DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION

RH-TP-07-29,045

In re: 1344 Fort Stevens Drive, N.W., Unit 102

Ward Four (4)

ERROL S. WATKIS
Housing Provider/Appellant

v.

MARIETTA L. FARMER
Tenant/Appellee

DECISION AND ORDER

August 15, 2013

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 District of Columbia (D.C.) Department of Consumer & Regulatory Affairs (DCRA), Housing Regulation Administration (HRA).[1] The applicable provisions of the Rental Housing Act of 1985 (the 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.

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[1] The Office of Administrative Hearings (OAH) assumed jurisdiction over tenant petitions from the Rental Accommodations and Conversions Division (RACD) pursuant to the OAH Establishment Act, D.C. OFFICIAL CODE § 2-1831.01, -1831.03(b-1)(1) (2001 Supp. 2005). The functions and duties of the Rental Accommodations and Conversion Division (RACD) of DCRA 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

On August 16, 2007, Tenant/Appellee Marietta L. Farmer (Tenant), residing in Unit 102 at 1344 Fort Stevens Drive, N.W. (Housing Accommodation), filed Tenant Petition 29,045 (Tenant Petition) with the Housing Regulation Administration, claiming that the Housing Provider/Appellant Errol S. Watkis (Housing Provider) violated the Act as follows: (1) the Housing Provider improperly claimed an exemption from rent control; (2) the Housing Provider took a rent increase larger than the increase allowed by law; and (3) the Housing Provider failed to file proper rent increase forms. Tenant Petition at 3; Record (R.) at 41. As part of the Tenant Petition, the Tenant attached the following documents: (1) a lease agreement dated April 15, 2000; (2) a "Notice of Increase in Rent Charged" dated May 25, 2006; (3) a "Notice of Change in Rent Ceiling" dated May 25, 2006; (4) a letter to "Tenants of 1344 Fort Stevens Drive NW Apartments" from Errol Watkis dated June 22, 2007; (5) a letter to Marietta Farmer from Errol Watkis dated June 22, 2007; (6) a photocopy of a check for $546.00 dated July 26, 2007; (7) a "Notice of Overdue Rent" dated August 10, 2007; (8) a photocopy of a check for $546.00 dated June 28, 2007; (9) a photocopy of a check for $546 dated June 3, 2007; and (10) a "Certification of Records" dated August 14, 2007. R. at 1-35.

On November 14, 2007, Administrative Law Judge Steven M. Wellner (ALJ) issued a case management order (CMO) scheduling a hearing for December 6, 2007. CMO at 1; R. at 57. On November 28, 2007, the ALJ rescheduled the hearing for January 28, 2008. Farmer, RH-TP-07-29,045 (OAH Nov. 28, 2007); R. at 67-68. The hearing was held on January 28, 2008. R. at 82.

On March 4, 2009, the ALJ issued a final order, Marietta L. Farmer v. Errol S. Watkis, RH-TP-07-29,045 (OAH Mar. 12, 2007) (Final Order). Final Order at 1-11; R. at 72-82. The ALJ made the following Findings of Fact in the Final Order:[2]

1. Tenant has leased Apartment 102 at 1344 Fort Steven Drive, NW, (the "Housing Accommodation") from Housing Provider since 2000.

2. In May 1985, prior to the tenancy, Housing Provider filed a request for an exemption from the District of Columbia's rent control law. RXs 200 and 202. The basis for the exemption was that the building "was 80% vacant on April 30, 1985 . . . ." *See* D.C. Official Code § 42-205(a)(8) (provision repealed by vote of electorate November 5, 1985, pursuant to Initiative, Referendum, and Recall Charter Amendments Act of 1977). The Rent Administrator approved the exemption in December 1985 and assigned Housing Provider Exemption No. 500017 to the Housing Accommodation. RX 200; *see* RX 202.

3. In the spring of 2004, Housing Provider was checking his files at DCRA and was informed by a DCRA employee that his 1985 Registration/Claim of Exemption form could not be found. The employee advised Housing Provider that if he planned to increase his tenants' rents, he would need to obtain a new Registration/Claim of Exemption form. DCRA then issued Housing Provider a new [R]egistration/Claim of Exemption form with a different number (Registration No. 50004469) and no reference to the 1985 exemption.

