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JOSEPH BRATCHER, Tenant/Petitioner, v. CALVIN JOHNSON, Housing Provider/Respondent.	Case No.: RH-TP- 08-29478 *In re* 1239 Vermont Avenue NW Unit 908

FINAL ORDER

I. Introduction

On November 12, 2008, Tenant/Petitioner, Joseph Bratcher filed Tenant Petition 29,478 against Calvin Johnson, Housing Provider/Respondent, alleging the following violations of the Rental Housing Act of 1985 ("the Act"): 1) the building where Tenant's rental unit was located is not properly registered with the Rental Accommodations Division of the Department of Housing and Community Development ("RAD"); 2) the rent increase was larger than the increase allowed by any applicable provision of the Act; 3) Housing Provider did not give Tenant a proper 30 day notice of rent increase before the increase was charged; 4) Housing Provider substantially reduced the services and facilities in connection with Tenant's housing accommodation; 5) Housing Provider took retaliatory action against Tenant in violation of Section 502 of the Act and; 6) Housing Provider served Tenant with a Notice to Vacate that violates Section 501 of the Act.

For the reasons set forth below, I find that Tenant prevailed in the following claims: 1) that Housing Provider increased Tenant's rent larger than what is allowed by any applicable provision of the Act; 2) that there was no proper 30 day notice of rent increase before the increase was charged; 3) , that Housing Provider substantially reduced the facilities provided as part of the rent and/or tenancy; 4) and that Housing Provider served Tenant with a Notice to Vacate that violates Section 501 of the Act.

Additionally, for the reasons set forth below, I find that Tenant does not prevail on his claims that his rental unit was not properly registered and that Housing Provider took retaliatory action against him in violation of section 502 of the Act. Accordingly, these claims are dismissed.

II. Procedural History

On January 5, 2009, this administrative court issued a Case Management Order ("CMO") scheduling this matter for a hearing on February 9, 2009. On February 9, 2009, the parties attempted to mediate the dispute unsuccessfully. On July 14, 2009, this administrative court heard oral arguments on Tenant's motion to amend the tenant petition to add the following claims: 1) Housing Provider did not file the correct rent increase forms with the Rental Accommodations and Conversion Division ("RACD"); 2) Housing Provider demanded a security deposit after the date Tenant moved in and that no security deposit had been demanded before; 3) Housing Provider increased Tenant's rent when Tenant's unit was not in substantial compliance with the D.C. Housing Regulations; 4) the rent exceeds the legally-calculated rent ceiling for Tenant's unit; 5) the rent ceiling filed with the RAD for Tenant's unit is improper; and 6) Housing Provider permanently eliminated services and/or facilities provided as part of the rent and/or tenancy.

This administrative court denied Tenant's motion to amend the tenant petition and scheduled this matter for evidentiary hearings on August 27, 2009, and October 20, 2009. At the hearings, Tenant introduced sixteen exhibits into evidence, two of which were withdrawn. Housing Provider introduced ten exhibits into evidence. The exhibits that the parties introduced into evidence were admitted and a list is provided in Appendix A attached to this Order.

III. Findings of Fact

1. The housing accommodation that is the subject of the tenant petition is located at 1239 Vermont Avenue, NW, Unit 908.

2. Tenant has resided in the housing accommodation since September 1, 2004. PX 114.

3. When Tenant began his tenancy he shared the housing accommodation with Rick Breitenfeldt and the monthly rental amount was $1,975. PX 114.

4. Rick Breitenfeldt vacated the housing accommodation.

5. Tenant signed a new lease with Housing Provider on September 1, 2005 to solely occupy the unit and his monthly rental amount became $2,100. PX 115, RX 200.

6. Tenant's unit had a clothes dryer that was removed in November of 2008 as required by the Department of Consumer and Regulatory Affairs ("DCRA"). The condominium complex provides clothes dryers in the building at cost.

7. When Tenant moved into the housing accommodation the swimming pool was operational. The swimming pool was not filled with water for use by the building's tenants in 2005 and 2006 during the twelve-week period the pool was normally open. In

2007, DCRA closed the pool for part of the twelve-week pool season due to housing code violations.

8. There is no evidence in the record of the months when the swimming pool in the condominium complex was normally open for 2005 or 2006. In 2005, the District of Columbia Department of Parks and Recreation began daily operation of their outdoor pools on June 22, 2005. In 2006, the District of Columbia Department of Parks and Recreation staggered the opening of City pools. The last date that City pools were opened was June 19, 2006. I take Official Notice that the beginning of the pool season at the housing accommodation was June 22, 2005, and June 19, 2006.[1]

9. Pursuant to the lease agreement, Housing Provider was to provide to Tenant one parking space at an additional cost of $50.00 per month. PX 115, RX 200.

