DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION

RH-TP-06-28,207

In re: 5113 Western Avenue, N.W.

Ward Three (3)

MARGUERITE CORSETTI TRUST, et al.
Housing Providers/Appellants

v.

MARIO J. SEGRETI
Tenant/Appellee

ORDER AFTER REMAND

January 12, 2015

SZEGEDY-MASZAK, CHAIRMAN. This case is before the Rental Housing Commission (Commission) on remand from a Memorandum Opinion and Judgment issued by the District of Columbia Court of Appeals (DCCA). The applicable provisions of the Rental Housing Act of 1985 (Rental Housing Act), D.C. Law 6-10, D.C. OFFICIAL CODE §§ 42-3501.01-3509.07 (2001), the District of Columbia Administrative Procedure Act (DCAPA), D.C. OFFICIAL CODE §§ 2-501- 2-510 (Supp. 2008), and the District of Columbia Municipal Regulations (DCMR), 1 DCMR §§ 2800-2899 (2004), 1 DCMR §§ 2920-2941 (2004), 14 DCMR §§ 3800-4399 (2004) govern these proceedings.

I. PROCEDURAL HISTORY

On October 14, 2004, Tenant/Appellee Mario J. Segreti (Tenant), residing at 5113 Western Avenue, N.W. (Housing Accommodation), filed Tenant Petition RH-TP-06-28,207 (Tenant Petition) with the Rental Accommodations and Conversion Division (RACD),[1] claiming that Housing

[1] The Office of Administrative Hearings (OAH) assumed jurisdiction over tenant petitions from RACD and the Department of Consumer and Regulatory Affairs (DCRA) pursuant to the OAH Establishment Act, D.C. OFFICIAL CODE

Providers/Appellants Marguerite Corsetti Trust (Corsetti Trust) and trustee Luke Deiuliis (collectively, Housing Providers) claiming various violations of the Act.[2] Tenant Petition at 1-5; Record for RH-TP-06-28,207 (R.) at 19-23.

On June 3, 2009, Administrative Law Judge (ALJ) Jennifer M. Long issued a final order, Segreti v. Marguerite Corsetti Trust, RH-TP-06-28,207 (OAH Jun. 3, 2009) (Final Order). In the Final Order, the ALJ determined as follows:

(1) the Tenant's claims were not barred by the doctrine of collateral estoppel;

(2) the Tenant met the statutory definition of a "tenant" under the Act at D.C. OFFICIAL CODE § 42-3501.03(36) (2001);[3]

(3) the Housing Providers were not entitled to a small landlord exemption, under D.C. OFFICIAL CODE § 42-3502.05(a)(3);[4]

(4) a counterclaim filed in the D.C. Superior Court requesting rent in the amount of $3,000 per month constituted an illegal rent increase because the Housing Accommodation was not properly registered;

(5) the Housing Providers substantially reduced services at the Housing Accommodation by eliminating water and electricity services for a five-day period;

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§ 2-1831.01, -1831.03(b-1)(1) (Supp. 2008). The functions and duties of RACD were transferred to the Department of Housing and Community Development (DHCD) from DCRA by the Fiscal Year Budget Support Act of 2007, D.C. Law 17-20, 54 DCR 7052 (September 18, 2007) (codified at D.C. OFFICIAL CODE § 42-3502.03a (Supp. 2008).

[2] The Commission notes that a complete procedural history of this case prior to the DCCA's remand is contained in the Commission's decision dated September 18, 2012. Marguerite Corsetti Trust v. Segreti, Rh-TP-06-28,207 (RHC Sept. 18, 2012) at 2-9.

[3] D.C. OFFICIAL CODE § 42-3502.03(36) provides as follows: "'Tenant' includes a tenant, subtenant, lessee, sublessee, or other person entitled to the possession, occupancy, or the benefits of any rental unit owned by another person."

[4] D.C. OFFICIAL CODE § 42-3502.05(a)(3)(D) provides in relevant part the following: "Sections 42-3502.05(f) through 42-3502.19, except § 42-3502.17, shall apply to each rental unit in the District except: . . . (3) Any rental unit in any housing accommodation of 4 or fewer rental units, including any aggregate of 4 rental units whether within the same structure or not[.]"

