, heat, hot and cold water, air conditioning, telephone answering or elevator services, janitorial services, or the removal of trash and refuse.

In order to establish the claim that a related facility or service has been substantially reduced, the tenant must prove that they put the Housing Provider on notice of the necessary repairs. *Offong v. American Security Bank*, TP 21,087 (RHC Jan 11, 1990) at 5. Tenant must also produce evidence establishing the existence, duration, and severity of the reduced services or facilities. *Lane v. Regina Davis/J.E.S. Enter.*, TP 24,841 (RHC Sept. 30, 2002) at 8.

I find that the only "related facility," as defined by the Act, that Tenant/Petitioner complained of in her tenant petition, as well as in her testimony was the refrigerator. Harrington alleged that the refrigerator needed to be replaced and she had to put tape on the door of the refrigerator to keep the cold air inside. She testified that this condition, along with the other conditions she complained of to Lula Quadros in May 2006, existed since 2005 and existed at the time she filed this petition. Harrington also offered pictures that were taken on March 7, 2008, that she represented as the conditions of the unit since 2005. Therefore I find that Tenant/Petitioner has established that she put the Housing Provider on notice as to the necessary repairs needed for the refrigerator, and that she established the existence, duration, and severity of the reduced facility.

The Rental Housing Commission has held consistently that the hearing examiner, now administrative law judge, is not required to assess the value of a reduction in services and facilities with "scientific precision," but may instead rely on his or her "knowledge, expertise, and discretion as long as there is substantial evidence in the

record regarding the nature of the violation, duration, and substantiality." *Kemp v. Marshall Heights Cmty, Dev.*, TP 24,786 (RHC Aug. 1, 2000) at 8 (*citing Calomiris v. Misuriello* TP 4809 (RHC Aug. 30, 1982) and *Nicholls v. Tenants of 5005, 07, 09 D Street, S.E.,* TP 11,302 (RHC Sept. 6, 1985)). It is not necessary for an administrative law judge to receive expert testimony or precise evidence concerning the degree to which services and facilities have been reduced in order to compensate tenants for the value of the reduced services. "[E]vidence of the existence, duration and severity of a reduction in services and/or facilities is competent evidence upon which the [judge] can find the dollar value of a rent roll back." *George I. Borgner, Inc. v. Woodson*, TP 11,848 (RHC, June 10, 1987) at 11.

In compliance with this provision, I will assign a value of $20 per month for the defective refrigerator. I will therefore roll back Tenant/Petitioner Beckford's rent by $20 per month from May 2006 through February 12, 2007, the date of the filing of the tenant petition. That is 9 months x $20 = $180 reduction in rent, plus $8.60 for the prorated period in February 2007. Total reduction in rent is $188.60 for the defective refrigerator. Again, interest calculations under 14 DCMR 3826.2 are calculated from the date of the violation to the date of the issuance of the decision. 14 DCMR 3826.2. They are set forth below:

Interest calculated from May 2006 – October 20, 2009:

May 2006 – February 12, 2007 (date of tenant petition)

Overcharge amount = $20/month

February 1-12, 2007 = $8.60

May 2006 – October 20, 2009 Calculations:

May 2006 – April 2007 = 12 months

May 2007 – April 2008 = 12 months

May 2008 – April 2009 = 12 months

May 2009 – September 2009 = 5 months

October 1 through October 20, 2009 – 20/31 = .65

TOTAL 41.65 months

Date	Amount of Overcharge	Months Held	Monthly Interest Rate	Interest Due
May-06	$20.00	41.65	0.0025	$2.08
Jun-06	$20.00	40.65	0.0025	$2.03
Jul-06	$20.00	39.65	0.0025	$1.98
Aug-06	$20.00	38.65	0.0025	$1.93
Sep-06	$20.00	37.65	0.0025	$1.88
Oct-06	$20.00	36.65	0.0025	$1.83
Nov-06	$20.00	35.65	0.0025	$1.78
Dec-06	$20.00	34.65	0.0025	$1.73
Jan-07	$20.00	33.65	0.0025	$1.68
Feb. 1, 2007 - Feb. 12, 2007	$8.60	32.65	0.0025	$0.70
Total	**$188.60**			**$17.64**

The only "related service" that Tenant/Petitioner complained of was the pest control. She claimed that she saw rats in 2005 and immediately notified the Housing Provider. The Housing Provider sent someone to spray the unit and lay rat traps and the rats eventually went away. Because Tenant/Petitioner did not specify the duration of the infestation, she has not met the burden of proving that there was a substantial reduction in a related service. *Lane v. Regina Davis/J.E.S. Enter., supra.*

E. Tenant's Claim of Retaliation

Tenants contend that the Housing Provider retaliated against them after they made complaints about the repairs that were needed within their unit. D.C. Official Code § 42-3505.02 discusses the issue of retaliatory actions, and states in pertinent 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:
>
> > (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...
> >
> > (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.