10. During his residency, Tenant did not remit a monthly payment to Housing Provider for the use of a parking space.

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[1] I took official notice from the press release issued on June 24, 2005, by the Department of Parks and Recreation that the swimming pool at the housing accommodation should have opened on June 22, 2005, which would have began the twelve-week pool season in 2005. I took official notice from the press release issued on May 26, 2006, by the Department of Parks and Recreation that the swimming pool at the housing accommodation should have opened on June 19, 2006, which would have began the twelve-week pool season in 2006. The press releases are attached to this order in Appendix C. I took official notice pursuant to the District of Columbia Administrative Procedure Act ("DCAPA"), D.C. OFFICIAL CODE 2-509(b), which provides that where the decision of an agency in a contested case rests upon official notice of a material fact not appearing in the evidence in the record, any party to such a case, upon timely request, shall be afforded an opportunity to show the contrary. In accordance with D.C. OFFICIAL CODE § 2-509(b), the parties have fifteen (15) days from the date of this Final Order to show facts contrary to those found in the press releases dated June 24, 2005 and May 26, 2006. *See Carey v. District Unemployment Compensation Bd.*, 304 A.2d 18, 20 (D.C. 1973).

11. On October 12, 2007, Housing Provider filed a claim of exemption form with RAD because Housing Provider holds and operates no more than four rental units. PX 113, RX 203A.

12. On August 19, 2008, Housing Provider filed another claim of exemption form with RAD under the name of Calyndie Property Rentals, LLC which lists Calvin Johnson as the only natural person with a direct or indirect financial interest in the housing accommodation. The basis of the claim of exemption is Housing Provider holds and operates no more than four rental units. RX 203B.

13. Housing Provider mailed to Tenant via certified mail and regular mail on August 26, 2008, a Notice of Increase in Rent Charged Form dated August 25, 2008, a Notice of Disclosure Form Available to Tenants dated August 19, 2008, a Certificate of Notice of Increase in Rent Charged dated August 25, 2008, and a 30 Day Notice to Correct or Vacate dated August 25, 2008. RXS 211, 212, 213, 214, and 216.

IV. Discussion and Conclusions of Law

A. Jurisdiction

This matter is governed by the Rental Housing Act of 1985 (D.C. Official Code §§ 42-3501.01 et. seq.) ("Rental Housing Act" or "the Act"), Chapters 41-43 of 14 District of Columbia Municipal Regulations ("DCMR"), the District of Columbia Administrative Procedures Act (D.C. Official Code §§ 2-501 et. seq.) ("DCAPA"), and OAH Rules (1 DCMR 2800 et. seq. and 1 DCMR 2920 et. seq.).

B. Housing Provider's Claim of Exemption

Housing Provider argues that the housing accommodation is exempt from the rent stabilization provisions because he owns no more than four units. Housing Provider has the burden of proof to establish his eligibility for an exemption from the Act.[2] In the instant case, Housing Provider introduced into evidence two claim of exemption forms which were filed October 12, 2007 and August 19, 2008, respectively. RXS 203A, 203B.

Housing Provider filed the first Claim of Exemption form on October 12, 2007 listing the owner of the property as Calvin C. Johnson. RX 203A. The Rent Administrator shall approve a claim of exemption where the rental unit for which exemption is claimed is owned by an individual who has an interest with no more than three other natural persons in four or fewer rental units.[3]

However, Housing Provider filed a second claim of exemption form on August 19, 2008, in which he changed the name of the owner of the property to Calyndie Property Rentals, LLC. The Rent Administrator shall disapprove a claim of exemption where the rental unit for which exemption is claimed is owned in whole or in part by a corporation.[4] A limited liability corporation is a corporate entity and a corporate entity is not a "natural person, small individual landlord, which the legistature intended to confer a

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[2] *Revithes v. D.C. Rental Hous. Comm'n,* 536 A.2d 1007 (D.C. 1987). *See also Best v. Gayle*, TP 23,043 (RHC Nov. 21, 1996) at 5.

[3] 14 DCMR 4106.12.

[4] 14 DCMR 4106.13(a).

special exemption upon."[5] The purpose of the exemption for small landlords is to remove the burdens of compliance from those who were not in a position to ease or shift that burden, namely an individual who is not in the rental housing business.[6] Therefore, when Housing Provider transferred ownership of the rental unit from that of an individual to a corporate entity he was attempting to shield himself as an individual from the risks of being an individual landlord by incorporating his rental housing enterprise. He thereby lost the benefit of the small individual landlord exemption.

There is no evidence in the record as to the specific date on which the transfer of the property from Calvin Johnson to Calyndie Property Rentals, LLC took place. However, because Housing Provider filed the claim of exemption form on August 19, 2008 in the name of Calyndie Property Rentals, LLC, this administrative court will consider this as the date that Housing Provider lost his exemption status as an individual landlord.

C. Tenant's claim the building where his rental unit is located is not properly registered with the RAD.

Tenant claims that the building where his rental unit is located is not properly registered with the RAD. Housing Provider registered the rental unit under the name of Calvin Johnson with RAD and claimed that the rental unit was exempt on October 12, 2007. RX 203A. Housing Provider registered the rental unit and claimed that the rental unit was exempt again under the name of Calyndie Property Rentals, LLC with RAD on

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[5] *Price v. D.C. Rental Hous. Comm'n*, 512 A.2d 263, 267 (D.C.1986).