4. Housing Provider returned to DCRA and was told that his 1985 Registration/Claim of Exemption form had been found. He asked DCRA to remove the more recent Registration/Claim of Exemption form and Registration Number from his file to prevent confusion. A DCRA employee told Housing Provider that the new form and number could not be removed. The employee said that duplicates and other file discrepancies were typically resolved only when a tenant filed a tenant petition objecting to some action by a housing provider.

5. Because of the confusion in DCRA's files, and at the suggestion of a DCRA employee, Housing Provider decided that he would temporarily adhere to rent increase procedures applicable to non-exempt housing providers. In 2004, 2005 and 2006, he sent his tenants notices of rent increases of general applicability on DCRA forms intended for use by non-exempt housing providers. *See*, for example, PX 101 (Tenant Notice of Increase of General Applicability that Housing Provider, addressed to Tenant and dated March 29,

[2] The Findings of Fact are recited here using the same language as in the Final Order. The Commission has numbered the ALJ's paragraphs for ease of reference.

2004), PX 102 (Notice of Rent Increase Charged, dated March 30, 2005, addressed to a tenant in Apartment 301) and PX 104 (Notice of Rent Increase Charged, dated May 25, 2006, addressed to a tenant in Apartment 101). The forms did not indicate that they were being used notwithstanding Housing Provider's belief that the units were exempt from rent control, and they showed the registration number (50004469) assigned to Housing [P]rovider when his exemption file was missing. *Id.* In addition to explaining that the rent increases were based on the consumer price index, the forms listed then-current rent ceilings and rents charged, and new rent ceilings and rents charged. *Id.*

6. Meanwhile, Housing Provider did not want to wait for a tenant to challenge his exemption status, so, on November 14, 2006, he emailed the director of DCRA, explained the situation and requested assistance. RX 203. On January 26, 2007, Housing Provider received a letter from DCRA's Acting Rent Administration [sic], stating that the "ambiguities surrounding EX 500017 and 1344 Fort Stevens Garden Apartments have been resolved." RX 200. The Acting Rent Administrator's letter set out his understanding of the problem and explained what DCRA had done to correct it:

> A review of the administrative file indicates that you registered your property on or about October 3, 1983. Pursuant to section 205(a)(8), of the Rental Housing Act of 1985, you were issued a Claim of Exemption, which provided that a building which was 80% vacant on April 30, 1985, and which ha[d] been approved for exemption pursuant to the Rental Housing Act of 1985 by the Rent Administrator . . . could claim exemption. The provision under which your property was granted its exemption has since been repealed. Your exemption under section 205(a)(8), however, is not affected [sic]. . . .
>
> Please accept our apology for the administrative error on the part of our staff . . . and our delay in bringing this matter to closure.

7. On June 22, 2007, having resolved the file problem with DCRA, Housing Provider mailed Tenant a letter notifying her of a rent increase effective August 1, 2007. PX 106. The letter stated that Tenant's rent would increase from $546 to $795 per month. *Id.* At the bottom of the letter, Housing Provider wrote, "DCRA/RACD Number E500017," but nowhere in the letter is the Housing Accommodation's exemption status addressed or the word "exemption" used.

Final Order at 2-4; R. at 79-81 (footnotes omitted).

The ALJ made the following Conclusions of Law in the Final Order:[3]

1. During a discussion of preliminary matters at the evidentiary hearing, Tenant asked to withdraw her claim that Housing Provider had increased her rent while her apartment was not in substantial compliance with housing regulations. I construe her request as a summary motion for voluntary dismissal of that claim, as permitted by OAH Rule 2817.1. Housing Provider did not object, and the motion is granted without prejudice, as provided in OAH Rule 2817.4.

2. Tenant's remaining three claims all relate, directly or indirectly, to the issue of whether Housing Provider properly relied on Exemption No. 500[0]17 when he advised Tenant of a rent increase effective August 1, 2007.

3. In resolving this case, I need not consider whether Housing Provider actually met the substantive exemption requirements of D.C. Official Code § 42-205(a)(8) at the time he filed his exemption application in 1985. Whether or not those requirements were met in 1985, Housing Provider has not established that he was otherwise entitled to rely on that exemption when taking a rent increase in August 2007. A prerequisite to the taking of any rent increase is that "[t]he housing accommodation [be] registered in accordance with § 42-3502.05." D.C. Official Code § 42-3502.08(a)(1)(B). According to D.C. Official Code § 42-3502.05(d), proper registration, in the case of an exempt property, includes giving notice of the exemption to the tenant before the lease is executed: "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." Specific procedures for providing notice of the exemption are provided in 14 DCMR 4101. The Rental Housing Commission has held that a purported exemption for a rental unit not properly registered is void from the start. *Butler v. Toye*, TP 27,262 (RHC Dec. 2, 2004) at 5.