The Act provides that if 1) the tenant has made a witnessed oral or written request to the housing provider to make repairs which are necessary in order to comply with housing regulations or exercised a right conferred to them as a tenant, and 2) within 6

months after the tenant's action the housing provider takes a retaliatory action against the tenant as defined within the act, and 3) the housing provider does not offer clear and convincing evidence to rebut the claim, the Administrative Law Judge can presume that a retaliatory action occurred.

Here, Tenant/Petitioner signed a Relocation Agreement opting to take the buy out and vacate the Property by May 23, 2006, which was signed March 4, 2006. RX 209. As a tenant, Harrington was exercising her rights under a contract with the Housing Provider to take the buy out and vacate at a later date. According to the Tenant/Petitioner Harrington's testimony, she asked in April 2006 whether they were going to fix the ceilings, and she was told that she should not worry about that because she was leaving. However, in later testimony, Harrington conceded that whenever the ceiling leaked, that it was fixed. Therefore I find that the Housing Provider did initially deny the maintenance service, but did not decrease maintenance services because the ceiling was fixed. Because the service was not decreased as a result of Tenant/Petitioner's request I find that the initial denial of services does not constitute retaliatory action.

However, I do find that there was a decrease of services after Harrington complained to Lula Quadros on May 19, 2006. Harrington testified that she was told that someone would come and make the repairs that she requested, but no one ever came to make the repairs. Also, Harrington offered testimony and pictures that certain conditions existed in her apartment since 2005. PX 102. As mentioned before, the onsite construction on the Property began in late January to early February of 2006, and was finished in 12-16 months. Construction workers were to make repairs per the request of tenants. However no one made the repairs requested, as evidenced through the testimony

given, and the pictures taken by Harrington, and the DCRA inspection report. PX 102-103. Therefore, I find that the nearly nine month period after Harrington made the request in May 2006 until the time this petition was filed, there was a decrease in services. Kim Sperling, witness for the Housing Provider, testified that whenever there was a maintenance request, the repairs were taken care of within 72 hours. However, Sperling never stated what requests were made, or when these conditions were repaired. For that reason, I find that the Housing Provider did not satisfy its burden of proving through clear and convincing evidence no retaliatory action was made. Therefore I presume that there was retaliatory action taken against Tenant/Petitioner Harrington after she complained to management about the conditions of her apartment, and I am entering judgment in the Tenant/Petitioner's favor on that claim.

F. Tenant's Claim of Improper Notice to Vacate

The tenant's last claim is that a Notice to Vacate was served in violation of §501 of the Act. D.C. Official Code § 42-3505.01(j) controls this claim and provides that "[i]n any case where the housing provider seeks to recover possession of a rental unit or housing accommodation to convert the renal unit or housing accommodation to a condominium or cooperative, notice to vacate shall be given according to § 42-3402.06(c). D.C. Official Code § 42-3402.06(c) states that "[a]n owner shall not serve a notice to vacate until at least 90 days after the tenant received notice of intention to convert, or prior to expiration of the 60-day period of notice of opportunity to purchase." Moreover, § 42-1904.08(b)(3) of the D.C. Official Code discusses notices to vacate within a notice of conversion:

(b) In the case of a conversion condominium:

> (3) If the notice of conversion specifies a date by which the apartment unit shall be vacated, then such notice shall constitute and be the equivalent of a valid statutory notice to vacate. Otherwise, the declarant shall give the tenant or subtenant occupying the apartment unit to be vacated the statutory notice to vacate where required by law in compliance with the requirements applicable thereto.