[6] *Id* at 267 n.3.

August 19, 2008. RX 205. Housing Provider received a basic business license from DCRA in the name of Calyndie Property Rentals, LLC on June 24, 2009. RXS 205(a), 217.

Housing Provider's claim of exemption under the name of Calyndie Property Rentals, LLC is not valid because a limited liability corporation is a corporate entity and not a natural person as discussed above, this filing is not valid and thus Housing Provider is not properly registered. Tenant prevails on his claim that his rental unit was not properly registered in violation of the Act.

The penalty for violating this provision of the Act is an imposition of a fine. In order to impose a civil fine, I must find that the housing provider's actions were "willful."[7] The Rental Housing Commission and the D.C. Court of Appeals have distinguished between "knowing" and "willful" violations of the Act.[8] "Willfully" goes to intent to violate the law and "knowingly" is simply that you know what you are doing.[9] As an example, the Commission stated that if you know that you are increasing the rent,

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[7] D.C. Official Code § 42-3509.01(b).

[8] *See Quality Mgmt., Inc.*, 505 A.2d 73, 75-76; *Borger Mgmt., Inc.*, TP 27,445 (RHC Mar. 4, 2004) at 11.

[9] *Quality Mgmt., Inc.*, 505 A.2d 73, 75-76; *Borger Mgmt., Inc.*, TP 27,445 (RHC Mar. 4, 2004) at 11.

the fact that you do not intend to violate the law would be "knowingly."[10] If you also intended to violate the law, that would be "willfully."[11]

In this case, there is no evidence that Housing Provider was aware of the registration requirements for the rental unit. Therefore, I impose no fine on Housing Provider.

D. Tenant's claim that Housing Provider increased Tenant's rent larger than what is allowed by any applicable provision of the Act.

Tenant alleges that Housing Provider increased his rental amount larger than what is allowed by any applicable provision of the Act. When Tenant signed a new lease with Housing Provider on September 1, 2005, his rent went from $1,975 to $2,100 which is an increase of $125.

Tenant filed the tenant petition on November 12, 2008. No tenant petition may be filed with respect to any rent adjustment more than 3 years after the effective date of the adjustment.[12] Tenant filed the tenant petition on November 12, 2008, which is more than three years from the effective date of the rent adjustment which was September 1, 2005. Because the statute of limitations has run on Tenant's claim that Housing Provider

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[10] *Quality Mgmt., Inc.*, 505 A.2d 73, 75-76; *Borger Mgmt., Inc.*, TP 27,445 (RHC Mar. 4, 2004) at 11.

[11] *Quality Mgmt., Inc.*, 505 A.2d 73, 75-76; *Borger Mgmt., Inc.*, TP 27,445 (RHC Mar. 4, 2004) at 11.

[12] D.C. Official Code § 42-3502.06(e).

increased Tenant's rent larger than what is allowed by any applicable provision of the Act, Tenant does not prevail.

E. Tenant's claim that there was no proper 30 day notice of rent increase before the increase was charged.

Tenant alleges that Housing Provider did not provide a proper 30 day notice of rent increase before the increase was charged. The rent increase occurred when Tenant signed a new lease with Housing Provider on September 1, 2005 and Tenant's rent went from $1,975 to $2,100.

Again, Tenant filed the tenant petition on November 12, 2008. No tenant petition may be filed with respect to any rent adjustment more than 3 years after the effective date of the adjustment.[13] Tenant filed the tenant petition on November 12, 2008, which is more than three years from the effective date of the rent adjustment which was September 1, 2005. Because the statute of limitations has run on Tenant's claim that there was no proper 30 day notice of rent increase before the increase was charged, Tenant does not prevail.

F. Tenant's claim that Housing Provider substantially reduced the services and/or facilities provided as part of the rent and/or tenancy.

Tenant alleges that Housing Provider substantially reduced the services and/or facilities provided as part of the rent and/or tenancy. At the hearing, Tenant testified concerning three perceived reductions in facilities, specifically: 1) Housing Provider

[13] *Id.*

failed to return a parking space; 2) Tenant was unable to use the pool; and 3) the dryer had been removed from the unit.

The Act provides that if related facilities provided in connection with the Housing Accommodation have been substantially decreased, the rent may be decreased to reflect proportionally the value of the change in facilities.[14] The Act defines what is considered to be a "related facility."

> "Related facility" is defined as:
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> 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.

D.C. Official Code § 42-3501.03(26).

To prove that a housing provider has substantially decreased a related facility, the tenant has the burden to establish that: (1) a reduction of the related service or facility occurred; (2) the duration of the reduction; (3) the housing provider was given notice of the reduction; and (4) the reduction was substantial. [15]

1. Parking Space

In analyzing whether Housing Provider's failure to return a parking space reduced Tenant's facilities, we first have to examine whether the parking space is a "related facility." The lease provides that, "Tenant shall be entitled to use 1 parking space(s) for

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[14] D.C. Official Code § 42-3502.11.

