DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION

RH-TP-07-29,050

In re: 1441 Euclid Street, NW, Unit 205

Ward One (1)

ROSHAH DEJEAN
Tenant/Appellant

v.

OSCAR GOMEZ
Housing Provider/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 with the Rent Administrator in the Rental Accommodations and Conversion Division (RACD).[1] The applicable provisions of the Rental Housing Act of 1985 (Rental Housing 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.

[1] The 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 RACD were transferred to 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)). Accordingly, this case was transferred from the Rent Administrator to OAH on March 8, 2007. *See* Martin, RH-TP-6-28,222 (OAH May 11, 2007) (Case Mgmt. Order) at 1.

I. PROCEDURAL HISTORY

On August 27, 2007, Tenant/Appellant Roshah Dejean (Tenant), residing at 1441 Euclid Street, N.W., Unit 205, Washington, D.C. 20009 (Housing Accommodation), filed Tenant Petition RH-TP-07-29,050 (Tenant Petition) against Housing Provider/Appellee Oscar Gomez (Housing Provider) claiming the following violations of the Act:

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. The Housing Provider failed to file the proper rent increase forms with the Rental Accommodations and Conversion Division;

4. The rent being charged exceeds the legally calculated rent ceiling for my/our unit(s);

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. The building in which my/our rental unit(s) is located is not properly registered with the Rental Accommodation[s] and Conversion Division;

8. Services and/or facilities provided in connection with the rental of my/our unit(s) have been substantially reduced;

9. 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; and

10. A Notice to Vacate has been served on me/us which violates the requirements of Section 501 of the Act.

See Tenant Petition at 3-5; Record (R.) at 33-35. Thereafter a Case Management Order was issued setting a hearing date for November 28, 2007. Dejean v. Gomez, RH-TP-07-29,050

(OAH Oct. 25, 2007). Evidentiary hearings were held before Administrative Law Judge (ALJ) Wanda R. Tucker on November 28, 2007 and January 8, 2008. R. at 57, 161.

On May 7, 2009, the ALJ issued a final order, Dejean v Gomez, RH-TP-07-29,050 (OAH May 7, 2009) (Final Order). In the Final Order the ALJ made the following findings of fact: [2]

1. The housing accommodation, a rental unit within a multi-unit condominium building, is located at 1441 Euclid Street, NW, Unit 205. The condominium building, including the rental unit, was renovated extensively in 2004. RXs 208, 208-A, 208-B.

2. The rental unit is owned by Housing Provider through Contact Management, LLC, which is registered with the Corporation Division of DCRA.

3. On August 27, 2006, Tenant and Housing Provider entered into a 12-month lease, beginning October 1, 2006, and ending September 30, 2007. The monthly rent for the rental unit through the lease term was $890; except that the parties noted on the lease that Tenant would move into the rental unit on September 11, 2006, and the rent for September 2006 would be $563.66. PXs 101, 102, 102A.

4. Tenant filed TP 29,050 initiating this matter on August 27, 2007, before the expiration of the initial lease term.

5. Housing Provider did not increase Tenant's rent before August 27, 2007, the date TP 29,050 was filed.

6. Housing Provider did not serve Tenant a rent increase notice before August 27, 2007, the date TP 29,050 was filed.

7. Tenant did not proffer evidence of the rent ceiling for the unit or any rent ceiling filed with RACD.

8. Housing Provider had not filed any registration documents for the rental unit with RACD before TP 29,050 was filed.

9. By e-mail dated September 6, 2006, Housing Provider informed Tenant of the process for re-keying her unit and afforded her the opportunity to do so. Reasons cited for re-keying included facilitating access to the unit for extermination services in Tenant's absence. RX 209.

[2] The findings of fact are recited here as stated by the ALJ in the Final Order.

10. Housing Provider contracted with American Pest Management, Inc., for extermination services for the rental unit through the condominium owners association for the building. RXs 200, 200-A through 200-E. Housing Provider bore the costs of the services.

11. Tenant mailed a letter dated September 13, 2006, to Housing Provider complaining about conditions in the rental unit when she moved in, including cleanliness issues, the need for paint, and nails in the walls, but did not ask Housing Provider to address the conditions noted. Tenant also stated that she heard mice in the kitchen area of the rental unit and asked Housing Provider to address the problem immediately. PX 103. Housing Provider did not receive Tenant's letter, as it was addressed, incorrectly, to him at "1509 South Columbus Street, Alexandria, Virginia." PX 103. Housing Provider lives at the designated street address, but in Arlington, Virginia.

12. Housing Provider's witness, Craig McIntyre, who occupied the unit immediately prior to Tenant, left the unit in clean condition and in the same state of repair reflected in Housing Provider's exhibits 208-A and 208-B, which show a clean unit furnished with hardwood floors and a kitchen furnished with stainless steel appliances, modern cabinets, and granite countertops.

13. By e-mail to Housing Provider dated October 26, 2006, Tenant complained about a noisy tenant and stated that the noise was the only thing that made her unhappy about living in the building. RXs 209-B, 210.

14. By letter dated February 22, 2007, and correctly addressed to Housing Provider at "1509 South Columbus Street, Arlington, Virginia," Tenant notified Housing Provider that she had American Pest Management exterminate her unit for rodents and roaches. Tenant attributed the need for services to the "incessant mouse and roach problem." Further, Tenant notified Housing Provider that American Pest Management informed her that the mouse got into the unit by way of holes behind the stove and beneath the kitchen sink. Tenant asked Housing Provider to cover the holes as soon as possible. PX 103-A.