4. The burden of proving an exemption from rent control is on the housing provider. *Goodman v. D.C. Rental Hous. Comm'n*, 573 A.2d 1293, 1297 (D.C. 1990). Neither party introduced evidence at the hearing, however, to show that Tenant was aware of Housing Provider's claim of exemption at the time she signed her lease in 2000, or, in fact, at any time prior to the hearing itself. The Tenant Notice of Increase of General Applicability that Housing Provider gave to Tenant on or around March 29, 2004, makes no mention of a claim or [sic] exemption and does not indicate it is anything other than notice

[3] The Conclusions of Law are recited here using the same language as in the Final Order. The Commission has numbered the ALJ's paragraphs for ease of reference.

of a rent increase being implemented for a non-exempt housing accommodation. PX 101. Neither party offered the lease into evidence.

5. Housing Provider has failed to meet his burden to show that he complied with the registration requirements of the Act. The rent increase taken August 1, 2007, is therefore unlawful. D.C. Official Code § 42-3502.08(a)(1)(B). Housing [P]rovider must refund the amount it overcharged Tenant, plus interest. D.C. Official Code § 42-3509.01(a); *Sawyer Prop. Mgmt. of Md., Inc. v. D.C. Rental Hous. Comm'n*, 877 A.2d 96, 101 (D.C. 2005). The rent refund includes all months from the date the increase was taken (August 2007) through the month in which the hearing took place (January 2008, in which rent was payable on the first day of the month (PX 106)). The refund must be made whether or not Tenant actually paid the rent Housing Provider demanded. *See* D.C. Official Code § 42-3501.03(28) (defining "rent" as money "demanded" by a housing provider); *Kapusta v. D.C. Rental Hous. Comm'n*, 704 A.2d 286, 287 (D.C. 1997) (affirming award of rent refund where rent was demanded but not paid).

6. The rules implementing the Rental Housing Act provide for the award of interest on rent refunds calculated from the date of the violation to the date of the issuance of the Final Order. 14 DCMR 3826.2. The interest rate imposed is the judgment interest rate used by the Superior Court of the District of Columbia on the date of issuance of the decision. *See* 14 DCMR 3826.3; *Joseph v. Heidary*, TP-27,136 (RHC July 29, 2003); *Marshall v. D.C. Rental Hous. Comm'n*, 533 A.2d 1271, 1278 (D.C. 1987). The Superior Court interest rate is currently 4% per annum.

7. ... Tenant's total award is $1,576.10, consisting of a rent refund of $1,494, and interest of $82.10.[4]

8. As noted above, having concluded that Housing Provider did not establish its right to rely on a claimed exemption from rent control, I need not decide whether the substantive basis for the claim of exemption (an 80 percent vacancy rate on April 30, 1985) existed. Whether it did or not, Housing Provider could not rely on the exemption without properly registering the Housing Accommodation as required by D.C. Official Code § 42-3502.05(d).

9. In addition to her allegation that the rent increase of August 1, 2007, [sic] was unlawful, Tenant claimed that Housing Provider failed to file proper forms for the increase. Because Housing Provider was not entitled to rely on Exemption No. 500017, he would have been required to file rent increase forms

[4] The Commission does not reproduce in this Decision and Order a table appearing in the Final Order showing the ALJ's computation of the rent refund and interest. *See* Final Order at 7; R. at 76.

consistent with management of a non-exempt property. The remedy for his failure to file those forms, however, would be the same as the remedy imposed for the $249 rent overcharge.

10. Tenant did not argue at the hearing that Housing Provider's violation was committed willfully or in bad faith. Given the circumstances described by Housing Provider in his undisputed testimony, I do not believe penalties for willful or bad faith conduct should be imposed. *Third Jones Corp. v. Young,* TP 20,300 (RHC Mar. 22, 1990); *Quality Mgmt., Inc. v. D.C. Rental Hous. Comm'n*, 505 A.2d 73, 76, n. 6 (D.C. 1986).

Final Order at 5-8; R. at 75-78 (footnotes omitted).