(6) the elimination of water and electricity services constituted retaliatory action under D.C. OFFICIAL CODE § 42-3505.02;[5] and

(7) the Tenant was served with a notice to vacate in violation of D.C. OFFICIAL CODE § 42-3505.01(a).[6] Final Order at 4-24; R. at 528-48.

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[5] D.C. OFFICIAL CODE § 42-3505.02 provides the following:

> (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;
>
> (2) Contacted appropriate officials of the District government, either orally in the presence of a witness or in writing, concerning existing violations of the housing regulations in the rental unit the tenant occupies or pertaining to the housing accommodation in which the rental unit is located, or reported to the officials suspected violations which, if confirmed, would render the rental unit or housing accommodation in noncompliance with the housing regulations;
>
> (3) Legally withheld all or part of the tenant's rent after having given a reasonable notice to the housing provider, either orally in the presence of a witness or in writing, of a violation of the housing regulations;
>
> (4) Organized, been a member of, or been involved in any lawful activities pertaining to a tenant organization;
>
> (5) Made an effort to secure or enforce any of the tenant's rights under the tenant's lease or contract with the housing provider; or
>
> (6) Brought legal action against the housing provider.

[6] D.C. OFFICIAL CODE § 42-3505.01(a) provides the following:

> 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

The ALJ awarded the Tenant the following damages: (1) a rent rollback to $350, the amount he had been paying prior to the illegal increase; (2) a rent refund of $2,650 (the difference between $3,000 and $350) between June 2004 and July 2007 for a total of $100,700; and (3) $200 for the elimination of water and electricity services (trebled to $600 as a result of her finding of bad faith). *Id.* at 19, 27-28; R, at 524-25, 533. The ALJ also imposed a $5,000 fine after determining that the Housing Providers' elimination of water and electricity services was a willful violation of the Act. *Id.* at 28-29; R. at 523-24.

On August 7, 2009, the Housing Providers filed a Notice of Appeal of the Final Order, and after a hearing on February 7, 2012, the Commission issued its Decision and Order (Decision and Order) affirming the ALJ's Final Order in its entirety. Decision and Order at 41. Thereafter, the Housing Providers sought review of the Commission's Decision and Order with the DCCA.

II. THE DCCA'S DECISION

On September 30, 2014, the DCCA issued an Amended Memorandum Opinion and Judgment,[7] affirming the Commission's Decision and Order in part, and reversing and remanding in part. MOJ at 3-7. The DCCA affirmed that the Tenant's claims were not barred by collateral estoppel, that the Tenant satisfied the definition of a "tenant" under the Act, and that the Housing Providers did not qualify for the small-landlord exemption. *Id.* at 3-6. The DCCA reversed the determination that the Housing Providers' counterclaim in D.C. Superior Court demanding $3,000 in

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> 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.

[7] The DCCA had issued the original Memorandum Opinion and Judgment on September 23, 2014, and indicated that the amendments made "were formatting changes and not substantive ones." Marguerite Corsetti Trust v. Segreti, Nos. 10-CV-1021, 10-CV-1039, 10-CV-529, 11-CV-1111, & 12-AA-1656, Mem. Op. & J. at 1 (D.C. Sept. 30, 2014) (MOJ). A copy of the MOJ is attached to this Order in Appendix A.

monthly rent constituted an illegal demand for rent or an illegal rent increase. *Id.* at 7. In explanation, the DCCA stated as follows, in relevant part:

> Although the [Housing Providers'] counterclaim sought $3,000 based on the fair market rental value of the property, this was not "rent" as contemplated by the [Act]—i.e., money (or other benefit or gratuity) demanded by a housing provider as a condition of continued occupancy. In the civil case, the [Housing Providers] sought to eject [the Tenant], and it only filed a counterclaim for mesne profits to compensate for its loss of use while [the Tenant] wrongfully asserted a right of possession vis-à-vis the building. Moreover, the fact that the [Housing Providers] conceded that [the Tenant] was a tenant [as defined by the Act] does not convert its earlier filed request for mesne profits in conjunction with its ejectment action into a demand for rent or a rent increase.