15. American Pest Management provided services to Tenant's unit on April 18, 2007 and May 2, 2007. RXs 200-A, 200-D.

16. By e-mail to Housing Provider on May 4, 2007, Tenant complained that Housing Provider had not responded to a complaint concerning an "opening" in the rental unit that she had not slept in the unit for a total of three nights because of the mouse. Tenant demanded a $90 rent refund for the nights she had not slept in her unit. By e-mail to Tenant dated May 4, 2007, Housing Provider countered that American Pest Management had provided services to

the unit and a repairman had been in Tenant's unit three times and had done "all possible work" to seal the holes. Housing Provider denied Tenant's rent refund request because he felt he had done all he could do. PX 103-B, RX 211.

17. American Pest Management provided services to Tenant's unit on May 16, 2007. RX 200-B.

18. By e-mail dated June 12, 2007, Tenant notified Housing Provider that she had seen the mouse on the countertop running towards the stove; she suspected that there might be holes behind the stove; she bought steel wool to cover the holes; and she did not anticipate that the mouse would gain entry in the future because there were no holes behind the refrigerator or washer/dryer. No service was requested, but she stated that she would be calling American Pest Management for extermination. PX 113.

19. American Pest Management provided services to Tenant's unit on June 20, 2007. RX 200-C.

20. By e-mail to Housing Provider dated July 6, 2007, Tenant stated that she had seen the mouse again and noticed that the wall behind the dishwasher did not reach the floor and there were openings around pipes to the dishwasher. Tenant asked Housing Provider to send his repairman to put foam in the openings as he had underneath the sink. PX 113-A. Housing Provider had no record of this e-mail.

21. By e-mail exchange between Tenant and Housing Provider dated July 17, 2007, Housing Provider informed Tenant that she could sign up for monthly extermination services and Tenant informed Housing Provider that she had done so. RXs 209-E, 212.

22. American Pest Management provided services to Tenant's unit on July 18, 2007. RX 200.

23. By e-mail dated August 7, 2007, Tenant complained that she heard the mouse again. Tenant acknowledged that American Pest Management had exterminated the unit and stated that Housing Provider had done his best by sending the repairman and speaking to the condominium association board about the problem. Tenant thanked Housing Provider for "handling the situation in the best way possible" and stated that she was happy with the apartment, but "the mouse situation is disconcerning" [sic]. PX 103-C. Housing Provider had no record of this e-mail.

24. By e-mail dated August 8, 2007, Tenant complained about the "rodent problem" in the building to condominium association board members; and

reported having found a dead mouse on her floor on August 7, 2007. PXs 104, 107. Tenant noted that Housing Provider had provided extermination services and placed foam in openings behind the stove, washer/dryer, dishwasher, refrigerator, and beneath the sink. This e-mail was not sent to Housing Provider initially. PX 104.

25. On August 8, 2007, Tenant informed a member of the condominium association board that she had been getting regular exterminations. She also stated that she had put food in traps left by the exterminator, but the mouse "proves to be quite intelligent as it just leaves its droppings around the trap." PX 104.

26. By e-mail dated August 13, 2007, to Tenant and condominium association board members, Housing Provider noted that there had been a rodent problem for two years and that he had done everything possible to eradicate the mouse problem in Tenant's unit. PX 105. Housing Provider testified credibly that his reference to the two-year rodent problem was not intended to indicate that that [sic] there had been a problem with Tenant's unit for two years, but that there problems [sic] with other units after extensive renovation of the condominium building in 2004. Tenant had resided in the rental unit less than a year on the date of the e-mail.

27. By e-mail dated August 14, 2007, at 12:11 p.m., from Housing Provider to Tenant and condominium association board members, Housing Provider noted that Tenant had requested a pest control company other than American Pest Management, but Housing Provider rejected the request in favor of allowing the condominium association's extermination program to run its course. PX 105-A.

28. By e-mail dated August 14, 2007, at 12:51 p.m., from Tenant to Housing Provider, Tenant characterized the mouse problem in her unit as "severe" and concluded that monthly exterminations were insufficient. PX 106.

29. American Pest Management provided services to Tenant's unit on August 15, 2007. PX 108, RX 200-E.

30. On August 21, 2007, DCRA issued a notice of violation for the rental unit for Tenant's unit, which stated that "[r]odents have not been eliminated from the premises by trapping or baiting or both." Housing Provider was afforded 3 days from the service date of the notice to correct the condition or show cause why the condition should not be corrected. PX 112, RX 201. PX 201.

31. By e-mail to Housing Provider on May 4, 2007, at 10:09 a.m., Tenant complained that Housing Provider had not responded to her complaint concerning an "opening" in the rental unit and she had not slept in the unit for

a total of three nights because of the mouse. Tenant demanded a $90 rent refund for the three nights she had not slept in her unit. PX 103-B.

32. By e-mail to Tenant dated May 4, 2007, at 10:42 a.m., Housing Provider responded to Tenant's e-mail by stating that his repairman had been to the unit three times to seal holes, and the unit had been exterminated and would be exterminated monthly at Tenant's request. Housing Provider also stated that, months ago, he had offered to allow Tenant to terminate her lease because she was unhappy with the apartment and Housing Provider had done all he could do to accommodate her, including traveling to the unit to open the front door, taking calls at all times, and addressing her complaints about noisy neighbors. Housing Provider renewed his offer to permit Tenant to terminate her lease, notified her that he would not renew the lease at the end of the one-year lease term, and reminded her that the lease required her to give 30-days notice of moving. PX 103-B.

