

**DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION**

RH-TP-06-28,830; RH-TP-06-28,835

In re: 2714 Quarry Road, N.W., Unit B-1

Ward One (1)

**CARMEL PARTNERS, INC. d/b/a QUARRY II, LLC**  
Housing Provider/Appellant/Cross-Appellee

v.

**MICHAEL JOSEPH LEVY**  
Tenant/Appellee/Cross-Appellant

**DECISION AND ORDER FOLLOWING REMAND**

May 16, 2014

**SZEGEDY-MASZAK, CHAIRMAN.** This case is on appeal to the Rental Housing Commission (Commission) from a final order issued by the Office of Administrative Hearings (OAH) based on a petition filed in the District of Columbia (D.C.) Department of Consumer & Regulatory Affairs (DCRA), Housing Regulation Administration (HRA), Rental Accommodations and Conversions Division (RACD).<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- 2-510 (2001 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.

---

<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) (2001 Supp. 2005). The functions and duties of the RACD were transferred to the Department of Housing and Community Development (DHCD) 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 (2001 Supp. 2008)).

## I. PROCEDURAL HISTORY<sup>2</sup>

On November 6, 2006, Tenant/Appellee/Cross-Appellant Michael Joseph Levy (Tenant), residing at Unit B-1 of 2714 Quarry Road, N.W. (Housing Accommodation), filed tenant petition RH-TP-06-28,830 with the Rent Administrator, claiming that the Housing Provider/Appellant/Cross-Appellee, Carmel Partners, Inc. d/b/a Quarry II, LLC (Housing Provider), violated the Act as follows:

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. The Housing Provider failed to file the proper rent increase forms with the Rental Accommodations and Conversion Division.
3. The rent being charged exceeds the legally calculated rent ceiling for my/our unit(s).
4. The rent ceiling filed with the Rental Accommodations and Conversion Division for my/our unit(s) is improper.
5. A rent increase was taken while my/our unit(s) were not in substantial compliance with the D.C. Housing Regulations;
6. The Housing Provider, manager or other agent of the Housing Provider of my/our rental unit(s) has violated the provisions of Section \_\_\_\_<sup>3</sup> of the Rental Housing Emergency Act of 1985.

See RH-TP-06-28,830 at 1-5; Record for RH-TP-06-28,830 at 26-30. Subsequently, on November 13, 2006, the Tenant filed a second tenant petition, RH-TP-06-28,835, against the Housing Provider, claiming the same six (6) aforementioned violations of the Act. See RH-TP-

---

<sup>2</sup> A detailed factual background prior to this cross appeal is set forth in the Commission's Decision and Order in Levy v. Carmel Partners, Inc., RH-TP-06-28,830; RH-TP-06-28,835 (RHC Mar. 19, 2012), and the Commission's Order on Reconsideration in Carmel Partners, Inc. v. Levy, RH-TP-06-28,830; RH-TP-06-28,835 (RHC Apr. 18, 2012) (Order on Reconsideration). The Commission sets forth in this decision only the facts relevant to the issues that arise from the Housing Provider's appeal filed on August 23, 2012, and the Tenant's cross-appeal filed on August 28, 2012.

<sup>3</sup> The Commission notes that the Tenant did not indicate a specific section of the Act in claim six (6) of his Tenant Petition. See Tenant Petition RH-TP-06-28,830 at 5; R. at 26.

06-28,835 at 1-5; Record for RH-TP-06-28,835 at 26-30. On April 26, 2007, Administrative Law Judge (ALJ) Arabella Teal entered an order consolidating RH-TP-06-28,830 and RH-TP-06-28,835 (hereinafter, collectively, “Tenant Petition”). See Levy v. Carmel Partners, Inc., RH-TP-06-28,830; RH-TP-06-28,835 (OAH Apr. 26, 2007); Record for RH-TP-06-28,830; RH-TP-06-835 (R.) at 97.