Id. The DCCA remanded the case for an amendment of the amount of damages due to the Tenant in light of its decision. *Id.*

III. CONCLUSION

In furtherance of the DCCA's instructions as described above, the Commission vacates the ALJ's award of a rent rollback and a rent refund of $100,700, that resulted from the erroneous determination that the Housing Providers' counterclaim requesting $3,000 per month in rent constituted an illegal rent increase under the Act, *see supra* at 2-3. *See* MOJ at 7. The Commission remands this case to OAH for an amendment of the Final Order reflecting solely a recalculation of the remaining damages: the trebled rent refund in the amount of $600 for the substantially reduced services and facilities plus interest.

SO ORDERED

PETER B. SZEGEDY-MASZAK, CHAIRMAN

MOTIONS FOR RECONSIDERATION

Pursuant to 14 DCMR § 3823 (2004), final decisions of the Commission are subject to reconsideration or modification. The Commission's rule, 14 DCMR § 3823.1 (2004), provides, "[a]ny party adversely affected by a decision of the Commission issued to dispose of the appeal may file a motion for reconsideration or modification with the Commission within ten (10) days of receipt of the decision."

JUDICIAL REVIEW

Pursuant to D.C. OFFICIAL CODE § 42-3502.19 (2001), "[a]ny person aggrieved by a decision of the Rental Housing Commission…may seek judicial review of the decision…by filing a petition for review in the District of Columbia Court of Appeals." Petitions for review of the Commission's decisions are filed in the District of Columbia Court of Appeals and are governed by Title III of the Rules of the District of Columbia Court of Appeals. The court may be contacted at the following address and telephone number:

D.C. Court of Appeals
Office of the Clerk
Historic Courthouse
430 E Street, N.W.
Washington, DC 20001
(202) 879-2700

CERTIFICATE OF SERVICE

I certify that a copy of the **DECISION AND ORDER** in CI 20,753 and CI 20,754 was served by first-class mail, postage prepaid, this **12th day of January, 2015**, to:

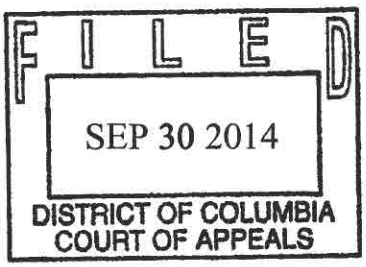
Lois R. Goodman, Esq.
5712 Nebraska Ave., NW
Washington, DC 20015-1222

Michael B. McGovern, Esq.
Hanson & Malloy
1320 19th Street, NW
Suite 300
Washington, DC 20036

LaTonya Miles
Clerk of Court
(202) 442-8949

APPENDIX A

DISTRICT OF COLUMBIA COURT OF APPEALS



No. 10-CV-1021

MARGUERITE L. CORSETTI TRUST, APPELLANT,

v.

MARIO SEGRETI, APPELLEE,

Nos. 10-CV-1039, 10-CV-529, & 11-CV-1111

ANTOINETTE WITT, SUCCESSOR TRUSTEE, ET AL., APPELLANTS,

v.

MARIO SEGRETI, APPELLEE,

No. 12-AA-1656

MARGUERITE L. CORSETTI TRUST, PETITIONER,

v.

DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION, RESPONDENT,

and

MARIO SEGRETI,

INTERVENOR.

Appeals from the Superior Court of the District of Columbia
and Petition for Review of an Order of the Rental Housing Commission
(37138-LTB-08; 4255-CA-04; RH-TP-06-28, 207)

(Hon. Brian Holeman & Hon. Judith N. Macaluso, Trial Judges)

(Argued June 4, 2014 Decided September 23, 2014)
(Amended[1] September 30, 2014)

[1] The amendments made to this memorandum opinion and judgment were formatting changes and not substantive ones.

Before FISHER and EASTERLY, *Associate Judges*, and RUIZ, *Senior Judge*.