33. By e-mail dated May 4, 2007, at 11:14 a.m., Tenant responded to Housing Provider's e-mail by stating that she felt Housing Provider's response to her May 4th e-mail was harsh and possibly due to a miscommunication or misinterpretation. Tenant stated that she "was actually very happy with the apartment minor [sic] the small issues." PX 103-B.

34. By e-mail dated August 14, 2007, at 12:34 p.m., Housing Provider notified Tenant that her lease would expire on September 30, 2007, and would not be renewed. Housing Provider also informed Tenant that he expected her to move by midnight September 30th and reminded her that the lease required her to provide 30-days notice of her move. PX 109.

35. By e-mail dated August 14, 2007, at 12:51, from Tenant to Housing Provider and condominium association board members, Tenant stated that Housing Provider had informed her that her lease would not be renewed and that Housing Provider threatened her with eviction. Tenant also stated that she had asked a housing inspector to inspect her unit. PX 106.

36. By e-mail dated August 14, 2007, at 2:28 p.m., from Housing Provider to Tenant and members of the condominium association board, Housing Provider denied that he had threatened Tenant with eviction, and explained that he was not renewing her lease because the lease terms did not require him to do so. Housing Provider stated that since Tenant was not happy with her unit, it was fortunate that her lease was about to expire, which afforded her the opportunity to find a place that met her needs. PX 106.

37. By letter dated August 14, 2007, signed by Ulka Patel, Esquire, and captioned "Notice of Intent to Terminate" Tenant was notified that Housing Provider intended to enforce the termination date set forth in the lease and would not

offer Tenant a successive lease or permit a month to month tenancy. Tenant was asked to remove her personal property, render the premises in broom clean condition, and schedule a walk through of the unit with Housing Provider no later than October 5, 2007. PX 110. Housing Provider retained Mr. Patel for to [sic] write the letter.

38. By letter dated August 17, 2007, to Ulka Patel, Esquire, an attorney with the Washington Legal Clinic for the Homeless (WLCH) notified Mr. Patel that, in the District of Columbia, a tenant cannot be evicted solely because the lease expires. PX 111. The WLCH attorney opined that it appeared that Housing Provider was attempting to terminate the tenancy in the context of requests that the rental unit be maintained in compliance with housing regulations, which likely would be deemed retaliatory. PX 111.

39. On August 21, 2007, DCRA issued a notice of violation for the rental unit, which stated that "[r]odents have not been eliminated from the premises by trapping or baiting or both." Housing Provider was afforded 3 days from the service date of the notice to correct the condition or show cause why the condition should not be corrected. PX 112, RX 201. There is no evidence of the service date. The notice was served on the registered agent for Contact Management, LLC, who signed for the notice on August 29, 2007, two days after TP 29,050 was filed. PX 201. Housing Provider testified credibly that he received the notice in the early part of September 2007.

Final Order at 4-12; R. at 180-88. The ALJ made the following conclusions of the law in the Final Order:[3]

1. In TP 29,050 filed on August 27, 2007, Tenant alleged that Housing Provider increased her rent by an amount larger than allowed by law, increased her rent while her rental unit was not in substantial compliance with the housing regulations, and failed to file proper rent increase forms with RACD. Each of these complaints is dismissed with prejudice, as Tenant failed to establish that Housing Provider increased her rent before she filed TP 29,050.

2. At the hearing, Tenant introduced evidence that Housing Provider increased her rent after she filed TP 29,050, which was not considered for purposes of this Order. The tenant petition must give a defending party fair notice of the grounds upon which a claim is based, so that the defending party has the opportunity to adequately prepare its defense and thus ensure that the claim is fully and fairly litigated. In this matter, the tenant petition did not provide Housing Provider notice that Tenant would litigate complaints pertaining to a

[3] The conclusions of law are recited here as stated by the ALJ in the Final Order except that the Commission has numbered the ALJ's paragraphs for ease of reference.

rent increase that had not occurred at the time the petition was filed. Moreover, Tenant did not move affirmatively to amend her petition to include subsequent times either before the hearing or during the presentation of her case in chief. The record is clear that Housing Provider did not expressly or impliedly consent to litigate events that occurred after the petition was filed, as he moved for a directed verdict after Tenant rested her case, on grounds that Housing Provider had not increased Tenant's rent before she filed the petition.

3. Tenant testified that, before she filed TP 29,050, Housing Provider orally informed her that he intended to increase her rent. Tenant proffered no corroborating evidence in this regard or any details that would be a basis for determining if any rent increase notice was improper. Accordingly, I do not credit Tenant's assertion and Tenant's complaint that Housing Provider served her an improper 30-day rent increase notice is dismissed with prejudice.

4. Tenant's complaint that Housing Provider filed an improper rent ceiling with RACD is dismissed with prejudice because Tenant failed to present evidence that would establish the amount of the rent ceiling for her unit or the amount of any rent ceiling filed with RACD. Tenant moved to introduce evidence pertaining to the rent ceiling complaint after she rested her case and after Housing Provider moved for a directed verdict. I denied her motion as untimely an [sic] prejudicial.

