

**DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION**

RH-TP-06-28,690

*In re:* 1833 Summit Place, NW, Unit 101

Ward One (1)

**LORNA NOTSCH**  
Tenant/Appellant

v.

**CARMEL PARTNERS, LLC**  
Housing Provider/Appellee

**DECISION AND ORDER**

May 16, 2014

**SZEGEDY-MASZAK, CHAIRMAN.** This case is on appeal to the Rental Housing Commission (“Commission”) from a decision and order issued by the Office of Administrative Hearings (“OAH”) based on a petition filed in the Rental Accommodations and Conversion Division (“RACD”), Housing Regulation Administration (“HRA”), of the District of Columbia Department of Consumer and Regulatory Affairs (“DCRA”).<sup>1</sup> The applicable provisions of the Rental Housing Act of 1985 (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 §§ 2-501-510 (2001), 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.

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<sup>1</sup> OAH assumed jurisdiction over tenant petitions from RACD pursuant to the OAH Establishment Act, D.C. OFFICIAL CODE § 2-1831.03(b-1)(1) (2005 Supp.). The functions and duties of RACD in DCRA were transferred to the Department of Housing and Community Development (DHCD) by the Fiscal Year 2008 Budget Support Act of 2007, D.C. Law 17-20, 54 DCR 7052 (codified at D.C. OFFICIAL CODE § 42-3502.03a (2008 Supp.)).

## **I. PROCEDURAL HISTORY**

On July 5, 2006, Tenant/Appellant Lorna Notsch (Tenant), a resident of 1833 Summit Place, NW, Unit 101 (Housing Accommodation) filed Tenant Petition RH-TP-06-28,690 (Tenant Petition) with DCRA, against Housing Provider/Appellee Carmel Partners, LLC (Housing Provider). Tenant Petition at 1-4; Record for RH-TP-06-28,690 (R.) at 13-16. On February 9, 2007, Administrative Law Judge (ALJ) Nicholas Cobbs entered an Order granting the Tenant's motion to amend the Tenant Petition. *See Notsch v. Carmel Partners*, RH-TP-06-28,690 (OAH Feb. 9, 2007); R. at 111. The Amended Tenant Petition raised the following claims against the Housing Provider:

1. The rent increase was larger than the amount of increase which was allowed by any applicable provision of the Rental Housing Emergency Act of 1985.
2. One Hundred Eighty (180) days have not passed since the last rent increase.
3. A proper thirty (30) day notice of rent increase was not provided before the rent increase became effective.
4. The Housing Provider failed to file the proper rent increase forms with the Rental Accommodations and Conversion Division.
5. The rent ceiling filed with the Rental Accommodations and Conversion Division for my/our unit(s) is improper.
6. A rent increase was taken while my/our unit(s) were not in substantial compliance with the D.C. Housing Regulations.
7. Services and/or facilities provided in connection with the rental of my/our unit(s) have been permanently eliminated.
8. Services and/or facilities provided in connection with the rental of my/our unit(s) have been substantially reduced.

Amended Tenant Petition at 2-5; R. at 81-84. A hearing was held in this matter on March 21, 2007, and a Final Order was issued on March 24, 2008, *Notsch v. Carmel Partners*, RH-TP-06-28,690 (OAH Mar. 24, 2008) (Final Order). *See* R. at 219-46.