[15] *Parreco v. Akassy*, TP 27,408 at 15 (RHC Dec. 8, 2003), *rev'd on other grounds*, 885 A.2d 327 (D.C. 2005).

the parking of motor vehicle(s) at an additional cost of $50 per month." PX 115, RX 200. The lease makes clear that Tenant is entitled to use the parking space for an additional cost and the use of the parking space is not authorized by the payment of the rent. Both Housing Provider and Tenant testified that there was an agreement that Tenant would relinquish the parking space until June 1, 2008, for Housing Provider to use it to offset Tenant's rent. At the expiration of this oral agreement, the parking space would return to Tenant. Tenant never paid for the use of the parking space and did not pay for its return on June 1, 2008. The question remains whether the parking space is a related facility and I find that pursuant to the lease the use of the parking space was not authorized by the payment of the rent charged for the rental unit and therefore is not a related facility.

2. Swimming Pool

Tenant alleges that in 2005 and 2006 the swimming pool located on the roof of the condominium complex where his unit is located was not filled and thus Housing Provider substantially reduced the facilities in connection Tenant's unit. Tenant testified that in 2005 and 2006, the pool was not filled for the entire season the pool was normally open. Tenant also testified that the pool was only open for part of the season in 2007. Housing Provider testified that the pool season was a twelve week period and in 2007, DCRA closed the pool and cited the condominium association for multiple violations related to structural and safety issues. Housing Provider testified that the swimming pool is not under his exclusive control and that it is the decision of the condominium association to repair the swimming pool so that it is operational.

The question is whether the swimming pool is a "related facility" under the Act. Tenant testified that the swimming pool was operational when he was first shown the property and was one of the features that induced him to rent the housing accommodation in 2004. Further, Tenant introduced an email into evidence in which he writes to Housing Provider, "As far as the pool is concerned, I am not sure what the boards [sic] decision to not open it has to do with the rent. I am assuming when determining the value of a rental that you take into consideration the amenities that go with it." PX 125. Where an individual paying rent at a particular housing accommodation would be entitled to use the facility, then the facility is related.[16] Because the swimming pool is a facility Tenant was entitled to use because he was paying rent at the housing accommodation, I find that it is a related facility. Also, when the pool was not operational during the twelve week season it was normally open, Housing Provider substantially reduced Tenant's facilities concerning the housing accommodation. The remedy available to Tenant is discussed in section G below.

3. Clothes Dryer

Tenant alleges that when the clothes dryer in the unit was removed as required by a DCRA housing inspector in November 2008, the facilities in his unit were substantially reduced. Housing Provider testified that because the clothes dryer can not be made to vent to the outside and is not in compliance with DCRA regulations, the clothes dryer can

[16] *Pinnacle Realty Mgmt. Co. v. Voltz*, TP 25,092 (RHC Mar. 4, 2004) at 9.

not be operated within the unit.[17] Housing Provider testified that there are clothes dryers available in the building at cost.

As stated above, a "related facility" is one in which an individual paying rent at a particular housing accommodation would be entitled to use the facility.[18] Because the clothes dryer is a facility that Tenant was entitled to use because he was paying rent at the housing accommodation, I find that it is a related facility. Further, because Tenant is no longer able to use the clothes dryer, I find that Housing Provider substantially reduced Tenant's facilities. Tenant's remedy is discussed below.

G. Remedy

A related facility need only be one "the use of which is authorized by the payment of the rent charged for a rental unit."[19] It follows that tenants can recover for reductions in related facilities that are not prescribed in the lease or required by law.[20]

Prior to its amendment in August 2006, the Rental Housing Act provided for award of a rent refund "for the amount by which the rent exceeds the applicable rent ceiling . . . and/or for a roll back of the rent to the amount the [Administrative Law Judge] determines."[21] The Rental Housing Commission has consistently interpreted the

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[17] Owners of residential buildings are required to provide adequate ventilation pursuant to 14 DCMR 500.1.

[18] *Pinnacle Realty Mgmt. Co.*, TP 25,092 (RHC Mar. 4, 2004) at 9.

[19] D.C. Official Code § 42-3501.03(26).

[20] *PinnacleRealty Mgmt. Co.*, TP 25,092 (RHC Mar. 4, 2004) at 9.

[21] D.C. Official Code § 42-3509.01(a) (2001).

statute to limit the remedy for reduced facilities to a reduction in the rent ceiling, limiting rent reductions to cases in which the rent charged exceeded the reduced rent ceiling.[22]

As of August 2006 the Rental Housing Act was amended to abolish rent ceilings. The amended Act provides that a housing provider may be held liable for "the amount by which the rent exceeds the applicable rent charged."[23]

1. Swimming Pool

Tenant claims that the swimming pool was not filled during the twelve week pool season in 2005. Tenant filed the tenant petition on November 12, 2008. I have taken Official Notice that the twelve-week pool season was in June, July and August of 2005. The summer months of 2005 would be more than three years prior to the filing date of the tenant petition. The limitations provision of the Act prohibits the filing of a tenant petition "with respect to any rent adjustment more than 3 years after the effective date of the adjustment."[24] The tenant petition applies to rent adjustments that occurred November 12, 2005, and later. Therefore, Tenant's claim is beyond the statute of limitations period and is time barred.