5. Tenant testified credibly that she found no registration documents for the rental unit at RACD before TP 29,050 was filed. Housing Provider did not assert that he registered the unit with RACD, but testified credibly that, until he received the Case Management Order scheduling a hearing in this matter and the attached tenant petition, he believed that he was in compliance with governing law because he had registered Contact Management, LLC, the ownership entity for the rental unit, with the Corporations Division of DCRA. Thus, the preponderance of evidence shows that Housing Provider failed to register the rental unit with RACD as required by the Rental Housing Act. However, the penalty for failure to register is invalidation of any rent increase for the unit at issue. As noted above, Tenant failed to establish that Housing Provider increased her rent before she filed this petition. Thus, Tenant failed to establish a critical element of proof and this complaint is dismissed with prejudice.

6. Tenant has complained that Housing Provider substantially reduced services and/or facilities provided in connection with her rental unit. For purposes of the Rental Housing Act, services provided in connection with a rental unit are "related services", [sic] a term defined to mean services provided by a housing provider in connection with the use and occupancy of a rental unit, which are

required by law or a tenant's lease. At issue here are extermination and maintenance services to rid Tenant's unit of a mouse.

7. The evidence supports a finding that the services at issue are related services for purposes of the Rental Housing Act. Tenant's lease required Housing Provider to maintain the rental unit in a safe, sanitary, and habitable manner in compliance with District of Columbia law. PX 101, para. 11. Under District government rules, the occupant of a rental unit in a multiple dwelling building, like the rental unit at issue here, is responsible for the extermination of rodents whenever the occupant's unit is the only one infested; but the responsibility for extermination shifts from the tenant to the housing provider if infestation of the rental unit is caused by failure of the owner to maintain the residential building in rodent proof condition.

8. In this case, there is evidence that the mouse entered Tenant's unit through holes in the walls around pipes, which indicates that Housing Provider failed to maintain the rental unit in rodent proof condition. PXs 103-A, 112, 113-A, and RX 201. Thus, Tenant has demonstrated, on the facts presented, that Housing Provider was required by law and the lease to provide extermination and maintenance services to rid her unit of the mouse.

9. To prevail in a petition alleging reduction in related services, a tenant must demonstrate that a housing provider reduced services previously provided and that the housing provider failed to provide such services within a reasonable time after notice of the need for services. Tenant has not carried her burden of proof in this regard. The evidence shows that Housing Provider provided, at minimum, monthly extermination services, which were not decreased in frequency as the tenancy progressed. PXs 103-A, 103-B, 103-C, 104, 108 and RXs 200, 200-A through 200-E, 211, 212. Housing Provider also responded timely and reasonably to Tenant's many requests for maintenance services by dispatching a repairman to seal holes around pipes that may have afforded the mouse access to the rental unit. PXs 103-A, 103-B, 104, 113. As late as August 7, 2007, nearly a year after moving into the unit and just three weeks before she filed TP 29,050, Tenant characterized Housing Provider's efforts to rid her unit of the mouse as "handing the situation in the best way possible." PX 103-C. Although Tenant's characterization is not dispositive of the issue of the reasonableness of Housing Provider's efforts, it is some evidence that Housing Provider's efforts were reasonable under the circumstances.

10. Tenant has not demonstrated by a preponderance of evidence that Housing Provider reduced related services as claimed. Therefore, this complaint is dismissed with prejudice.

11. Tenant has complained that Housing Provider retaliated against her in violation of the Rental Housing Act by threatening to evict her and notifying

her that he would not renew her lease or permit a month-to-month tenancy. Tenant maintains that these actions were retaliatory because they were taken in response to her complaints to Housing Provider and the condominium association about conditions in the unit and her request that DCRA inspect her unit for violations of the housing regulations.

12. A housing provider is prohibited from terminating or refusing to renew a rental agreement if the action is taken because a tenant exercises rights conferred under the Rental Housing Act. These actions are presumed to be retaliatory for purposes of the Act if, within six months of the actions, a tenant has made a witnessed oral or written request for repairs necessary to bring the tenant's rental unit into compliance with the housing regulations or contacted appropriate officials concerning suspected or existing housing regulation violations.

13. Tenant has proffered sufficient evidence to invoke the presumption of retaliation. The record shows that Tenant complained to Housing Provider about a mouse in the rental unit and conditions that may have facilitated the mouse's entry in February 2007, May 2007, June 2007, and August 2007. PXs 103-A -103C [sic], 104, 106, 113, 113A. On August 14, 2007, Tenant notified Housing Provider that she had asked DCRA to inspect her unit for housing regulation violations related to the mouse. PXs 106, 112 and RX 201. In the months preceding May 2007, and on May 4, 2007, and August 14, 2007, Housing Provider offered to allow Tenant to terminate her lease because she was unhappy with her unit. PXs 103-B, 106. On May 4, 2007, and August 14, 2007, Housing Provider notified Tenant that he would not renew her lease or permit a month-to-month tenancy, he expected her to move no later than September 30, 2007, and he expected 30 days notice of her moving date. PX 103-B, 106, 109, 110.

