

**DISTRICT OF COLUMBIA**  
**OFFICE OF ADMINISTRATIVE HEARINGS**  
941 North Capitol Street, NE, Suite 9100  
Washington, DC 20002-4210  
TEL: (202) 442-8167  
FAX: (202) 442-9451

DISTRICT OF COLUMBIA  
OFFICE OF  
ADMINISTRATIVE HEARINGS

2009 JUL -2 P 12: 07

COMFORT MUNONYE  
Tenant/Petitioner,

v.

HERCULES REAL ESTATE SERVICES  
Housing Provider/Respondent.

Case No.: RH-TP-07-29164  
*In re* 1339 Fort Stevens Drive, NW  
Unit 206

---

**FINAL ORDER**

**I. Introduction**

On January 17, 2008, Tenant/Petitioner Comfort Munonye filed a tenant petition with the Rent Administrator. Tenant alleged the following: (1) the rent increase was larger than the amount of increase which was allowed by any applicable provision of the Rental Housing Act of 1985; (2) a proper thirty (30) day notice of rent increase was not provided before the rent increase became effective; (3) housing provider failed to file the proper rent increase forms with the Rental Accommodations and Conversion Division, Department of Consumer and Regulatory Affairs ("RACD")<sup>1</sup>; (4) the rent being charged exceeds the legally calculated rent ceiling for Tenant's unit; (5) the rent ceiling filed with the RACD for Tenant's unit is improper; (6) a rent increase was taken while the unit was not in substantial compliance with the D.C. Housing Regulations; (7) the building in which Tenant's rental unit is located is not properly registered

---

<sup>1</sup> Effective October 1, 2007, the functions of the RACD, Department of Consumer and Regulatory Affairs, (DCRA), and those of the Rent Administrator, were transferred to the Housing Regulation Administration, Rental Accommodations Division, Department of Housing and Community Development.

with the RACD; (8) services and facilities provided in connection with the rental of Tenant's unit have been substantially reduced; and (9) housing provider has violated the provisions of section 42-3502.05(d) & (h) 2001 ed. of the Rental Housing Act of 1985.

On January 29, 2009, Respondent filed a Motion to Dismiss, asserting the Housing Provider is exempt due to participation in the Federal Tax Credit Program. On May 7, 2009, a hearing on the Motion to Dismiss was held. Both parties appeared and presented oral argument on the Motion. On May 14, 2009, by leave of this administrative court, Petitioner was afforded an opportunity to file a Response to Respondent's Motion to Dismiss. On June 2, 2009, Petitioner filed a response to Respondent's Motion. On June 17, 2009, Respondent filed a response to Petitioner's response.

. Based on the entire record in this matter, I am dismissing this case and make the following findings of fact and conclusions of law.

## **II. Findings of Fact**

1. The housing accommodation is located at 1339 Fort Stevens Drive, NW, Unit #206.
2. Tenant has lived at the housing accommodation since 2005. (Lease-Attachment to Petition).
3. On January 17, 2008, Tenant filed a tenant petition with the Rent Administrator alleging the following: 1) the rent increase was larger than the amount of increase which was allowed by any applicable provision of the Rental Housing Act of 1985; (2) a proper thirty (30) day notice of rent increase was not provided before the rent increase became effective; (3) housing provider failed to file the proper rent increase forms with the

Rental Accommodations and Conversion Division, Department of Consumer and Regulatory Affairs ("RACD")<sup>2</sup>; (4) the rent being charged exceeds the legally calculated rent ceiling for Tenant's unit; (5) the rent ceiling filed with the RACD for Tenant's unit is improper; (6) a rent increase was taken while the Tenant's unit was not in substantial compliance with the D.C. Housing Regulations; (7) the building in which Tenant's rental unit is located is not properly registered with the RACD; (8) Services and Facilities provided in connection with the rental of Tenant's unit have been substantially reduced; and (9) Housing Provider has violated the provisions of section 42-3502.05(d) & (h) 2001 ed. of the Rental Housing Act of 1985.

4. The Housing provider is a participant in the low income Federal Tax Credit Program, administered by the District of Columbia Housing Finance Agency, pursuant to I.R.C. § 42. (Motion to Dismiss, Attachment A.)
5. On July 12, 2002, Housing Provider filed a Registration/Claim of Exemption Form with the Rent Administrator indicating that they are exempt because of their participation in the low-income housing tax credit program. (Motion to Dismiss, Attachment A.)

### **III. Conclusions of Law**

This matter is governed by the Rental Housing Act of 1985 ("Act"), D.C. Official Code §§ 42-3501.01-3509.07, the District of Columbia Administrative Procedure Act (DCAPA), D.C. Official Code §§ 2-501-510, the District of Columbia Municipal Regulations (DCMR), 1 DCMR

---

<sup>2</sup> Effective October 1, 2007, the functions of the RACD, Department of Consumer and Regulatory Affairs, (DCRA), and those of the Rent Administrator, were transferred to the Housing Regulation Administration, Rental Accommodations Division, Department of Housing and Community Development.