In 2006, Tenant's rent was $2,100. There is no evidence in the record as to what Tenant's rent ceiling was. The pool was closed for the entire twelve-week pool season

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[22] *Jonathan Woodner Co. v. Enobakhare*, TP 27,730 (RHC Feb. 3, 2005) at 14; *Kemp v. Marshall Heights Cmty. Dev.*, TP 24,786 (RHC Aug. 1, 2000) at 8; *Hiatt Place P'ship v. Hiatt Place Tenants' Ass'n,* TP 21,249 (RHC May 1, 1991) at 26.

[23] D.C. Official Code § 42-3509.01(a) (2007); *See* 53 D.C. Reg. 4489 (Jun. 23, 2006); 53 D.C. Reg. 6688 (Aug. 18, 2006).

[24] D.C. Official Code § 42-3502.06(e).

for that year. I do not find Tenant's testimony credible that the value of the use of the pool was $600.00 because it is almost a third of his rent for use of a facility for a twelve-week period. I value the reduction in facility to be $10.00 a week for the twelve-week period in 2006 in which the facility was reduced.

In light of this analysis, I conclude that Housing Provider's failure to provide Tenant access to the swimming pool during the twelve-week pool season in 2006 was a reduction in related facilities. Evidence of the existence, duration, and severity of a reduction in facilities is competent evidence upon which an Administrative Law Judge can find the dollar value of a reduction in the rent ceiling or rent charged. Expert or other direct testimony is not required.[25]

In 2007, the pool was operational for part of the twelve-week period. Tenant did not provide the dates in which the pool was not operational; therefore I do not have information regarding the duration of the reduction in the facility. Pursuant to the DCAPA, in contested cases the proponent of a rule or order shall have the burden of proof.[26] Tenant has the burden of the proof in this matter, and I find that Tenant did not meet his burden of proof.

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[25] *Norman Bernstein Mgmt. Inc. v. Plotkin*, TP 21,282 (RHC May 10, 1989) at 5; *Harris v. Wilson*, TP 28,197 (RHC July 12, 2005) at 5.

[26] D.C. Official Code § 2-509(b).

I am awarding Tenant ten dollars ($10.00) a week for the twelve-week pool season in 2006. The regulations provide that interest may be imposed.[27] Appendix B attached to this Order details Tenant's award including interest.

With respect to the clothes dryer, Housing Provider removed it per a request from DCRA in November of 2008. Tenant's rent in November of 2008 was $2,100.00. Tenant rented the unit with a clothes dryer and was expecting to be able to use it in the unit for the duration of his tenancy. When DCRA required the removal of the clothes dryer, through no fault of Housing Provider's, this substantially reduced a facility that Tenant paid for as part of his rent. The fact that the building has clothes dryers that Tenant must now use does mitigate some of the inconvenience to Tenant. Tenant introduced no evidence as to the value of this substantial reduction in facilities. Therefore, I value the substantial reduction in this facility to be $25.00 a month.

Appendix B attached to this Order details Tenant's award for the substantially reduced facilities.

H. Tenant's claim that Housing Provider retaliated against him in violation of Section 502 of the Act.

The determination of retaliation under the Act requires a two fold analysis. First, Tenant must have exercised any of the six protected acts enumerated in the statute.[28] Rights that Tenant must have exercised include: 1) requested that Housing Provider make

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[27] 14 DCMR 3826.1.

[28] D.C. Official Code § 42-3505.02(a).

necessary repairs to bring the unit into compliance with the housing regulations; 2) contacted officials of the District government concerning violations of the housing regulations in the rental unit; 3) withheld all or part of the rent after giving notice to the housing provider because of the violations of the housing regulations; 4) organized or joined a tenant organization; 5) made an effort to enforce his rights under the lease agreement; 6) or brought legal action against the housing provider.[29]

Tenant's testimony as to what protected act Tenant exercised that resulted in Housing Provider's retaliatory actions was vague. However, Tenant alleges he demanded the return of a parking space in June of 2008 in an attempt to enforce his rights under the lease.

Second, the tenant must raise the presumption of retaliation by establishing that the housing provider's conduct occurred within six months of the tenant performing one of the six protected acts listed in D.C. Official Code § 42-3505.02(b). Retaliatory conduct by a housing provider includes, but is not limited to "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

[29] D.C. Official Code § 42-3505.02(b)(1)-(6).

or rental agreement, termination of a tenancy without cause, or any other form of threat or coercion."[30]

In the instant case, Tenant alleges Housing Provider's retaliatory conduct is that he filed complaints for possession for non-payment of rent in July and November of 2008; failed to allow Tenant to retain a pet; and refused to return a parking space for the unit.