AMENDED MEMORANDUM OPINION AND JUDGMENT

PER CURIAM: The over-arching question in these consolidated appeals is whether Mario Segreti may continue to live as a tenant in the house that belonged to his grandmother, Marguerite Corsetti. Mr. Segreti moved in with Ms. Corsetti in 1990, and at one point she executed a will in which she devised the house to Mr. Segreti. But shortly before she died in 2004, Ms. Corsetti deeded her house to a previously established eponymous revocable inter vivos trust; she then revised the trust to direct that the trust property be distributed to her children upon her death. In the ten years since Ms. Corsetti's death, the trust and Mr. Segreti have been litigating in a variety of fora. Mr. Segreti (1) initiated a civil suit in Superior Court ("the civil case") arguing that the trust was attempting to unlawfully evict him and seeking injunctive relief as a "tenant in lawful possession with a claim of title entitled to all of the rights of a tenant under applicable District of Columbia law," which prompted the trust to file counterclaims against him including a claim for mesne profits for wrongful possession, (2) initiated a case in the Probate Division of Superior Court ("the probate case") challenging Ms. Corsetti's revised will and asserting ownership of the house, and (3) filed a petition with the District of Columbia Housing Regulation Administration[2] ("the administrative case") alleging that the trust had retaliated against him for asserting his rights as a tenant by reducing services and that the trust's counter claim for mesne profits in his civil action constituted an illegal rent increase under the Rental Housing Act of 1985, D.C. Code § 42-3501.01 et seq. (2012 Repl.) ("RHA" or "the Act"). The trust initiated a fourth action ("the landlord-tenant case") when it filed a complaint for possession in the Landlord and Tenant Branch of the Superior Court.

Mr. Segreti lost in the probate case, and this court affirmed the Probate Division's final order upholding the trust's ownership of Ms. Corsetti's house in June 2009. But Mr. Segreti prevailed in his administrative case, and then in his civil case and the trust's landlord-tenant case. We now review those rulings. We affirm with one exception: we reverse the final determination by the Rental Housing Commission (RHC) in Mr. Segreti's administrative case that the trust's

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[2] Mr. Segreti's complaint was initially before the Rental Accommodations and Conversion Division of the Department of Consumer and Regulatory Affairs. The OAH assumed jurisdiction of the case in 2007, following the reorganization of agency review in the District.

counterclaim seeking mesne profits for wrongful possession constituted an improper demand for a rent increase, and on that issue we remand for proceedings consistent with this opinion.[3]

I. Administrative Appeal

Preliminarily, the trust argues that Mr. Segreti was collaterally estopped in the administrative case from asserting that he paid rent to Ms. Corsetti and was thus a tenant; the trust argues that this issue had already been litigated in the probate case[4] and the Probate Division had found that he had a "free place to live" and that he "received free room and board." Reviewing this issue de novo, *see Franco v. District of Columbia*, 3 A.3d 300, 303-04 (D.C. 2010), we are not persuaded.

Parties are collaterally estopped from relitigating an issue of law or fact in a subsequent action when "the issue was actually litigated and . . . determined by a valid, final judgment on the merits . . . under circumstances where the determination was essential to the judgment, and not merely dictum." *Modiri v. 1342 Rest. Grp., Inc.*, 904 A.2d 391, 394 (D.C. 2006) (quoting *Davis v. Davis*, 663 A.2d 499, 501 (D.C. 1995)). But the issue of Mr. Segreti's tenancy was not actually litigated or finally resolved in the probate case. The Probate Division's task was to consider whether (1) Ms. Corsetti's 2004 will and amended trust were invalid because his grandmother was incompetent or had been subject to undue influence, and (2) Mr. Segreti had a contract with his grandmother to receive the house that would have precluded her from deeding the house to the trust in 2004 and distributing it to her children. The question of whether he paid her money to live at the house was not essential to the judgment on either issue.[5] Moreover, it is

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[3] The trust confuses the arguments in its various appeals by raising duplicative challenges to the administrative proceedings in its appeals of Superior Court rulings and vice versa. We address the trust's arguments only in the proper procedural context, and only once.

[4] Because the trust engages in a collateral estoppel analysis, we understand the trust to be making a collateral estoppel claim, although it characterizes its argument as one of "claims preclusion."

[5] Although there was testimony regarding the payment of rent, it was not the subject of litigation. The testimony in the probate proceedings that Ms. Corsetti had stated that Mr. Segreti "had gotten to live [at his grandmother's house] for free" and that "she had taken care of him [for] free for 14 years" was elicited by

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distinct from the question of whether Mr. Segreti paid "rent" as it is defined under the RHA. See *infra* note 6 ("rent" under the RHA is defined to include payment in forms other than money).