On March 13, 2009, the Housing Provider filed a Motion to Reconsider.[5] Motion for Reconsideration; R. at 84-95. On April 24, 2009, the Housing Provider filed a *pro se* Notice of Appeal with the Commission, in which he stated the following:[6]

1. The [T]enant's original complaint, testimony and all questioning at the January 28, 2008 evidentiary hearing focused on whether I, the Housing Provider, met the exemption requirements of D.C. OFFICIAL CODE § 42-205(a)(8) at the time I filed my exemption in 1985, and the Rental Accommodations Division of the DCRA's acknowledged administrative errors that lead to non-exempt rent increase notices being sent to the [T]enant in 2004, 2005, and 2006. The [T]enant never claimed that she did not have notice of the original exemption before her lease was executed. The [T]enant only questioned whether the exemption was valid and properly filed with the Rental Accommodations Division of the DCRA. At the hearing, the [A]dministrative [L]aw [J]udge's questions and the evidence I that [sic] was asked to produce focused exclusively on whether or not I met the established requirements for a properly filed claim of exemption with the Rental Accommodations Division of the DCRA. I was not asked to testify or provide evidence to demonstrate that the tenant received proper notice of the exemption prior to executing the lease. The [D]ecision and [O]rder was issued without giving me the opportunity to testify or submit evidence to document the fact that the [T]enant was properly notified of the property's exempt status prior to the execution of her lease. As the final decision and

[5] "A motion for reconsideration shall be decided by the Administrative Law Judge within thirty (30) days of its filing." 1 DCMR § 2937.4 (2004). "If an Administrative Law Judge fails to act upon a motion for reconsideration within the time limit established by section 2937.4, the motion shall be denied by operation of law." 1 DCMR § 2937.5 (2004). The record does not contain a decision on the Motion to Reconsider, and therefore, the motion was denied by operation of law in accordance with 1 DCMR §§ 2937.4 and 2937.5.

[6] The Commission recites the Housing Provider's statements as they appear in the Notice of Appeal, except that the Commission has numbered the Housing Provider's paragraphs for ease of reference.

order hinges on that specific issue, I respectfully request that you reopen the hearing record and permit me to submit the following documents into evidence: A complete copy of the [T]enant's lease which includes the rental application form signed by the [T]enant on March 19, 2000. The application clearly states that the rent for her apartment is not regulated. The last paragraph on page two (2) of the [T]enant's lease agreement, executed on April 15, 2000, states that the rental application shall be considered part of the lease agreement. The signed rental application form demonstrates that the [T]enant did have notice of the exemption before her lease was executed. The [T]enant omitted the rental application with the copy of the lease agreement that she filed with her original complaint.

2. The aforementioned evidence demonstrates that I complied with the Rental Accommodations Division's requirements to give the [T]enant notice of the exemption prior to execution of her lease. Further, at the direction of Keith Anderson, the Acting Rent Administrator, I met with his designee, Ms. Dorothy Greer [sic], to compose a letter to the tenants, dated June 22, 2007, affirming the property's rent control exemption status and referencing the DHCD Rental Accommodations Division's acknowledged errors in the processing and maintenance of the property's rent control exemption in their official files. Additionally, in the Notice of Rent Increase dated June 22, 2007, the [T]enant was also reminded that all terms of her original rent agreement continued to remain in effect. The notice included the original exemption number acknowledged by the DHCD Rental Accommodations Division. The [T]enant included copies of these letters in her original petition.

3. I also request that the order awarding a rent refund to the [T]enant be rescinded, as the evidence demonstrates that I have operated in full compliance with D[.]C[.] OFFICIAL CODE § 42-3502.05(d) and all applicable regulations. The evidence also demonstrates that before, during[,] and after the process of communicating with the [T]enant regarding the property's rent control exemption, I sought and received explicit instructions and guidance from the Rental Accommodations Division, and that having received documented acknowledgements from the Rental Accommodations Division of a properly filed claim of exemption, I have operated as an exempt property in good faith.

Notice of Appeal at 1-3.

The Commission held a hearing on August 20, 2009. On January 23, 2012, the Tenant filed with the Commission a Motion to Expedite. *See* Motion to Expedite at 1-2. On March 28, 2012, the Commission issued an Order granting the Tenant's Motion to Expedite. *See* Watkis v. Farmer, RH-TP-07-29,045 (RHC Mar. 28, 2012).

II. ISSUES ON APPEAL

1. Whether the ALJ erred by determining that the Housing Provider had failed to provide the Tenant with the required notice of the Housing Accommodation's exemption from the Act.[7]

III. DISCUSSION

1. Whether the ALJ erred by determining that the Housing Provider had failed to provide the Tenant with the required notice of the Housing Accommodation's exemption from the Act.