Here, the Notice of Intent to Convert was received by the Tenant/Petitioner on June 19, 2006. PX 104, page 2. I find that the Notice on Intent to Convert serves as a proper Notice to Vacate. The Notice to Convert maintains that if the Tenant/Petitioner chooses to not purchase the unit in which they reside, then the Notice of Intent to Convert becomes a 30-day Notice to Vacate. The Notice of Intent to Convert further maintains that the 30-day Notice to Vacate would begin on the 91st day of the Notice to Convert. Therefore, I find that the Notice of Intent to Convert specifies the date in which the Tenant/Petitioner was to vacate, and serves as a valid Notice to Vacate pursuant to § 42-1904.08(b)(3) of the D.C. Official Code. Furthermore, the Notice to Vacate within the Notice to Convert also complies with § 42-3402.06(c) of the D.C. Official Code as the 30-day Notice to Vacate does not begin until the 91st day of the Notice to Convert, thus giving the tenant at least 90 days after they received the Notice to Convert to serve the Notice to Vacate. Therefore, I find that a 30-day Notice to Vacate was properly served on the Tenant/Petitioner. Judgment will be entered in favor of the Housing Provider/Respondent on this claim.

G. Housing Provider/Respondent is Subject to Statutory Penalties for Its Violations of the Act.

D. C. Official Code § 42-3509.01(a) authorizes an administrative law judge to impose a fine against a Housing Provider for violations of the Act. The controlling statute

governing penalties for violation of the Act before August 2006, is D. C. Official Code § 42-3509.01(a), which provides:

> (a) Any person who knowingly...(2) substantially reduces or eliminates related services previously provided for a rental unit, shall be held liable by the Rent Administrator or Rental Housing Commission, as applicable, for the amount by which the rent exceeds the applicable rent ceiling or for treble that amount (in the event of bad faith) and/or for a roll back of the rent to the amount the Rent Administrator or Rental Housing Commission determines.
>
> (b) Any person who willfully...(3) commits any other act in violation of any provision of this chapter...shall be subject to a civil fine of not more than $5,000 for each violation.

The controlling statute governing penalties after August 2006 provides:

> (a) Any person who knowingly...(2) substantially reduces or eliminates related services previously provided for a rental unit, shall be held liable by the Rent Administrator or Rental Housing Commission, as applicable, for the amount by which the rent exceeds the applicable rent charged 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.

Tenants/Petitioners met their burden of proof by a preponderance of evidence that the rent increase taken in 2006 was in violation of the Act. D.C. Official Code § 42-3502.08. Tenant/Petitioner also met her burden of proof that services and facilities were reduced in violation of the Act, and that the Housing Provider committed retaliatory action against Tenants/Petitioners after Harrington complained about the conditions of the Property.

To subject a Housing Provider to penalties under the Act, there must first be a finding that the Housing Provider's conduct in imposing illegal rent increases, substantially reducing services and facilities, and retaliating against Tenants/Petitioners

was knowing. I reach this conclusion of knowing conduct on behalf of the Housing Provider because the Housing Provider was placed on notice of the housing code violations by the DCRA inspector and also by the Tenant/Petitioner on May 19, 2006, when Harrington complained to Lula Quadros who was not available to rebut the testimony of Harrington. Harrington clearly and convincingly testified that no one came to make the repairs, and the conditions depicted in the photographs, PX 102, are the same conditions that existed in 2005. Housing Provider also did not provide any abatement notices indicating the notices of housing code violations issued by Inspector Dodson were ever abated. Therefore, these repairs existed for a prolonged period of time of at least nine months. Such inaction on the part of the Housing Provider warrants imposition of the fines for a willful violation of the Act.

The Housing Provider's actions in failing to fully eradicate the problem since 2005 did rise to the level of being willful, and a reckless disregard for maintaining and leasing an apartment in sanitary condition, *i.e.* intentional violation of the law, deliberate and the product of a conscious choice. *Borger Mgmt, Inc. v. Miller*, TP 27,445 (RHC Mar. 4, 2004).