Having established that the issue of tenancy had not been previously litigated, we now turn to the trust's challenge to the RHC's order affirming the conclusion of the ALJ that Mr. Segreti is a tenant protected under the RHA, that the trust failed to register as a housing provider as required by the statute, and thus that the trust could not raise Mr. Segreti's rent. We "defer to an agency's interpretation of the statute which it administers . . . so long as that interpretation is reasonable and consistent with the statutory language." *Taggart-Wilson v. District of Columbia*, 675 A.2d 28, 29 (D.C. 1996) (quoting *Lenkin Co. Management v. District of Columbia Rental Hous. Comm'n*, 642 A.2d 1282, 1285 (D.C. 1994)). And "[w]e will not disturb the agency's decision if it flows rationally from the facts which are supported by substantial evidence in the record." *Parreco v. District of Columbia Rental Hous. Comm'n*, 885 A.2d 327, 333 (D.C. 2005) (quoting *Jerome Mgmt. v. District of Columbia Rental Hous. Comm'n*, 682 A.2d 178, 181-82 (D.C. 1996)).

The trust first challenges the RHC's jurisdiction, arguing that Mr. Segreti is not a tenant as defined by the RHA. Instead, the trust argues that Mr. Segreti was a "'roomer,' a 'guest' and/or 'lodger.'" The trust's attempt to rely on obsolete common law distinctions between "tenants," "roomers," and "lodgers" is unavailing. With the passage of the RHA, the District of Columbia adopted a comprehensive statutory scheme to regulate rental housing under which "tenancy" is statutorily defined, and that definition occupies the field. Under the RHA, a tenant is any person "entitled to the possession, occupancy, or the benefits of any

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the trust, seemingly to support the argument that Ms. Corsetti had excluded Mr. Segreti from her revised will because "she thought [she had already provided Mr. Segreti with] enough." Further testimony that Mr. Segreti had "never at any time paid rent" was apparently related to the argument that Mr. Segreti lived with his grandmother as a gratuity, not as part of a contractual relationship. The issue of rent was also raised in relation to a tangential discussion on the topic of Mr. Segreti's negotiations to buy the house from the trust, during which counsel for Mr. Segreti noted that Mr. Segreti "didn't put on a rent case [in probate court]" and that "[c]ertainly, [Mr. Segreti] says he did pay rent . . . but that wasn't part of our case."

rental unit owned by another person."[6] D.C. Code § 42-3501.03 (36). The RHC's determination that Mr. Segreti is a tenant under the RHA was supported by substantial evidence in the record, including the OAH ALJ's findings after a nine-day evidentiary hearing that Mr. Segreti had occupied the house since 1990, had lived continuously in a bedroom on the third floor, and had paid rent[7] throughout the relevant period as a condition of his occupancy.[8]

The trust also argues that the RHC and the ALJ erred in determining that Mr. Segreti was a tenant under the statute without first defining the relevant "rental unit." But there is no reasonable question that Mr. Segreti lived in a rental unit,[9]

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[6] The statute narrowly carves out from its jurisdiction housing providers operating hotels, inns, or other structures "used primarily for transient occupancy." D.C. Code § 42-3501.03 (14). These are only exempt from the RHA if they have obtained a "valid certificate of occupancy" or "if the landlord of the rental unit is subject to and pays the sales tax" imposed on units for transient occupancy. *Id.*

[7] Rent is statutorily defined as "the entire amount of money, money's worth, benefit, bonus, or gratuity demanded, received, or charged by a housing provider as a condition of occupancy or use of a rental unit, its related services, and its related facilities." D.C. Code § 42-3501.03 (28). The OAH ALJ credited the testimony of Mr. Segreti's witnesses that he both paid his grandmother money and rendered services to her in return for being able to live in her house.