The law provides that retaliatory action should be presumed if within the 6 months preceding the housing provider's action and the [administrative law judge] shall presume retaliatory action has been taken, and enter judgment in the tenant's favor.[31] The burden then shifts to the housing provider to come forward with clear and convincing evidence that his actions were not retaliatory.[32]

Housing Provider testified that he initiated the possessory action in June 2008 because Tenant had not paid his June rent. Tenant admits that he did not pay his June rent because Housing Provider would not return a parking space. Tenant did not pay his rent and Housing Provider has met his burden that this action was not retaliatory.

Tenant also alleges that the refusal of Housing Provider to return the parking space was a retaliatory action. The lease agreement provides, "Tenant shall be entitled to

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[30] D.C. Official Code § 42-3505.02(a).

[31] D.C. Official Code § 42-3505.02(b)(2). *Also see Borger Mgmt Inc. v. Miller*, TP-27,445 (RHC Mar. 4, 2004) at 7 (*citing Youssef v. United Mgmt. Co., Inc.*, 683 A.2d 152, 155 (D.C. 1996)).

[32] D.C. Official Code § 42-3505.02(b)(2). *Also see Youssef*, 683 A.2d at 155.

use 1 parking space(s) for the parking of motor vehicles(s) at an additional cost of $50 per month." PX 115. Tenant testified that he did not pay the $50 cost for the parking fee, and also alleges that although Housing Provider had not previously collected this fee, Tenant was entitled to the parking space. Housing Provider and Tenant both testified that they agreed that Tenant would relinquish the parking space and Housing Provider would use the proceeds from renting the parking space to others to offset Tenant's rent. However, by June of 2008 Housing Provider no longer desired to maintain this arrangement. Housing Provider's unwillingness to maintain the arrangement is not retaliation as contemplated by the Act.

Tenant also alleges that he owns a pet and that Housing Provider's refusal to allow the pet to remain in the unit or Housing Provider's demand of a pet fee is a retaliatory act. The lease agreement provides, "Tenant shall not keep Pets on the Premises without the prior written consent of the Landlord." PX 115, RX 200. Tenant submitted no evidence that he sought and received Housing Provider's consent for the pet. Housing Provider testified that he did not receive a consent request and only became aware that Tenant had a dog in April of 2008 when Housing Provider entered the housing accommodation to show it to a prospective renter and saw the dog living there.

Tenant introduced into evidence an email written by Housing Provider which states, "[a]lthough you indicated that the dog that was present in the unit at least since April 2008 is a 'therapy pet,' you did not seek my consent either verbally or in writing. Also, the request would have required a statement from a medical professional indicating the need for a 'therapy pet.' Nonetheless, you are required to provide an additional one-half month deposit $1,100 (pet deposit) and $200/month for pet rent covering the months

of April 2008 and May 2008." PX 127. Tenant's own evidence demonstrates that Housing Provider did not refuse to allow Tenant ownership of a pet but rather there were conditions that Tenant needed to satisfy for the pet to remain.

Therefore, the record shows by clear and convincing evidence that Housing Provider rebutted the presumption of retaliation. Accordingly, Tenant has failed to establish Housing Provider's actions were retaliatory.

I. Housing Provider served a Notice to Vacate on Tenant which violates Section 501 of the Act.

The Rental Housing Act prescribes the grounds upon which a housing provider may recover possession of a rental unit and notice requirements for recovering possession:

> Except as provided in this section, no tenant shall be evicted from a rental unit, notwithstanding the expiration of the tenant's lease or rental agreement, so long as the tenant continues to pay the rent to which the housing provider is entitled for the rental unit. No tenant shall be evicted from a rental unit for any reason other than for nonpayment of rent unless the tenant has been served with a written notice to vacate which meets the requirements of this section. Notices to vacate for all reasons other than for nonpayment of rent shall be served upon both the tenant and the Rent Administrator. All notices to vacate shall contain a statement detailing the reasons for the eviction, and if the housing accommodation is required to be registered by this chapter, a statement that the housing accommodation is registered with the Rent Administrator.

D.C. Official Code § 42-3505.01(a).

Housing Provider served Tenant with a Notice to Vacate on April 1, 2008. PX 126. In order to be valid, a notice to vacate shall include a statement detailing the

factual basis on which the housing provider relies; the minimum time to vacate; a statement that the housing accommodation is registered or exempt from registration and a statement that a copy of the notice to vacate was provided to the Rent Administrator.[33]

The notice that Housing Provider served on Tenant does give the time for Tenant to vacate but does not give a basis on which the housing provider relies, state whether the housing accommodation is exempt from registration, or that a copy of the notice to vacate was furnished to the Rent Administrator. PX 126.

Further, Housing Provider conceded during the hearing that the Notice to Vacate he served on Tenant was not valid. Therefore, the evidence shows that Housing Provider served Tenant an improper notice to vacate in violation of the Act.

Based upon the above reasons, Tenant prevails on his claim that Housing Provider served a Notice to Vacate on him which violates Section 501 of the Act.