The Housing Provider asserts in the Notice of Appeal that the ALJ erred in finding that he had failed to provide the Tenant with the requisite notice of the exempt status of the Housing Accommodation prior to the execution of the Tenant's lease agreement. *See* Notice of Appeal at 1-2. The Housing Provider requests on appeal that the Commission "reopen the hearing record" to allow for the submission of an March 19, 2000 Rental Application Form (hereinafter "Rental Application Form"), which the Housing Provider asserts would demonstrate that he complied with the Act's requirement that the Tenant be notified regarding the exempt status of the Housing Accommodation. *See id.* Additionally, the Housing Provider contends that the ALJ failed to give him the opportunity to testify or provide evidence to demonstrate that the Tenant received notice of the claim of exemption. *See id.* at 1. The Housing Provider asserts that the questions asked by the ALJ, along with the evidence the Housing Provider was asked to provide, focused only on whether the claim of exemption was proper. *See id.*

The Act provides that a prerequisite to any valid claim of exemption from the Act is that proper notice of a housing accommodation's exempt status is given to the tenants. D.C.

[7] The Commission observes that the Notice of Appeal combined the issues on appeal, and argument in support of those issues, in a narrative fashion. Notice of Appeal at 1-3. In its discretion, the Commission interprets the narrative statement in the Notice of Appeal to raise the following allegation of error by the ALJ: whether the ALJ erred by determining that the Housing Provider had failed to provide the Tenant with the required notice of the Housing Accommodation's exemption from the Act. *See id.* The Housing Provider's language in the Notice of Appeal is recited in this Decision and Order, *supra* at 7-8.

OFFICIAL CODE § 42-3502.05(d) (2001);[8] 14 DCMR § 4106.8 (2004);[9] Levy v. Carmel Partners, Inc., RH-TP-06-28,830; RH-TP-06-28,835 (RHC Mar. 19, 2012) (reversing the ALJ's determination that the housing accommodation was exempt from the Act where the housing provider had failed to provide the tenant with proper notice under D.C. OFFICIAL CODE § 42-3502.05(d) (2001)). The Commission has consistently held that failure to give a tenant notice of the exempt status of the housing accommodation renders the exemption void *ab initio*. *See* Smith v. Christian, TP 27,661 (RHC Sept. 23, 2005) (affirming hearing examiner's determination that claim of exemption was void ab initio where the housing provider failed to notify the tenant of the exemption); Butler v. Toye, TP 27,262 (RHC Dec. 2, 2004) (affirming the ALJ's conclusion that the housing provider could not benefit from a claim of exemption where he had failed to comply with the Act's notice requirements). *See also* Daly v. Tippett, TP 27,728 (RHC June 1, 2007); Kornblum v. Zegfye, TP 24,338 (RHC Aug. 19, 1999); Stets v. Featherstone, TP 24,480 (RHC Aug. 11, 1999); Young v. Rybec, TP 21,976 (RHC Jan. 28, 1992); Chaney v. H. J. Turner Real Estate Co., TP 20,247 (RHC Mar. 24, 1989). The District of Columbia Court of Appeals (DCCA) has instructed that the burden of proof is on the housing provider to prove eligibility for an exemption from the Act, including that proper notice was given to the tenant. *See* Revithes v. D.C. Rental Hous. Comm'n, 536 A.2d 1007, 1017 (D.C. 1987); Brooks v. Jones, RH-TP-09-29,531 (RHC May 9, 2012) (citing Goodman v. D.C. Rental

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[8] D.C. OFFICIAL CODE § 42-3502.05(d) (2001) provides the following:

> 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.

[9] 14 DCMR § 4106.8 (2004) provides as follows:

> Prior to the execution of a lease or other rental agreement, a prospective tenant of any unit exempted under §205(a) of the Act shall receive from the housing provider a written notice advising the prospective tenant that the rent increases for the housing accommodation are not regulated by the rent stabilization program.

Hous. Comm'n, 573 A.2d 1293 (D.C. 1990)); The Vista Edgewood Terrace v. Rascoe, TP 24,858 (RHC Oct. 13, 2000) at 12-13; Butler, TP 27,262 at 5; Best v. Gayle, TP 23,043 (RHC Nov. 21, 1996) at 5.

The Commission's standard of review of the ALJ's decision is contained in 14 DCMR § 3807.1 (2004):

> [T]he Commission shall reverse final decisions of the Rent Administrator which the Commission finds to be based upon arbitrary action, capricious action, or an abuse of discretion, or which contain conclusions of law not in accordance with provisions of the Act, or findings of fact unsupported by substantial evidence on the record of the proceedings before the Rent Administrator.