[8] The trust argues that much of the evidence at this hearing was admitted in violation of D.C. Code § 14-302 (a) (2012 Repl.), otherwise known as the "Dead Man's Statute," which provides that "a judgment or decree may not be rendered in favor of the plaintiff founded on the uncorroborated testimony of the plaintiff . . . as to any transaction with, or action, declaration or admission of, the deceased . . . person." But the trust fails to identify a single specific offending statement. It is not this court's obligation to root through the record to determine which statements the trust might be challenging in its brief on appeal. *See Comford v. United States*, 947 A.2d 1181, 1188 (D.C. 2008) ("[I]ssues adverted to in a perfunctory manner, unaccompanied by some effort at developed argumentation, are deemed waived. It is not enough merely to mention a possible argument in the most skeletal way, leaving the court to do counsel's work." (quoting *United States v. Zannino*, 895 F.2d 1, 17 (1st Cir.1990))).

[9] A rental unit is defined under the RHA as "any part of a housing accommodation . . . which is rented or offered for rent for residential occupancy and includes any apartment, efficiency apartment, room, single-family house and

(continued...)

and there is no requirement in the statute or case law that the boundaries of the "rental unit" be precisely defined in order to determine tenancy. We therefore find no deficiency in the holding by the RHC that Mr. Segreti is a tenant under the Act.

The trust additionally challenges the RHC's determination that the trust, as Mr. Segreti's housing provider under the RHA, was not eligible for the "small landlord exemption" from the requirement that all housing providers "file a registration statement with the Rent Administrator." D.C. Code §§ 42-3502.05 (f); -3502.08. Although the small landlord exemption generally only applies to "natural persons," *see* D.C. Code § 42-3502.05 (a), this exemption also extends to "a housing accommodation owned or controlled by a decedent's estate or testamentary trust if the housing accommodation was, at the time of the decedent's death, already exempt." D.C. Code § 42-3502.05 (a)(3)(D). We affirm the agency's determination as both "consistent with the statutory language," and reasonable. *Mullin v. District of Columbia Rental Hous. Comm'n*, 844 A.2d 1138, 1141 (D.C. 2004) (quoting *Franklin v. District of Columbia Dep't of Employment Servs.*, 709 A.2d 1175, 1176 (D.C.1998)). Under the plain language of the statute, the trust does not qualify for the small landlord exemption because it is not testamentary. Although the trust argues that Ms. Corsetti's inter vivos trust functions like a testamentary trust, these two types of trusts are distinct,[10] and we do not construe them as interchangeable simply because the terms of the inter vivos trust may, as in this case, require that the trust property be distributed after the grantor's death.[11]

(...continued)
the land appurtenant thereto, suite of rooms, or duplex." D.C. Code § 42-3501.03 (33).

[10] *See* Restatement (Third) of Trusts 2 5 Intro. Note TD No. 1 (1996) ("[A] trust is an inter vivos trust, and not a testamentary trust—that is, not one created by will—even if the promised payment or other transfer occurs after the settlor's death."); Restatement (Third) of Trusts § 25(1) (2003) (nor is an inter vivos trust "rendered testamentary merely because the settlor retains . . . powers to revoke and modify the trust"); *see also District of Columbia v. Chase Manhattan Bank*, 689 A.2d 539, 547 n.11 (D.C. 1997) (distinguishing between inter vivos and testamentary trusts).

[11] Although the plain language is dispositive, we further note that it is not unreasonable for the RHC to hew to the plain language and to decline to extend the small landlord exemption beyond testamentary trusts to inter vivos trusts in light of the remedial purpose of the RHA. *Goodman v. District of Columbia Rental Hous.*
(continued...)

However, we agree with the trust that the RHC's determination that the trust made a demand for a rent increase when it filed a counterclaim for wrongful possession in Mr. Segreti's civil action and requested mesne profits was unreasonable and contrary to law.[12] This court has held that "rent" is a "term of art" under the RHA which is defined as "the entire amount of money . . . demanded, received, or charged by a housing provider" as a condition of continued occupancy. *Kapusta v. District of Columbia Rental Hous. Comm'n*, 704 A.2d 286, 287 (D.C. 1997) (quoting D.C. Code § 42-3501.03 (28)). Although the trust's counterclaim sought $3,000 based on the fair market rental value of the property, this was not "rent" as contemplated by the RHA—i.e., money (or other benefit or gratuity) demanded by a housing provider as a condition of continued occupancy. In the civil case, the trust sought to eject Mr. Segreti, and it only filed a counterclaim for mesne profits to compensate for its loss of use while Mr. Segreti wrongfully asserted a right of possession vis-à-vis the building. Moreover, the fact that the trust ultimately dismissed its ejectment action (see *infra* at 10-11) and conceded that Mr. Segreti was a tenant does not convert its earlier filed request for mesne profits in conjunction with its ejectment action into a demand for rent or a rent increase. Accordingly, we reverse the determination of the RHC and remand for the limited purpose of amending the RHC's final order to reflect what amount, if any, is owed by the trust to Mr. Segreti.[13]