14. In this matter, the presumption of retaliation is not triggered by the evidence pertaining to termination of the lease, as it shows that Housing Provider did not threaten to terminate the lease or evict Tenant, but offered Tenant the option to terminate because she was unhappy with the unit. PX 103-B, 106, 109. However, Tenant has proffered sufficient evidence to invoke the presumption of retaliation by demonstrating that Housing Provider communicated his intention not to renew the rental agreement or allow a month-to-month tenancy, within six months of Tenant's complaints about a mouse in the unit, her request for repairs and extermination services related to the mouse's presence, and Tenant's call to the housing inspector about the mouse. While Housing Provider explained that his decision not to renew that lease or permit a month-to-month tenancy was based on his understanding that the lease terms did not require him to do so, the explanation is insufficient to rebut the presumption of retaliation, as Housing Provider did not demonstrate

by clear and convincing evidence that he was not motivated to exercise this option by Tenant's complaints. Moreover, the option is not permitted by law.

15. No specific penalty for retaliation is prescribed by the Rental Housing Act. Thus, the general penalty provision for violations of the Act applies, which is payment of a fine to the government of the District of Columbia, but only if the violation is willful. Willfulness goes to the intention to violate the Rental Housing Act, as opposed to simply knowing that you have acted or failed to act in a certain way. In this case, the evidence does not support a finding that Housing Provider intended to violate the Act. Instead, the record shows that Housing Provider acted on the mistaken belief that only the lease governed his options and he was not required to renew or extend Tenant's lease by its terms. PXs 103-B, 106, 109, 110. Thus, no penalty is imposed and the complaint is dismissed with prejudice.

16. Tenant has complained that Housing Provider served her an improper 30-day notice to vacate. The Rental Housing Act prescribes the grounds upon which a housing provider may recover possession of a rental unit and notice requirements for recovering possession. In this case, Housing Provider notified Tenant that he would not renew her lease or permit a month-to-month tenancy, he expected her to move no later than September 30, 2007, and he expected 30 days notice of her moving date. PX 103-B, 106, 109, 110. There is no evidence that Housing Provider's decision not to renew Tenant's lease was grounded on any of the circumstances prescribed in the Act for regaining possession of a rental unit. Nor is there any evidence that Housing Provider complied with any prescribed procedure for recovering possession of Tenant's unit. Therefore, the evidence shows that Housing Provider served Tenant an improper notice to vacate.

17. No specific remedy is prescribed for serving an improper notice to vacate. Thus, the general penalty provision for violations of the Act applies, which is payment of a fine to the government of the District of Columbia, but only if the violation is willful. As noted above, willfulness goes to the intention to violate the Rental Housing Act, as opposed to simply knowing that you have acted or failed to act in a certain way. In this case, the evidence does not support a finding that Housing Provider intended to violate the Act. Instead, the record shows that Housing Provider acted on the mistaken belief that only the lease governed his options and he was not required to renew or extend Tenant's lease by its terms. PXs 103-B, 106, 109, 110. Thus, no penalty is imposed and the notice is dismissed with prejudice.

Final Order at 12-20; R. at 172-180 (citations omitted). Thereafter, on May 15, 2009, the Tenant/Appellant filed a Notice of Appeal with the Commission, asserting the following:[4]

1. On September 11, 2006 Oscar Gomez entered a lease agreement with Roshah Dejean and collected payments for rental unit located at 1441 Euclid Street, NW unit 205 without having the property registered with RACD, without a business license, and without a certificate of occupancy. Under the Rental Housing Act of 1985, Oscar Gomez was and continues to illegally collect rental payments. As mandated by law, housing providers must be registered 30 days prior to receiving rental income. Ignorance of the law is no exception. Even after the tenant petition was filed in August 2007 and Oscar Gomez was notified of his illegal activity, to date, he still has failed to register the unit and procure a business license illustrating complete disregard for housing laws and regulations. On January 8, 2008 at the tenant petition hearing Oscar Gomez, admitted under oath, that he did not have the property registered, did not have a business license, nor a license of occupancy. Oscar Gomez , [sic] attempted to file a registration document on February 15, 2008 with RAD, more than 2 years after Roshah Dejean's move in date and a month after the OAH hearing. The attempted registration indicated the rent charged as $1300, however, rent as stated on the lease is $890. The aforementioned renders Oscar Gomez to a $5000 fine for filing false statements with the Rental Accommodations and Conversions Division under the Rental Housing Act of 1985. Most importantly, the registration is not withstanding/null in void [sic] as it has inaccurate information and is not accompanied with a business license. Due to Oscar Gomez's violation of the law treble damages as outlined in section 901 are justly due in the amount of $40,613.66.

2. Oscar Gomez neglected to uphold the terms in the lease as well as the D.C. Housing Code regulations in providing sanitary housing conditions despite receiving sufficient notice of the mice infestation in the unit 205 from Roshah Dejean. The first letter dated Sept. 13, 2006 addressed the mice infestation in nit [sic] 205 1441 Euclid Street, NW. After 11 months of said notifications and Oscar Gomez ignoring Roshah Dejean's request to service the unit appropriately, Roshah Dejean, notified Oscar Gomez as well as the condominium association that she would contact a housing inspector on August 14, 2007. On August 21, 2007 a housing inspector duly noted the unit under housing code violation due to mice infestation. Due to exercising her right as a tenant and notifying the authorities of the housing code violation, Oscar Gomez willfully retaliated by threatening to evict Roshah Dejean, had a a [sic] notice of intent to terminate letter from Ulka Patel of Nealon and

[4] The issues raised on appeal are recited here as stated by the Tenant in the Notice of Appeal except that the Commission has numbered the Tenant's paragraphs for ease of reference.