To impose a fine, the Act requires that the violation in question be "willful." Willfulness, in turn, requires more than mere violation of the Act. It requires that the Housing Provider "intended to violate or was aware that it was violating a provision of the Rental Housing Act." *Miller v. D.C. Rental Hous. Comm'n*, 870 A.2d 556, 558 (D.C. 2005). Tenant must show that Housing Provider intended to violate the law or possessed a culpable mental state. *Quality Mgmt. Inc. v. D.C. Rental Hous. Comm'n*, 505 A.2d 73, 76, n.6 (D.C. 1985). Housing Provider's inaction warrants imposition of the fines for a

willful violation of the Act. The Housing provider's actions in failing to fully eradicate the problem since 2005 did rise to the level of being willful, and a reckless disregard for maintaining and leasing an apartment in sanitary condition, i.e. intentional violation of the law, deliberate and the produce of a conscious choice. *Borger Mgmt, Inc. v. Miller*, TP 27,445 (RHC Mar. 4, 2004).

I reach this conclusion of willfulness based on the failure to make extensive repairs, *i.e.* defective walls and ceilings with cracks, defective refrigerator etc., that remained unattended for a nine month period after being notified by the Tenant and the D.C. housing inspectors. I will impose a civil fine of $5,000 for the substantial housing code violations, services and facilities that were reduced, and for the incomplete repairs lasting from 2006-2007. This is because the Property was not in substantial compliance with D.C. housing regulations due to unattended repairs. I will also impose another $2,000 in fines for taking the illegal rent increase in 2006. Since the second rent increase did not take effect until March 2007, which was after the tenant petition was filed, no penalty will be assessed for the rent increase in 2007. Finally, I will impose another $2,000 fine for Housing Provider's retaliatory conduct in failing to fix the repairs for a period of nine months. Such conduct is egregious and warrants sanctions to deter future conduct of this nature. Statutory penalties total $9,000.

IV. Order

Based on the findings of fact and conclusions of law, and the entire record, it is, this 20th day of October, 2009:

ORDERED, that the Tenant Petition No. RH-TP-07-28895 is **GRANTED** based on Housing Provider violating the Act by implementing an illegal rent increase in 2006, when the Property was not in substantial compliance with D.C. housing regulations, and for substantially reducing services and facilities and for retaliatory acts taken; and it is further

ORDERED, that the Housing Provider shall pay Tenant/Petitioner rent refunds and rollbacks including interest in the total amount of **ONE THOUSAND FIVE HUNDRED TWENTY-NINE DOLLARS AND TWENTY-EIGHT CENTS ($1,529.28);** and it is further

ORDERED, that Housing Provider shall pay the D.C. Treasurer fines in the total amount of **NINE THOUSAND DOLLARS ($9,000);** and it is further

ORDERED, that either party may move for reconsideration of this Final Order within ten days under OAH Rule 2937; and it is further

ORDERED, that the remaining claims in Tenant Petition No. RH-TP-07-28895 are **DISMISSED WITH PREJUDICE;** and it is further

ORDERED that the appeal rights of any party aggrieved by this order are set forth below.

Claudia Barber
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 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:

By First Class Mail (Postage Pre-Paid):

Byron Beckford
Tesae Harrington
6645 Georgia Avenue, N.W.
Unit #211
Washington, DC 20011

Kevin I. Kane, Esquire
100 N. Washington Street
Suite 500
Rockville, MD 20850

By Inter-Agency Mail:

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

Keith Anderson
Acting Rent Administrator
Rental Accommodations Division
District of Columbia Department of Housing and Community Development
Housing Regulation Administration
1800 Martin Luther King Jr. Ave., S.E.
Washington, DC 20020

I hereby certify that on 10-20, 2009 This document was caused to be served upon the parties listed on this page at the addresses listed and by the means stated.

Benedetta Rhames
Clerk/Deputy Clerk

EXHIBITS ADMITTED INTO EVIDENCE

Petitioner's Exhibits:

100 Byron Beckford's three rent receipts

101 Notice of Rent Increase dated January 26, 2007

102 Photographs of condition of unit 211 taken in 2008

103 Housing violation notices

104 Notice to convert condominium

105 Rent payment history from 2-1-2006 through January 9, 2007

Respondent's Exhibits:

200 Parties' lease agreement dated July 27, 1995

201 Introductory seminar attendance sheet of 11-29-2005

202 Attendance sheet for 12-20-2005

208 Petitioner's rejection letter of 8-18-2006

209 Relocation agreement for Petitioner signed March 4, 2006 by tenants

210 Receipt of payment for relocation for petitioner dated March 6, 2006

211 Petitioner Tesae Harrington's relocation check

212 Election notice facsimile transmittal