The ALJ made the following findings of fact in the Final Order:<sup>2</sup>

**A. Rent and Rent Ceiling Increases**

1. Tenant, Lorna Notsch, leased the rental unit, Apartment 101, at 1833 Summit Place, N.W., on June 19, 2003. The lease, effective from July 1, 2003 through June 30, 2004, set a rent of \$1,000 per month and stated that the rent ceiling was \$1,352.00. Petitioner's Exhibit ("PX") 101.
2. The rent ceiling stated in the lease was based on an Amended Registration filed with the Rent Administrator on March 31, 2003, implementing a rent ceiling increase of \$726 from \$626 to \$1,352. PX 131. The effective date of the rent ceiling adjustment was March 1, 2003. *Id.* The rent ceiling increase derived from a vacancy increase under Section 213 of the Rental Housing Act, D.C. Official Code § 42-3502.13(a)(2) (2001). The comparable unit used for the vacancy increase was No. 103 at 1821 Summit Place, N.W. *Id.* This unit was in a different building, but purportedly had the same dimensions and layout as Tenant's apartment. PX 140.
3. On August 28, 2003, Housing Provider filed a Certificate of Election of Adjustment of General Applicability with the Rent Administrator that misstated the rent applicable to Tenant's unit. The Certificate listed Tenant's previous and present rent as \$596. PXs 130, 139. This was the rent that Housing Provider had charged to the prior tenant in the apartment. PX 128. The Certificate documented an increase of \$26 in Tenant's rent ceiling from \$1,352 to \$1,378, implementing the annual adjustment of general applicability.
4. Housing Provider corrected the mistake concerning Tenant's rent in a Certificate of Election of Adjustment of General Applicability filed with the Rent Administrator on August 31, 2004, which stated the prior and present rent for the apartment to be \$1,000. The August 2004 Certificate implemented an increase in Tenant's rent ceiling of \$37, from \$1,378 to \$1,415. PX 148.
5. On October 28, 2004, Housing Provider served a Notice of Increase in Rent Charged on Tenant, announcing an increase in Tenant's rent from \$1,000 to \$1,029 per month, effective December 1, 2004. The Notice implemented a portion of the \$37 rent ceiling increase documented in the August 31, 2004, filing and attributable to the 2004 annual adjustment of general applicability. PX 112.

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<sup>2</sup> The findings of fact are recited here using the language of the ALJ in the Final Order, except that the Commission has numbered the ALJ's paragraphs for ease of reference.

6. In July, 2005, Housing Provider again increased Tenant's rent ceiling. On July 27, 2005, Housing Provider served Tenant with a Notice of Increase in Rent Ceiling, increasing the rent ceiling by \$36 based on the 2.7% annual adjustment of general applicability for 2005. PX 113. On July 28, 2005, Housing Provider filed a Certificate of Election of Adjustment of General Applicability with the Rent Administrator documenting the rent ceiling increase, effective August 1, 2005.
7. On September 30, 2005, and again on October 27, 2005, Housing Provider filed Amended Registrations with the Rent Administrator to document an increase of \$162 in Tenant's rent ceiling from \$1,451 to \$1,613. PXs 137, 138. The rent ceiling increase was attributed to a vacancy increase under Section 213(a)(2) of the Act, D.C. Official Code § 42-3502.13(a)(2). Tenant occupied the unit throughout 2005. Housing Provider did not offer any explanation for taking a vacancy rent ceiling increase at a time when the unit was occupied.
8. On December 27, 2005, Housing Provider implemented a \$50 rent increase, effective February 1, 2006 (the "February 2006 Rent Increase"), using a portion of the March 2003 rent ceiling increase of \$726. PX 114. The Notice of Increase in Rent Charged served on Tenant stated that Tenant's rent ceiling on the date of the rent increase was \$1,451. The Rent Administrator's record of filings, PX 120, reflect[s] that an affidavit of service was filed with the Rent Administrator on January 30, 2006, although the affidavit itself was not offered into evidence. PX 120. The Rent Administrator's record contains no entry of an amended registration by Housing Provider to record the rent increase. PX 120. Accordingly, I find that Housing Provider did not file an amended registration to document the February 2006 Rent Increase.
9. On June 6, 2006, Housing Provider implemented a \$272 rent increase, effective August 1, 2006 (the "August 2006 Rent Increase"), using a further portion of the March 2003 rent ceiling increase of \$726. The Notice of Increase in Rent Charged served on Tenant stated that Tenant's rent ceiling on the date of the rent increase was \$1,508. The Rent Administrator's record of filings, PX 120, reflects that an affidavit of service was filed with the Rent Administrator on June 29, 2006, although the affidavit itself was not offered into evidence. The Rent Administrator's record contains no entry of an amended registration by Housing Provider to record the rent increase. PX 120. Accordingly, I find that Housing Provider did not file an amended registration to document the August 2006 [R]ent [I]ncrease.