The Commission will defer to an ALJ's decision "so long as it flows rationally from the facts and is supported by substantial evidence." *See* 1773 Lanier Place, N.W. Tenants' Ass'n v. Drell, TP 27,344 (RHC Aug. 31, 2009) at 58 (citing Majerle Mgmt., Inc. v. D.C. Rental Hous Comm'n, 866 A.2d 41, 46 (D.C. 2004)). "Substantial evidence" has been defined as such relevant evidence as a reasonable mind might accept as able to support a conclusion. Hago v. Gewirz, RH-TP-08-11,552 & RH-TP-08-12,085 (RHC Aug 4, 2011); Fort Chaplin Park Assocs. v. D.C. Rental Hous. Comm'n, 649 A.2d 1076, 1079 (D.C. 1994); Allen v. D.C. Rental Hous. Comm'n, 538 A.2d 752, 753 (D.C. 1988) (citing Consol. Edison Co. v. Nat'l Labor Relations Bd., 305 U.S. 197 (1938)). The Commission is required to give deference to the ALJ's findings, and those findings should not be disturbed if they are supported by substantial evidence. *See* Kornblum v. Charles E. Smith Realty, TP 26,155 (RHC Mar. 11, 2005) at 8. *See also* Eilers v. D.C. Bureau of Motor Vehicles Servs., 583 A.2d 677 (D.C. 1990).

In the Final Order, the ALJ concluded that, because there was no evidence introduced at the hearing to show that the Tenant was given notice of the Housing Accommodation's exempt status, the Housing Provider was not entitled to rely on a claim of exemption when he increased

the Tenant's rent. *See* Final Order at 5-6; R. at 77-78 (citing D.C. OFFICIAL CODE §§ 42-3502.05(d), -3502.08(a)(1)(B) (2001);[10] Butler, RP 27,262). The ALJ noted that the Notice of Increase of General Applicability given to the Tenant by the Housing Provider, and submitted into evidence by the Tenant at the OAH hearing, made no mention of a claim of exemption, and that neither party offered the Tenant's lease into evidence. *See* Final Order at 6; R. at 77.

Based on its review of the record, the Commission is satisfied that the ALJ's finding that the Housing Provider had not given the Tenant proper notice of the claim of exemption is supported by substantial evidence. 14 DCMR § 3807.1 (2004). *See* Fort Chaplin Park Assocs., 649 A.2d at 1079; Allen, 538 A.2d at 753; Hago, RH-TP-08-11,552 & RH-TP-08-12,085; Drell, TP 27,344. Specifically, the Commission observes that the ALJ's finding that no evidence was submitted to show that the Tenant was given notice of the claim of exemption is supported by the Commission's review of the testimony given at the OAH hearing, as well as its review of the exhibits submitted by the parties into evidence.[11] *See* Tenant's Exhibits 100-102, 104, 106; R. at 100-103, 105, 107; Housing Provider's Exhibits 200, 202, 203; R. at 108, 111-117. *See also* Hearing CD (OAH Jan. 28, 2008).

Furthermore, the Commission is satisfied that the ALJ's conclusion that the Housing Provider was not entitled to rely on the claim of exemption as a result of his failure to give the

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[10] D.C. OFFICIAL CODE § 42-3502.08(a)(1)(B) (2001) provides the following:

> Notwithstanding any provision of this chapter, the rent for any rental unit shall not be increased above the base rent unless: . . . (B) The housing accommodation is registered in accordance with § 42-3502.05.

[11] For example, the Commission observes that during the Housing Provider's testimony at the OAH hearing, the Housing Provider stated that he filed a Registration/Claim of Exemption Form with DCRA in 1985. *See* Hearing CD (OAH Jan. 28, 2008). The Housing Provider's testimony then jumps forward to 2004, skipping any mention of the events surrounding the signing of the Tenant's lease 2000, at which time the Housing Provider states that he went to DCRA to check the records in his file, and discovered that the Registration/Claim of Exemption Form was not in the DCRA records. *See id.* Furthermore, the Housing Provider testified that he provided the Tenant with 30-days' notice of rent increases; however, the Commission observes that the Housing Provider's testimony does not mention whether he gave the Tenant notice of the claim of exemption. *See id.*

Tenant proper notice in accordance with D.C. OFFICIAL CODE § 42-3502.05(d) (2001), flowed rationally from the findings of fact, and was in accordance with the Act, as described *supra* at 9-11. *See* Final Order at 5-6; R. at 77-78. *See also* D.C. OFFICIAL CODE § 42-3502.05(d) (2001); 14 DCMR § 4106.8 (2004); Levy, RH-TP-06-28, 830; RH-TP-06-28,835; Daly, TP 27,728; Smith, TP 27,661; Butler, TP 27,262; Kornblum, TP 24,338; Stets, TP 24,480; Young, TP 21,976; Chaney, TP 20,247.