(...continued)
Comm'n, 573 A.2d 1293, 1297 (D.C. 1990) (the RHA "should be construed in a manner which would discourage its circumvention," and accordingly "statutory exemptions [to the registration requirement under the RHA] are to be narrowly construed").

[12] Mesne profits represent "damages suffered by a landowner who has succeeded in a common-law action of ejectment whereby the plaintiff may recover for . . . the use of the land during the wrongful occupation." Black's Law Dictionary 39 (10th ed. 2014). In the District of Columbia, a plaintiff seeking ejectment may "embody in his complaint, in a separate count, a claim for the . . . mesne profits received by the defendant from the property sued for . . . ." D.C. Code § 16-1109 (a).

[13] We decline to address the trust's cursory argument that this court should reverse the RHC based on "lack of due process and speedy determination" in the administrative proceedings. While we acknowledge that there were significant delays in the administrative appeals, this argument was not raised in the administrative proceedings and we decline to entertain it in the first instance on (continued...)

II. Landlord-Tenant and Civil Appeals

We begin with the trust's argument that the Superior Court in the landlord-tenant and civil cases erred in deferring to the OAH ALJ's determination regarding Mr. Segreti's status as a tenant under the doctrine of primary jurisdiction.[14] This is effectively an argument that the trust should have been permitted to relitigate this issue in Superior Court. It fails because the trust, relying on an oral ruling by the ALJ in the administrative case that Mr. Segreti was a tenant under the RHA, then endorsed that position in the Superior Court. The trust first conceded that Mr. Segreti was a tenant in the civil case;[15] it then filed a case in the landlord-tenant

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(...continued)
appeal. *See, e.g., Pajic v. Foote Properties, LLC*, 72 A.3d 140, 145-46 (D.C. 2013).

[14] Primary jurisdiction is applied "where a claim is originally cognizable in the courts" yet "enforcement of the claim requires the resolution of issues which, under a regulatory scheme, have been placed within the special competence of an administrative body; in such a case the judicial process is suspended pending referral of such issues to the administrative body for its views." *Drayton v. Poretsky Mgmt., Inc.*, 462 A.2d 1115, 1118 (D.C. 1983) (quoting *United States v. W. Pac. R. Co.*, 352 U.S. 59, 63-64 (1956)). The Superior Court in the landlord-tenant case never stayed the proceedings for an administrative ruling on Mr. Segreti's status as a tenant; it had no need, as the OAH ALJ had already ruled by the time the issue of Mr. Segreti's tenancy was being litigated in landlord tenant court. Instead, as the trust notes, the court dismissed the trust's complaint for possession in reliance on the OAH ALJ's ruling. Thus the trust's argument reduces to an objection to the court's reliance on the OAH ALJ's non-final order, instead of the final agency ruling by the RHC. But as discussed above, the RHC affirmed the OAH ALJ, and we now affirm the RHC. Thus we discern no prejudice to the trust from the court's premature reliance on the OAH ALJ's decision. In any event the trust's argument that the Superior Court should not have looked to the ALJ in the administrative case to resolve this issue fails for the reasons set forth above.

[15] The trust conceded at a hearing in the civil case in August 2007 that it was "not going to appeal the [ALJ's] finding that [Mr. Segreti is] a tenant" and that it was "ready, willing, and able to treat him as a tenant and respect all of his rights, just as [the trust], as the owner, now will like to assert our rights."

court to enforce its eviction action under the RHA against Mr. Segreti as a tenant.[16] "The doctrine of judicial estoppel precludes a party from switching legal positions in this manner according to the vicissitudes of self-interest." *Fairman v. District of Columbia*, 934 A.2d 438, 445 (D.C. 2004) (internal quotation marks omitted). On this basis we reject the trust's primary jurisdiction arguments.