As stated above in order to impose a civil fine, I must find that the housing provider's actions were "willful." In this case, there is no evidence that Housing Provider was aware of the requirements for recovering possession of the rental unit. In fact Housing Provider states in the Notice to Vacate dated April 1, 2008:

> Pursuant to the lease dated September 1, 2005 between Calvin C. Johnson [lessor] and Joseph Bratcher [lessee] for a month-to-month term and terminable on sixty (60) days notice by either party, you are hereby notified to deliver up possession of the hereinafter described premises you now hold in possession, on a month-to-month tenancy, within 60 days from April 1, 2008. Said premises known as 1239 Vermont Avenue NW Unit 908, Washington, DC 20005 shall be surrendered to the Landlord no later than 5pm on June 1, 2008. PX 119.

[33] 14 DCMR 4302.1.

The Notice to Vacate shows that Housing Provider erroneously believed that he could terminate Tenant's tenancy solely based on the provisions of the lease agreement because Tenant was renting month-to-month. I find that Housing Provider knowingly attempted to evict Tenant from the housing accommodation. But also find that Housing Provider's actions were not a "willful" violation of the law.

Based upon the above reasons, I impose no penalty for Housing Provider's failure to serve Tenant with a proper Notice to Vacate.

V. Order

Based upon the foregoing Findings of Fact and Conclusions of Law and the entire record in this matter, it is, this **17th** day of **March 2010:**

ORDERED, that Housing Provider's claim that the housing accommodation is exempt is **GRANTED** in part and **DENIED** in part; and it is further

ORDERED, that Tenant's claim that the building where his rental unit is located is not properly registered with the RAD is **GRANTED**; and it is further

ORDERED, that Tenant's claim that Housing Provider increased Tenant's rent larger than what is allowed by any applicable provision of the Act is **DENIED**; and it is further

ORDERED Tenant's claim that there was no proper 30 day notice of rent increase before the increase was charged is **DENIED**; and it is further;

ORDERED, that Tenant's claim that Housing Provider substantially reduced the facilities provided as part of the rent and/or tenancy is **GRANTED** in part and **DENIED** in part; and it is further

ORDERED, that Housing Provider must pay Tenant **ONE HUNDRED-SEVENTEEN DOLLARS AND EIGHT CENTS ($117.08)** for substantially reducing the swimming pool facility; and it is further.

ORDERED, that Housing Provider must pay Tenant **EIGHTY-SIX DOLLARS AND NINETEEN CENTS ($86.19)** for substantially reducing the clothes dryer facility; and it is further

ORDERED, that the total amount that Housing Provider must pay Tenant for the aforementioned violations is **TWO HUNDRED THREE DOLLARS AND TWENTY-SEVEN CENTS ($203.27)**; and it is further

ORDERED, that Tenant's claim that Housing Provider retaliated against him in violation of Section 502 of the Act is **DENIED**; and it is further

ORDERED, that Housing Provider served a Notice to Vacate on Tenant which violates Section 501 of the Act is **GRANTED**; and it is further

ORDERED, that either party may move for reconsideration of this Final Order within 10 days under OAH Rule 2937; and it is further

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

Caryn L. Hines
Administrative Law Judge

APPENDIX A

Exhibits in Evidence

Petitioner		
Exhibit No.	**No(s). of Pages**	**Description**
PX105	1	DCRA Certificate of Notice of Increase in Rent Charged 8/25/08
PX107	1	Notice of Increase in Rent Charged dated 8/25/08
PX108	1	Physician's Disability Certification Form
PX 113	3	RAD Registration and Claim of Exemption Form dated 10/12/07
PX 114	6	Lease dated 3/15/04
PX 122	1	Certificate from DCRA dated 8/10/09
PX 123	3	RAD Registration and Claim of Exemption Form dated 8/19/08
PX 124	5	Tenant's statement
PX 125	2	Email Letter dated October 1, 2007 re: parking space
PX 126	1	Letter dated April 1, 2008 re: surrendering possession
PX 127	2	Email Letter dated May 29, 2008 re pet fee
PX 128	1	Complaint before the Superior Court of the District of Columbia Landlord Tenant Branch dated November 5, 2008
PX 129	2	Complaint for Possession before the Superior Court of the District of Columbia Landlord Tenant Branch dated October 15, 2008
PX 130	1	Certificate from DCRA dated November 12, 2008
Respondent		
RX 200	6	Lease dated September 1, 2005
RX 203A	3	RAD Registration and Claim of Exemption Form dated October 12, 2007
RX 203B	3	RAD Registration and Claim of Exemption

		Form dated August 19, 2008
RX 204	1	DCRA Business and Professional License Administration letter dated August 19, 2008
RX 205	1	Certificate of Registration August 19, 2008
RX 206	1	Complaint for Possession of Real Estate dated October 15, 2008
RX 207	1	Protective Order Information Sheet November 13, 2008
RX 211	1	Copy of U.S. Postal Service Certified Mail Receipts dated August 26, 2008 and August 27, 2008
RX 212	1	Notice of Increase in Rent Charged dated August 25, 2008
RX 213	1	Notice of Disclosure Form Available to Tenants dated August 19, 2008
RX 214	1	Certificate of Notice of Increase in Rent Charged dated August 24, 2008
RX 216	4	30 Day Notice to Correct or Vacate dated August 25, 2008
RX 217[34]	1	Duplicate of Basic Business License dated 6-24-09

[34] Filed post hearing on November 19, 2009.

