

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.

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

DECISION AND ORDER

September 25, 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.

¹ OAH assumed jurisdiction over tenant petitions from the Rental Accommodations and Conversion Division (RACD) on October 1, 2006, pursuant to § 6(b-1)(1) of the OAH Establishment Act, D.C. Law 16-83, D.C. OFFICIAL CODE § 2-1831.03(b-1)(1) (2012 Repl.). The functions and duties of RACD were transferred to DHCD by § 2003 of the Fiscal Year 2008 Budget Support Act of 2007, D.C. Law 17-20, D.C. OFFICIAL CODE § 42-3502.04b (2012 Repl.).

I. PROCEDURAL HISTORY²

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 RAD, 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.

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 written record, 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 dismissed the Tenant Petition in its entirety, concluding as follows:

The August 4, 2004, lease options letter sent to Tenant by Housing Provider was not a demand for rent; it was a proposal of alternative lease arrangements allowed under the Rental Housing Act at the time. Tenant chose an option that did not raise his rent, in return for a 12-month lease. Housing Providers can choose not to

² The Commission notes that a complete procedural history of this case prior to the Tenant's June 29, 2015 Notice of Appeal is set forth in the Commission's Decision and Order entered in this case on March 10, 2015: Wilson v. Smith Prop. Holdings Van Ness, RH-TP-07-28,907 (RHC Mar. 10, 2015). The Commission, in its discretion, sets forth herein only those facts relevant to the instant decision and order.

raise rent under the Rental Housing Act, and can do so in return for a lease to which they might not otherwise be entitled.

Id. at 6; R. at 194.

On January 20, 2011 the Tenant filed a timely notice of appeal of the Final Order with the Commission (First Notice of Appeal). *See* First Notice of Appeal at 1. On March 10, 2015, the Commission issued its initial Decision and Order, Wilson v. Smith Property Holdings Van Ness, RH-TP-07-28,907 (RHC Mar. 10, 2015) (Initial Decision and Order). The Commission affirmed the ALJ in part, determining that there was no legal merit under the Act to the Tenant's claim that the selection of a twelve-month lease term with no corresponding rent increase, constituted a rent increase under the Act, and therefore the Housing Provider was not required to comply with the notice and filing requirements under the Act for taking a rent increase. *Id.* at 10-17.

However, the Commission's review of the Final Order revealed that the ALJ failed to make factual findings and provide conclusions of law with respect to the legal requirements of the Tenant's claim of retaliation under the Act. *Id.* at 17-22. The Commission remanded to the ALJ to provide findings of fact and conclusions of law on the Tenant's claim of retaliation. *Id.* at 21-22.

On June 18, 2015, the ALJ issued a Final Order After Remand: Wilson v. Archstone-Smith Properties, 2007-DHCD-TP 28,907 (OAH June 18, 2015) (Final Order After Remand).

The ALJ made the following findings of fact in the Final Order After Remand:³

1. On August 4, 2004, Housing Provider sent a letter [(Lease Option 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

³ The findings of fact are recited here using the language of the ALJ in the Final Order After Remand.

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.
3. 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.
4. 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).
5. Tenant chose the twelve month lease option, which did not increase his rent.

Final Order After Remand at 2-3; R. at 275-76. The Final Order After Remand contained the following conclusions of law:⁴

1. The Rental Housing Commission remanded this case for a decision on the question of retaliation. The Commission identified the issues as: (1) whether Housing Provider engaged in prohibited conduct under the Act. D.C. Official Code § 42-3505.02(a); (2) whether Tenant raised a presumption of retaliation by engaging in one of the six protected acts enumerated in D.C. Official Code § 42-350[5.0]2(b); and (3) whether Housing Provider rebutted the presumption of retaliation by clear and convincing evidence as required by D.C. Official Code § 42-350[5.0]2(b). *Wilson v. Archstone-Smith Cmtys., LLC* [sic], RH-TP-07-28[,],907, at 22.
2. “‘Retaliatory action,’ is action intentionally taken against a tenant by a housing provider to injure or get back at the tenant for having exercised rights protected by § 502 [D.C. Official Code § 42-3505.02] of the Act.” 14 DCMR § 4303.1. The determination of retaliatory action requires a two-step analysis, which is outlined in the provisions of the Act. First, it must be determined whether the housing provider committed an act that is considered retaliatory under D.C. Official Code § 42-3505.02(a)⁵

⁴ The conclusions of law are recited here using the language of the ALJ in the Final Order After Remand.

⁵ The Commission omits the ALJ’s recitation of D.C. OFFICIAL CODE § 42-3505.02(a). See Final Order After Remand at 3; R. at 275. The full text of this provision of the Act is recited *infra* at 10-11.