In the civil case the trust cursorily argues that the trial court improperly dismissed the counterclaims for ejectment and trespass. We review for abuse of discretion, and disagree. *Schoonover v. Chavous*, 974 A.2d 876, 880-81 (D.C. 2009). The trust successfully moved to dismiss these counterclaims pursuant to Rule 41(a)(2)[17] of the Superior Court Rules of Civil Procedure at a hearing in August 2007.[18] Thereafter, the trust conceded in at least one motion before the trial court that the trial court had dismissed these claims at the trust's request.[19] In its brief, the trust cryptically argues that "there was no reason to saddle new counsel to actions not taken during the time of representation of the Trust." It is far from clear that the trust ever had "new counsel" that was not involved in the

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[16] Two years into this litigation and after dispositive motions and responses had already been filed by each party, the trust sought to amend its complaint to change its theory of the case and argue that Mr. Segreti was not a tenant. The trust now argues on appeal that this motion should have been granted. We review for abuse of discretion, *see Killingham v. Wilshire Invs. Corp.*, 739 A.2d 804, 807 (D.C. 1999), and under the circumstances, we discern none.

[17] Although the trust did not specify, this must have been a dismissal with the court's permission pursuant to Rule 41(a)(2), because Mr. Segreti had already filed an answer to the trust's amended counterclaim in November 2004 (thereby precluding dismissal under Rule 41(a)(1)(i)) and there is no stipulation of voluntary dismissal signed by both parties (as required by Rule 41(a)(1)(ii)).

[18] The trial judge orally granted the motion, when it stated at the hearing "I will dismiss the counterclaim with the exception of the [count for mesne profits]," and the docket entry from this proceeding reflects that "[a]ll counts of counter claim dismissed without prejudice except Count 2 [claim for mesne profits]."

[19] In a motion filed in the civil proceedings three months later, the trust acknowledged that it had voluntarily dismissed the claims, stating that the dismissal had been "pursuant to [the trust's] Rule 41 (a) voluntary dismissal of the [c]ounterclaim[s]" and that "[t]he [trust's] agreement to a Rule 41 (a) dismissal was done in an effort to unclog [the case]."

strategic decision to move to dismiss the trust's counterclaims. [20] But even accepting the trust's factual premise, such is the reality of litigation; the slate is not wiped clean every time a new lawyer comes into the case. It was not an abuse of discretion for the trial court not to permit the trust to litigate counterclaims it had already successfully moved to dismiss.

Once the counterclaims for ejectment and trespass were dismissed, there were no pending claims for possession of the property for which the trust could have been awarded mesne profits, as the trust concedes.[21] Thus, we affirm the trial court's dismissal of the counterclaim for mesne profits.

III. Conclusion

We affirm the decisions of the Superior Court and the RHC, with the exception of the RHC's determination that the counterclaim for mesne profits constituted a demand for a rent increase. We remand on that issue to the RHC to amend its order to reflect what amount, if any, is owed by the trust to Mr. Segreti.

So ordered.

ENTERED BY DIRECTION OF THE COURT:

JULIO A. CASTILLO
Clerk of the Court

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[20] Presumably the trust is alluding to the fact that Lois Goodman, who has represented the trust for most of the trial court proceedings and continues that representation on appeal, withdrew from the case in the latter half of 2007 (she resumed representation of the trust in late 2009), during which time the trust was represented by Stephen Fowler. But although Mr. Fowler filed his motion to be substituted as counsel approximately two weeks before the August 2007 hearing, Ms. Goodman did not file her notice to withdraw until several weeks after this proceeding.

[21] The trust acknowledges on appeal that "damages of mesne profits would not be measured at all unless and until the [t]rust had proven that Mr. Segreti was wrongfully holding the house which he had no right to occupy."

Copies to:

Honorable Brian Holeman

Honorable Judith N. Macaluso

Michael B. McGovern, Esq.
Hanson & Malloy
1320 19th Street, NW – Suite 300
Washington, DC 20036

Lois R. Goodman, Esq.
5712 Nebraska Avenue, NW
Washington, DC 20015-1222

Todd S. Kim, Esq.
Solicitor General – DC