

DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION

RH-TP-07-28,907

In re: 3003 Van Ness Street, NW, Unit S1006

Ward Three (3)

DAVID G. WILSON
Tenant/Appellant

v.

**SMITH PROPERTY HOLDINGS VAN NESS and ARCHSTONE-SMITH
COMMUNITIES, LLC**
Housing Providers/Appellees

DECISION AND ORDER

March 10, 2015

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 Housing Regulation Administration (HRA) of the District of Columbia Department of Department of Consumer and Regulatory Affairs (DCRA).¹ 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.

I. PROCEDURAL HISTORY

¹ OAH assumed jurisdiction over tenant petitions from the DCRA, Rental Accommodations and Conversion Division (RACD) pursuant to the Office of Administrative Hearings Establishment Act, D.C. Law 14-76, D.C. OFFICIAL CODE § 2-1831.03(b-1)(1) (2007 Repl.). The functions and duties of RACD in DCRA were transferred to Department of Housing and Community Development (DHCD) by § 2003 the Fiscal Year 2008 Budget Support Act of 2007, D.C. Law 17-20, D.C. OFFICIAL CODE § 42-3502.04b (2010 Repl.).

On March 6, 2007, Tenant/Appellant David Wilson (Tenant), resident of 3003 Van Ness Street, unit S1006 (Housing Accommodation) filed Tenant Petition RH-TP-07-28,907 (Tenant Petition) with HRA, against Archstone-Smith Communities, LLC and Smith Property Holdings Van Ness (collectively, Housing Provider). *See* Tenant Petition; Record for RH-TP-07-28,907 (R.) at 1-22. The 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. A proper thirty (30) day notice of rent increase was not provided before the rent increase became effective.
3. Services and/or facilities provided in connection with the rental of my/our unit(s) have been permanently eliminated.
4. Retaliatory action has been directed against me/us by my/our Housing Provider, manager or other agent for exercising our rights in violation of section 502 of the Rental Housing Emergency Act of 1985.

Tenant Petition at 3-5; R. at 18-20.

On September 5, 2007, the Tenant filed a Motion for Voluntary Dismissal of Claim and Issue regarding his third claim, for a reduction in services and/or facilities related to telephone charges. Motion for Voluntary Dismissal of Claim at 1-2; R. at 156-57.²

By agreement of the parties, no evidentiary hearing was held in this matter, and Administrative Law Judge Margaret Mangan (ALJ) issued a Final Order, based solely on the

² The Tenant filed a Notice of Re-Statement of Relief Sought in Petition on September 14, 2007, clarifying that the issue regarding telephone charges had been resolved, and that the remaining issues were (1) whether the lease options letter constituted an unlawful demand for increased rent, (2) whether the Housing Provider received a benefit from the Tenant entering into a twelve-month term lease, and (3) whether the Housing Provider retaliated against the Tenant. Notice of Re-Statement of Relief Sought in Petition at 1-2; R. at 160-59. At the Status Conference on October 12, 2010, the parties stated that telephone charge issue was resolved. Hearing CD (OAH Oct. 12, 2010) at 9:38-9:39. The Commission notes that neither party has appealed this issue.

written record,³ on January 7, 2011: Wilson v. Archstone-Smith Communities, LLC, RH-TP-07-28,907 (OAH Jan. 7, 2011) (Final Order); R. at 193-99.

The ALJ made the following findings of fact in the Final Order:⁴

1. On August 4, 2004, Housing Provider sent a letter to Tenant that stated:

With our flexible lease options and competitive pricing, you can turn your current month-to-month lease into a term lease that best suits your needs Take a look at the options below, then call or stop by the management office to discuss your renewal, or just circle your lease and pricing option, sign your name and drop it off at our front desk.

2. The letter then gave Tenant twelve pricing options based on the number of months Tenant wished to lease with inversely proportional pricing – the longer the term of the lease, the lower the monthly rent. When Tenant received the letter, Tenant was leasing his unit on a month-to-month basis. According to the letter, if Tenant chose to continue to lease the unit month-to-month, his rent would increase from \$1,303 to \$1,755 per month. The letter also stated “If we don’t hear from you by 8/24/2004 your lease will convert to month-to-month status effective the first day of the month following expiration. The monthly rate indicated in the month-to-month option will apply. The official letter you receive from the Department of Consumer and Regulatory Affairs will reflect that month-to-month rate.” (Emphasis in Original). Tenant chose the twelve month lease option, which did not increase his rent.

Final Order at 1-2; R. at 198-99 (emphasis in original). The ALJ made the following conclusions of law in the Final Order:⁵

1. The lease options letter must be examined in the context of the law at the time. In 2004, D[.]C[.] OFFICIAL CODE § 42-3502.08(h) stated:

³ At the OAH Status Conference on October 12, 2010, the parties orally agreed that the ALJ could decide the remaining issues in this case without an evidentiary hearing. Hearing CD (OAH Oct. 12, 2010) at 9:37-9:51. The ALJ reiterated this agreement in the Final Order, stating “[b]y agreement of the Parties, I make the decision on the written record without testimony.” Final Order at 1; R. at 199.

⁴ The findings of fact are recited here using the language of the ALJ in the Final Order, except they have been numbered for ease of reference.

⁵ The ALJ’s conclusions of law were contained in a section of the Final Order titled “Discussion,” and 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.