The Commission notes that the Housing Provider requests on appeal that the Commission consider a "Rental Application Form." *See* Notice of Appeal at 2. The Commission observes, and the Housing Provider admits in the Notice of Appeal, that the Rental Application Form was not part of the record below. *See* Notice of Appeal at 1-2. The Commission's regulations are clear that the Commission is not permitted to receive new evidence on appeal.[12] 14 DCMR § 3807.5 (2004) ("The Commission shall not receive new evidence on appeal"). Therefore, the Commission will not consider the Rental Application Form in this Decision and Order. *See id.*

Additionally, the Commission observes that the Housing Provider contends in the Notice of Appeal that the ALJ failed to give him the opportunity to testify or provide evidence to

[12] The Commission's review is limited to the record on appeal and therefore the Commission is not permitted to make its own findings of fact based on new evidence. *See, e.g.* McCulloch v. D.C. Rental Hous. Comm'n, 584 A.2d 1244, 1249 (D.C. 1991) (the DCCA determined that while the Commission cannot make its own findings of fact, it does have the power to interpret and implement the Rental Housing Act, and thus has the authority to review and decide whether the Rent Administrator's findings are "incorrect in light of statutory meaning, insufficient in light of statutory mandate, or unsupported by substantial evidence of record"); Smith v. D.C. Rental Accommodations Commission, 411 A.2d 612, 616-17 (D.C. 1980) (stating that the Commission exceeded its authority by making findings of fact regarding whether the landlord's registration statement was in substantial compliance with the D.C. OFFICIAL CODE); Meier v. D.C. Rental Accommodations Comm'n, 372 A.2d 566, 568 (D.C. 1977) (explaining that the Commission is allowed to review an ALJ's findings to determine whether they are arbitrary or lack support in the record, but the Commission cannot make findings of its own). Even if evidence exists that could help an appellant win its case or overturn a previous ruling, the Commission cannot make its own findings of fact on the matter if the evidence was not introduced at the hearing below. *See* Chapin St. Joint Venture v. D.C. Rental Hous. Comm'n, 466 A.2d 414, 415 (D.C. 1983) (the DCCA concluded that given the landlord's burden of proof to produce sufficient evidence to support his case, the Rent Administrator and the Commission were correct in dismissing the petition when the landlord failed to produce such evidence).

demonstrate that the Tenant received notice of the claim of exemption. *See* Notice of Appeal at 1. The Commission has adopted the following procedures from the DCCA for hearing on tenant petitions, in accordance with the DCAPA:

> [A]mong the procedures required during contested case proceedings are the following: reasonable notice of the hearing must be provided; the notice must state the time, place, and issues involved; an opportunity must be provided to all parties to present evidence and argument; the agency [i.e., proponent of a rule or order] bears the burden of proof; any oral testimony or documentary evidence may be placed in the record unless irrelevant or cumulative; every party has the right to present a case or defense orally or through written testimony; all parties have the right to assistance of counsel, to present rebuttal evidence and to cross-examine witnesses; the agency is required to maintain an official record; transcripts are available on a timely request; decisions must be based on the record and in writing; and the decision must include findings of fact and conclusions of law. D.C. Code § 1-1509.

Borger Mgmt., Inc. v. Lee, RH-TP-06-28,854 (RHC Mar. 6, 2009) (quoting Richard Milburn Pub. Charter Alt. High Sch. v. Cafritz, 798 A.2d 531, 539 & n.6 (D.C. 2002)). In applying these standards to this case, the Commission is satisfied, based on its review of the record, that the proceedings met the due process standards required in contested case hearings under the DCAPA, as described in the Commission's decision in Lee, RH-TP-06-28,854.[13] *See* Final Order at 1-9; R. at 74-82. Moreover, the Commission observes that the Housing Provider's Notice of Appeal does not specifically indicate how the OAH hearing failed to provide him with