> Associates, P.C[.] sent to Roshah Dejean indicating her lease would not be renewed, would not continue on a month to month basis, and Roshah Dejean had to vacate the unit on September 30, 2007. On August 17, 2007, Anne Smetak, Staff Attorney at Washington Legal Clinic For the Homeless, sent a correspondence to Ulka Patel indicating that terminating Roshah Dejean's tenancy in context of Roshah Dejean's request for unit 205 be in [sic] compliance with housing code regulation is deemed retaliatory and steps by Oscar Gomez to force Roshah Dejean to vacate the premise [sic] could constitute an illegal self help eviction, Mendez v. Johnson 389 A.2d 781 (D.C. 1978) and could expose Oscar Gomez to compensatory and punitive damages. Even after the aforementioned correspondence letter from Anne Smetak, on August 31, 2007, Oscar Gomez sent Roshah Dejean an improper 30 day notice to vacate the unit without a reason in good faith, or for any of the 10 legal reasons for eviction, nor with the registration or exemption number as required by RACD.

Notice of Appeal at 1-3. The Commission held a hearing on this matter on September 8, 2009.

III. DISCUSSION OF THE ISSUES

1. **On September 11, 2006 Oscar Gomez entered a lease agreement with Roshah Dejean and collected payments for rental unit located at 1441 Euclid Street, NW unit 205 without having the property registered with RACD, without a business license, and without a certificate of occupancy. Under the Rental Housing Act of 1985, Oscar Gomez was and continues to illegally collect rental payments. As mandated by law, housing providers must be registered 30 days prior to receiving rental income. Ignorance of the law is no exception. Even after the tenant petition was filed in August 2007 and Oscar Gomez was notified of his illegal activity, to date, he still has failed to register the unit and procure a business license illustrating complete disregard for housing laws and regulations. On January 8, 2008 at the tenant petition hearing Oscar Gomez, admitted under oath, that he did not have the property registered, did not have a business license, nor a license of occupancy. Oscar Gomez, attempted to file a registration document on February 15, 2008 with RAD, more than 2 years after Roshah Dejean's move in date and a month after the OAH hearing. The attempted registration indicated the rent charged as $1300, however, rent as stated on the lease is $890. The aforementioned renders Oscar Gomez to a $5000 fine for filing false statements with the Rental Accommodations and Conversions Division under the Rental Housing Act of 1985. Most importantly, the registration is not withstanding/null in void [sic] as it has inaccurate information and is not accompanied with a business license. Due to Oscar Gomez's violation of the law treble damages as outlined in section 901 are justly due in the amount of $40,613.66.**

The Commission observes that the Tenant's statement of Issue One appears to be a narrative recitation of facts that relate to the Tenant's claim in the Tenant Petition that the Housing Accommodation is not properly registered. *See* Notice of Appeal at 1-2; Tenant Petition at 3; R. at 35. The Commission has repeatedly held that it cannot review issues on appeal that do not contain a clear and concise statement of alleged error in the ALJ's decision. 14 DCMR §§ 3802.5(b), 3802.13 (2004).[5] *See, e.g.*, Sellers v. Lawson, RH-TP-08-29,437 (RHC Nov. 16, 2012) (dismissing issue where housing provider merely stated that he was appealing the ALJ's order); Levy v. Carmel Partners, Inc., RH-TP-06-28,830; RH-TP-06-28,835 (RHC Mar. 19, 2012) (holding the following claims in the notice of appeal were not clear and concise statements of error: (1) "Housing Violations/Decreased Facilities," (2) "tenant Petition Addendum," and (3) "Due Process"); Tenants of 1460 Irving St., N.W. v. 1460 Irving St., L.P., CIs 20,760-20,763 (RHC Apr. 5, 2005) (denying appeal issue where Tenants failed to refer to any record evidence to reverse the decision of the hearing examiner on the challenged finding of fact); Norwood v. Peters, TP 27,678 (RHC Feb. 3, 2005) (denying appeal issues as too vague: (1) "[t]he findings of fact are not supported or logically related to the evidence…," and (2) "[t]he findings of fact are completely misapplied in this case").

With respect to the *pro se* nature of this appeal, the DCCA has noted that "in matters involving pleadings, service of process, and timeliness of filings, *pro se* litigants are not always held to the same standards as are applied to lawyers." *See* Padou v. District of Columbia, 998

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[5] 14 DCMR § 3802.5(b) (2004) states the following: "The notice of appeal shall contain the following:…(b) The Rental Accommodation and Conversions Division (RACD) case number, the date of the Rent Administrator's decision appealed from, and a clear and concise statement of the alleged error(s) in the decision of the Rent Administrator."

14 DCMR 3802.13 (2004) provides as follows: "The Commission may dismiss the appeal for failure to comply with the requirements of § 3802.5."

A.2d 286, 292 (D.C. 2010) (quoting Macleod v. Georgetown Univ. Med. Ctr., 736 A.2d 977, 980 (D.C. 1999)). *See also* Sellers, RH-TP-08-29,437. Nevertheless, the Commission notes that "while it is true that a court must construe *pro se* pleadings liberally...the court may not act as counsel for either litigant." *See* Flax v. Schertler, 935 A.2d 1091, 1107 n.14 (D.C. 2007) (quoting Bergman v. Webb, 212 B.R. 320, 321 (B.A.P. 8th Cir. 1997)); Sellers, RH-TP-08-29,437; Shipe v. Carter, RH-TP-08-29,411 (RHC Sept. 18, 2012).