APPENDIX B

I. Reduction in Facility of Clothes Dryer

DATES OF OVERCHARGES	AMOUNT OF OVERCHARGES	MONTHS HELD BY HOUSING PROVIDER	MONTHLY INTEREST RATE	INTEREST DUE
Nov-08	$25.00	16.55	0.0025	$1.03
Dec-08	$25.00	15.55	0.0025	$0.97
Jan-09	$25.00	14.55	0.0025	$0.91
February 1, 2009 to February 9, 2009	$8.00	13.55	0.0025	$0.27
Total	**$83.00**			**$3.19**

II. Reduction in Facility of Swimming Pool

DATES OF OVERCHARGES	AMOUNT OF OVERCHARGES	MONTHS HELD BY HOUSING PROVIDER	MONTHLY INTEREST RATE	INTEREST DUE
June 19, 2006-June 30, 2006	$14.80	44.92	0.0025	$1.66
July 1, 2006 - July 31, 2006	$40.00	43.92	0.0025	$4.39
August 1, 2006- August 31, 2006	$40.00	42.92	0.0025	$4.29
September 1, 2006- September 8, 2006	$10.80	41.92	0.0025	$1.13
Total	**$105.60**			**$11.48**

APPENDIX C

News Release for Immediate Release

June 24, 2005

Kick off Summer at DPR's Swimming Pools and Summer Camps

(Washington, DC) The Department of Parks and Recreation (DPR) is proud to offer summer services for children, teens, adults, families and seniors as well as specialized programs for people with disabilities.

This summer's activities begin with the official Summer Kick-Off on June 30, 2005 from 10 am to 3 pm at the Anacostia Fitness Center at Anacostia Park. This event will feature games, food, live entertainment and more. For more information about the Summer Kick-Off, call (202) 698-2250 or (202) 463-6211.

The schedule for outdoor pools* is now available. Outdoor pools began daily operations as of June 22, 2005.

DC Parks and Recreation also offers Aquatic Camps, Discovery Camps, Little Explorers Camps, Residential Camps, Senior Camps, Sports Camps, and Therapeutic Recreation Camps; all hosted at different Recreation Sites throughout the city. To register for these camps, visit Program Registration or visit one of DPR's 16 RecWare Registration Sites. Enrollment is limited, and registration is accepted on a first-come, first-served basis.

News Release for Immediate Release

May 26, 2006

Five Outdoor Pools Open This Weekend to Kickoff Beginning of Swim Season

(Washington, DC) On Saturday, May 27, the DC Department of Parks and Recreation (DPR) will open five outdoor swimming pools, signaling the beginning of the outdoor summer swimming season. Weekend and holiday hours of operation for outdoor pools are 12 pm until 6 pm. DPR's ongoing partnership with Kaiser Permanente allows for free swimming for DC residents until September 30, 2006.

The following pools will open tomorrow: Anacostia-(202) 698-2250;Georgetown-(202) 282-0381; Francis-(202) 727-3285; Kenilworth Park-(202) 727-0635; Oxon Run-(202) 645-5042

The following pools will open June 3: East Potomac Park- (202) 727-6523; Langdon Park- (202) 576-8655; Randall- (202) 727-1420; Upshur- (202) 576-8661;

The following pools will open June 10: Fort Lincoln- (202) 576-6389; Fort Stanton- (202) 645-5047; Harry Thomas- (202) 576-6349; Rosedale- (202)727-1502; Douglass- (202) 645-5045

The following pools will open June 17: Barry Farm- (202) 645-5040; Benning Park- (202) 645-5044; Fort Dupont- (202) 645-5046; Kelly Miller- (202)724-5056

All outdoor pools will be opened to the public for daily operations beginning June 19.

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, in accordance with the Commission's rule, 14 DCMR 3802. The ten (10) day limit shall begin to run when the order becomes final. 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
441 4th Street NW
Suite 1140 North
Washington, DC 20001
(202) 442-8949

Certificate of Service:
By First Class Mail (Postage Prepaid):

Joseph Bratcher
1239 Vermont Avenue NW
Unit 908
Washington, DC 20005

David Sidbury, Esq.
33 R Street NE
Suite B
Washington, DC 20002

By Inter-Agency Mail:

District of Columbia Rental Housing Commission
441 4th Street NW
Suite 1140 North
Washington, DC 20001

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

I hereby certify that on 3-18, 2010,
this document was caused to be served upon the
above-named parties at the addresses and by the means stated.

Benedetta Phrames
Clerk / Deputy Clerk