2800-2899, 1 DCMR 2920-2941, and 14 DCMR 4100-4399. OAH assumed jurisdiction of rental housing cases pursuant to the OAH Establishment Act, D.C. Official Code § 2-1831.03.

D.C. Official Code § 42-3502.05(a)(1) provides in relevant part that the following is exempt from the rent stabilization provisions of the Rental Housing Act:<sup>3</sup> "[a]ny rental unit ... in any housing accommodation with respect to which the mortgage or rent is federally or District-subsidized ..."

The housing accommodation is a participant in the low income tax credit program (promulgated by I.R.C. § 42). The House Ways and Means Committee stated the following regarding the low-income tax credit:

The committee believes the low-income housing *credit* is a useful incentive for increasing the stock of affordable housing available to low-income individuals. Further, the committee believes that a permanent extension of the low-income housing credit will provide greater planning certainty needed for the efficient delivery of *this Federal subsidy*. (Emphasis added.)

Quoted in Re: Request for Advisory Opinion - Southern Ridge Apts., Dep't of Consumer and Regulatory Affairs (Nov. 12, 1993), (citing HOUSE WAYS AND MEANS COMMITTEE, 103rd CONG., FISCAL YEAR 1994 BUDGET RECONCILIATION RECOMMENDATIONS OF THE COMMITTEE ON WAYS AND MEANS (Comm. Print 1994).

The Department of Consumer and Regulatory Affairs concluded in an advisory opinion on the matter, that "[c]learly the House Ways and Means Committee viewed the low-income

---

<sup>3</sup> The "rent stabilization" provisions of the Rental Housing Act of 1985, D.C. Official Code §§ 42-3501.01-3509.07, are set forth in D.C. Official Code § 42-3502.05(f) through § 42-3502.19. The exemption provisions do not apply to D.C. Official Code § 42-3502.17 (see D.C. Official Code § 42-3502.05 (a)).

housing tax credit as a Federal "subsidy". I likewise conclude that it is a Federal "subsidy" for purposes of D.C. Code § [42-3502.05(a)(1)]." Id.

Thus, pursuant to D.C. Official Code § 42-3502.05(a)(1), the housing accommodation is exempt from the rent stabilization provisions of the Act, so long as the proper registration and exemption forms are on file with the Rent Administrator.<sup>4</sup> Tenant does not contest that Housing Provider has filed the proper Registration/Claim of Exemption Form.

Tenant believes she should be able to challenge rent increases under the Act because an agent of the Housing Provider, i.e., Margaret Poitras, is not registered as a Real Estate Broker/Salesperson or Property Manager in the District of Columbia. Pursuant to the statute however, it does not appear that the failure of an individual agent of the Housing Provider to possess a Real Estate Broker/Salesperson or Property Manager's license prohibits the Housing Provider from claiming an exemption under the Act. The statute provides an exemption for "any rental unit ... in any [subsidized] housing accommodation." D.C. Official Code § 42-3502.05(a)(1). In other words, as long as the housing provider participates in the low income tax credit program, the housing accommodation receives an exemption from the rent stabilization provisions of the Act.

Accordingly, Tenant Petition RH-TP-08-29164 is dismissed with prejudice. This Final Order will not take effect until fourteen days after the date of service. Within that time Tenant/Petitioner may file a motion to vacate this Final Order upon a showing of good cause why the case should not be dismissed. 1 DCMR 2818.2.

---

<sup>4</sup> Housing Provider has attached a copy of his Registration/Claim of Exemption Form certified by the RACD to his Motion to Dismiss.

**IV. Order**

Therefore, it is this 1st day of July, 2009:

**ORDERED** that Housing Provider's Motion to Dismiss is **GRANTED**; and it is further

**ORDERED** that Tenant Petition RH-TP-08-29164 is **DISMISSED WITH PREJUDICE**; and it is further

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

  
N. Denise Wilson-Taylor  
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:**

**By Priority Mail with Delivery Confirmation (Postage Paid):**

Bernard Gray, Sr., Esquire  
2009 18<sup>th</sup> Street, SE  
Washington, D.C. 20020

Jonathan Schuman, Esquire  
Schuman & Felts, Chartered  
4804 Moorland Lane  
Bethesda, Maryland 20814

**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  
D.C. Department of Housing and Community Development  
1800 Martin Luther King, Jr. Avenue, S.E.  
Washington, D.C. 20020

I hereby certify that on 7-2, 2009 this document was caused to be served upon the above-named parties at the addresses and by the means stated.

  
Clerk / Deputy Clerk