The Commission shall reverse final decisions of the ALJ that are based on "arbitrary action, capricious action, or an abuse of discretion, or which contains conclusions of law not in accordance with the provisions of the Act, or findings of fact unsupported by substantial evidence on the record." 14 DCMR § 3807.1 (2004). *See, e.g.*, Levy, RH-TP-06-28,830; Ford v. Dudley, TP 23,973 (RHC June 3, 1999).

The Commission observes that the Tenant's statement of Issue One relates, in part, to the Tenant's allegations of improper registration between September 11, 2006, and the date of the final OAH hearing on January 8, 2008:

> On September 11, 2006 Oscar Gomez entered a lease agreement with Roshah Dejean and collected payments for rental unit located at 1441 Euclid Street, NW unit 205 without having the property registered with RACD, without a business license, and without a certificate of occupancy. Under the Rental Housing Act of 1985, Oscar Gomez was and continues to illegally collect rental payments. As mandated by law, housing providers must be registered 30 days prior to receiving rental income. Ignorance of the law is no exception. Even after the tenant petition was filed in August 2007 and Oscar Gomez was notified of his illegal activity, to date, he still has failed to register the unit and procure a business license illustrating complete disregard for housing laws and regulations.

See Notice of Appeal at 1-2.

The Commission notes that the issue of improper registration was addressed by the ALJ in both the "Findings of Fact" and "Conclusions of Law" sections of the Final Order. *See* Final

Order at 5, 14-15; R. at 177-78, 187. For example, the ALJ found that the "Housing Provider had not filed any registration documents for the rental unit with RACD before TP 29,050 was filed." *See* Final Order at 5; R. at 187. Additionally, the ALJ concluded, based on the parties' testimony, that "...the preponderance of evidence shows that Housing Provider failed to register the rental unit with RACD as required by the Rental Housing Act." *See* Final Order at 14; R. at 178. However, the ALJ did not award damages based on the Housing Provider's failure to register the Housing Accommodation, because she determined that "the penalty for failure to register is invalidation of any rent increase for the unit at issue...[and] Tenant failed to establish that Housing Provider increased her rent before she filed this petition." *See* Final Order at 14-15 (citing D.C. OFFICIAL CODE §§ 42-3502.05(f), -3502.08(a)(1)(B) (2001); 14 DCMR § 4205.5(b) (2004));[6] R. at 177-78.

The Commission is satisfied that the ALJ did not err in concluding that the invalidation of a rent increase is a potential remedy for the Housing Provider's failure to register. *See id.*

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[6] D.C. OFFICIAL CODE § 42-3502.05(f) (2001) provides, in relevant part:

> Within 120 days of July 17, 1985, each housing provider of any rental unit not exempted by this chapter and not registered under the Rental Housing Act of 1980, shall file with the Rent Administrator, on a form approved by the Rent Administrator, a new registration statement for each housing accommodation in the District for which the housing provider is receiving rent or is entitled to receive rent. Any person who becomes a housing provider of such a rental unit after July 17, 1985 shall have 30 days within which to file a registration statement with the Rent Administrator. No penalties shall be assessed against any housing provider who, during the 120-day period, registers any units under this chapter, for the failure to have previously registered the units . . . .

D.C. OFFICIAL CODE § 3502.08(a)(1)(B) states the following: "(a)(1) Notwithstanding any provision of this chapter, the rent for any rental unit shall nto be increased above the base rent unless. . . (B) The housing accommodation is registered in accordance with § 42-3502.05 . . . ."

14 DCMR § 4205.5(b) provides as follows: "Notwithstanding § 4205.4, a housing provider shall not implement a rent adjustment for a rental unit unless all of the following conditions are met . . . (b) The housing provider has met the registration requirements of § 4102 with respect to the rental unit . . . ."

The Commission observes that the Tenant's statement of Issue One also references facts that occurred after the January 8, 2008 OAH hearing, specifically that the Housing Provider attempted to file a registration document on February 15, 2008:

> Oscar Gomez, attempted to file a registration document on February 15, 2008 with RAD, more than 2 years after Roshah Dejean's move in date and a month after the OAH hearing. The attempted registration indicated the rent charged as $1300, however, rent as stated on the lease is $890. The aforementioned renders Oscar Gomez to a $5000 fine for filing false statements with the Rental Accommodations and Conversions Division under the Rental Housing Act of 1985. Most importantly, the registration is not withstanding/null in void [sic] as it has inaccurate information and is not accompanied with a business license. Due to Oscar Gomez's violation of the law treble damages as outlined in section 901 are justly due in the amount of $40,613.66.

Notice of Appeal at 2.

The Commission notes that the record of an OAH proceeding closes at the end of the hearing below, and accordingly, there is no February 15, 2008 registration document in the record that the Commission received from OAH. *See* Florio v. Van Wyck, TP 27,878 (RHC July 22, 2005); Tenants of 1460 Irving St., N.W., CIs 20,760-20,763; Austin v. Page, TP 27,145 (RHC Dec. 12, 2003). *See generally* Final Order at 1-25; R. at 167-191. Therefore, the information contained in the Notice of Appeal regarding a February 15, 2008 registration statement is new evidence that the Commission is not permitted to consider on appeal. 14 DCMR § 3807.5 (2004). *See, e.g.*, Prosper v. Pinnacle Mgmt., TP 27,783 (RHC Jan. 19, 2012); Jared v. Easter, TP 28,159 (RHC Feb. 9, 2011); Hawkins v. Jackson, RH-TP-08-29,201 (RHC Aug. 31, 2009).