The ALJ held evidentiary hearings on these matters on June 12, 2007, and July 13, 2007; on December 12, 2008, the ALJ issued a Final Order, Michael Joseph Levy v. Carmel Partners, Inc. d/b/a Quarry II, LLC, RH TP 06-28,830; RH-TP-06-28,835 (OAH Dec. 12, 2008)), dismissing all of the Tenant’s claims. See Levy, RH TP 06-28,830; RH-TP-06-28,835; R. at 359-368.

On December 23, 2008, the Tenant filed a *pro se* notice of appeal with the Commission, and the Commission held a hearing on May 7, 2009. On March 19, 2012, the Commission issued a Decision and Order, Levy v. Carmel Partners, Inc., RH-TP-06-28,830; RH-TP-06-28,835 (RHC Mar. 19, 2012) (Decision and Order). The Commission addressed only one of the Tenant’s issues on appeal: “[w]hether the Housing Provider complied with tenant notice requirements applicable to exemptions from the Act.” See Decision and Order at 7. See also D.C. OFFICIAL CODE § 42-3502.05(d) & (h) (2001); 14 DCMR § 4101.6 (2004).<sup>4</sup>

---

<sup>4</sup> D.C. OFFICIAL CODE § 42-3502.05(d) & (h) (2001) state the following:

...  
(d) Prior to the execution of a lease or other rental agreement after July 17,1985, a prospective tenant of any unit exempted under subsection (a) of this section shall receive a notice in writing advising the prospective tenant that rent increases for the accommodation are not regulated by the rent stabilization program.

...  
(h) Each registration statement filed under this section shall be available for public inspection at the [Rental Housing] Division, and each housing provider shall keep a duplicate of the registration statement posted in a public place on the premises of the housing accommodation to which the registration statement applies. Each housing provider may, instead of posting in each housing accommodation comprised of a single rental unit, mail to each tenant of the housing accommodation a duplicate of the registration statement.

Based upon the substantial evidence in the record the Commission determined that the Housing Provider gave the notice required by 14 DCMR § 4101.6 more than sixteen (16) months after its filing of the Registration/Claim of Exemption Form with RACD on April 12, 2005. *See* Decision and Order at 9-11. Relying on over twenty (20) years of substantial Commission precedent, the Commission determined that a housing provider's failure to provide a tenant timely written notice of the exempt status of a housing accommodation (or otherwise timely notify the tenant by posting notice) renders the exemption void *ab initio* because it violates the provisions of the Act, D.C. OFFICIAL CODE § 42-3502.05(d) and 14 DCMR § 4101.6, which require timely written notice to tenants that their units are exempt from the Act. *See id.* (citing Daly v. Tippett, TP 27,718 (RHC June 1, 2007); Kornblum v. Zegeye, TP 24,338 (RHC Aug. 19, 1999); Stets v. Featherstone, TP 24,480 (RHC Aug. 11, 1999); Young v. Rybeck, TP 21,984 (RHC Jan. 28, 1992)).

The Commission determined that the Housing Accommodation is not exempt from the Act under D.C. OFFICIAL CODE §§ 42-3502.05(a)-(h) and 14 DCMR § 4101.6. *See* Decision and Order at 9. The Commission reversed the ALJ's holding that the Housing Accommodation is exempt from the Act, and remanded the case to OAH for further proceedings. *See id.* at 11-12.

On March 30, 2012, the Housing Provider filed a Motion for Reconsideration contending that the Commission erred in its interpretation of the Act's provisions and regulations by concluding that the Housing Accommodation is not exempt from the Act, because, in sum: "the

---

14 DCMR § 4101.6 states the following:

Each housing provider who files a Registration/Claim of Exemption form under the Act shall, prior to or simultaneously with the filing, post a true copy of the Registration/Claim of Exemption form in a conspicuous place at the rental unit, or housing accommodation to which it applies, or shall mail a true copy to each tenant of the rental unit or housing accommodation.