[13] For example, the record reflects that the ALJ provided written notice of the OAH hearing to both the Tenant and the Housing Provider, and that both parties were afforded the opportunity to present evidence and argument at the hearing regarding the claims in the tenant petition. *See* CMO at 1-7; R. at 51-57. *See also* Hearing CD (OAH Jan. 28, 2008). The Commission also notes that the record reflects that both parties testified under oath at the hearing, and each party was given the opportunity to cross-examine the other party after their respective testimony. *See* Hearing CD (OAH Jan. 28, 2008). Furthermore, the parties were given the opportunity to place relevant oral and documentary evidence in the record. *See* Tenant's Exhibits 100-102, 104, 106; R. at 100-103, 105, 107; Housing Provider's Exhibits 200, 202, 203; R. at 108, 111-117. *See also* Hearing CD (OAH Jan. 28, 2008). The CMO issued by the ALJ indicated that each party had the right to be assisted by counsel, though the Commission notes that both parties appeared at the OAH hearing *pro se*. *See* CMO at 3; R. at 55. Finally, the Commission observes that the ALJ maintained an official record of the proceedings, and issued a Final Order in writing, with findings of fact and conclusions of law. *See* Final Order at 1-9; R. at 74-82.

an opportunity to testify or provide evidence related to the issue of notice.[14] *See* Notice of Appeal at 1-3.

The Commission is satisfied, based on its review of the record, that the ALJ made findings of fact regarding whether the Housing Provider gave the Tenant proper notice of the claim of exemption, that such findings were based on substantial evidence in the record, including the exhibits submitted by both parties and the testimony given at the OAH hearing, and that the ALJ's conclusions of law flow rationally from the findings of fact and are in accordance with the provisions of the Act. 14 DCMR § 3807.1 (2004). *See* Final Order at 5-6; R. at 77-78. *See also* D.C. OFFICIAL CODE § 42-3502.05(d) (2001); 14 DCMR § 4106.8 (2004); Levy, RH-

[CONTINUED ON THE FOLLOWING PAGE]

[14] In addressing the Housing Provider's *pro se* Notice of Appeal, the Commission is mindful of the important role that *pro se* litigants play in the Act's enforcement. *See* Goodman, 373 A.2d at 1298-99; Cohen v. D.C. Rental Hous. Comm'n, 496 A.2d 603, 605 (D.C. 1985); Barnes-Mosaid v. Zalco Realty, Inc., RH-TP-08-29,316 (RHC Sept. 28, 2012) (Order Denying Motion for Reconsideration); Chen v. Moy, RH-TP-08-29,340 (RHC Mar. 27, 2012); Levy, RH-TP-06-28,830. The Commission has long recognized that *pro se* litigants can face considerable challenges in prosecuting their claims without legal assistance. *See* Levy, RH-TP-06-28,830; RH-TP-06-28,835 (citing Kissi v. Hardesty, 3 A.3d 1125, 1131 (D.C. 2010)). Especially in cases involving remedial statutes like the Act, courts and administrative agencies have been more disposed "to grant leeway to" *pro se* litigants. *See* Barnes-Mosaid, RH-TP-08-29,316; Chen, RH-TP-08-29,340; Levy, RH-TP-06-28,830; RH-TP-06-28,835. However, the DCCA and the Commission have been clear that "the court may not act as counsel for either litigant." *See id.*

TP-06-28,830; RH-TP-06-28,835; Daly, TP 27,728; Smith, TP 27,661; Butler, TP 27,262; Kornblum, TP 24,338; Stets, TP 24,480; Young, TP 21,976; Chaney, TP 20,247. Accordingly, the Commission affirms the ALJ on this issue.

IV. CONCLUSION

For the reasons stated herein, the Commission affirms the ALJ's Final Order.

SO ORDERED

PETER SZEGEDY-MASZAK, CHAIRMAN

RONALD A. YOUNG, COMMISSIONER

MARTA W. BERKLEY, COMMISSIONER

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, D.C. 20001
(202) 879-2700

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing **DECISION AND ORDER** was mailed, postage prepaid, by first class U.S. mail on this **15th day** of **August, 2013** to:

Marietta L. Farmer
1344 Fort Stevens Drive, NW
Unit #102
Washington, DC 20011

Errol S. Watkis
1516 Portal Drive, NW
Washington, DC 20012

Errol S. Watkis
P.O. Box 55567
Washington, DC 20040

LaTonya Miles
Clerk of the Court
(202) 442-8949