Based on its review of the record, including the ALJ's Final Order, the Commission is unable to discern in the Tenant's statement of Issue One in the Notice of Appeal, any allegations of error made by the ALJ in her determination of the Tenant's claim that the Housing Provider

failed to properly register the Housing Accommodation. *See* Notice of Appeal. The Commission observes that Issue One appears to be merely a statement of facts, which were addressed by the ALJ below, rather than any "clear and concise statement of...error(s)." *See* 14 DCMR §§ 3802.5(b), 3802.13 (2004); Sellers, RH-TP-08-29,437; Levy, RH-TP-06-28,830; RH-TP-06-28,835; Tenants of 1460 Irving St., N.W., CIs 20,760-20,763; Norwood, TP 27,678. The Commission observes that the ALJ applied the correct legal standards in determining that the Housing Provider had not properly registered the Housing Accommodation, and in further determining that the Tenant had failed to demonstrate that the rent had been increased, such that the Tenant would be entitled to a rent rollback based on the failure to register. *See* Final Order at 14-15 (citing D.C. OFFICIAL CODE §§ 42-3502.05(f), -3502.08(a)(1)(B) (2001); 14 DCMR § 4205.5(b) (2004)); R. at 177-78. Accordingly, the Commission dismisses this issue on appeal. *See* 14 DCMR §§ 3802.5(b), 3802.13 (2004); Sellers, RH-TP-08-29,437; Levy, RH-TP-06-28,830; RH-TP-06-28,835; Tenants of 1460 Irving St., N.W., CIs 20,760-20,763; Norwood, TP 27,678.

2. **Oscar Gomez neglected to uphold the terms in the lease as well as the D.C. Housing Code regulations in providing sanitary housing conditions despite receiving sufficient notice of the mice infestation in the unit 205 from Roshah Dejean. The first letter dated Sept. 13, 2006 addressed the mice infestation in nit 205 [sic] 1441 Euclid Street, NW. After 11 months of said notifications and Oscar Gomez ignoring Roshah Dejean's request to service the unit appropriately, Roshah Dejean, notified Oscar Gomez as well as the condominium association that she would contact a housing inspector on August 14, 2007. On August 21, 2007 a housing inspector duly noted the unit under housing code violation due to mice infestation. Due to exercising her right as a tenant and notifying the authorities of the housing code violation, Oscar Gomez willfully retaliated by threatening to evict Roshah Dejean, had a a [sic] notice of intent to terminate letter from Ulka Patel of Nealon and Associates, P.C[.] sent to Roshah Dejean indicating her lease would not be renewed, would not continue on a month to month basis, and Roshah Dejean had to vacate the unit on September 30, 2007. On August 17, 2007, Anne Smetak, Staff Attorney at Washington Legal Clinic For the Homeless, sent a correspondence to Ulka Patel**

indicating that terminating Roshah Dejean's tenancy in context of Roshah Dejean's request for unit 205 be in [sic] compliance with housing code regulation is deemed retaliatory and steps by Oscar Gomez to force Roshah Dejean to vacate the premise [sic] could constitute an illegal self help eviction, Mendez v. Johnson 389 A.2d 781 (D.C. 1978) and could expose Oscar Gomez to compensatory and punitive damages. Even after the aforementioned correspondence letter from Anne Smetak, on August 31, 2007, Oscar Gomez sent Roshah Dejean an improper 30 day notice to vacate the unit without a reason in good faith, or for any of the 10 legal reasons for eviction, nor with the registration or exemption number as required by RACD.

As the Commission previously stated, *see supra* at 16, the Commission shall reverse final decisions of the ALJ that are based on "arbitrary action, capricious action, or an abuse of discretion, or which contain conclusions of law not in accordance with the provisions of the Act, or findings of fact unsupported by substantial evidence on the record." 14 DCMR § 3807.1 (2004). *See, e.g.*, Levy, RH-TP-06-28,830; Ford, TP 23,973.

The Commission has held that the burden of proof is on the tenant when asserting a claim of reduction or elimination of services under the Act. *See* Pena v. Woynarowsky, RH-TP-06-28,817 (RHC Feb. 3, 2012). A landlord is not permitted to reduce services "required by law or the terms of a rental agreement" that were previously provided to the tenant in connection with the use and occupancy of a rental unit without decreasing the rent to "reflect proportionally the value of the change in services." D.C. OFFICIAL CODE §§ 42-3501.03(27), -3502.11 (2001).[7]

[7] D.C. OFFICIAL CODE § 42-3501.03(27) (2001) provides the following:

> "Related services" means services provided by a housing provider required by law or by the terms of a rental agreement, to a tenant in connection with the use and occupancy of a rental unit, including repairs, decorating and maintenance, the provision of light, heat, hot and cold water, air conditioning, telephone answering or elevator services, janitorial services, or the removal of trash and refuse.

D.C. OFFICIAL CODE § 42-3502.11 (2001) provides that:

> If the Rent Administrator determines that the related services or related facilities supplied by a housing provider for a housing accommodation or for any rental unit in the housing accommodation are substantially increased or decreased, the Rent Administrator may increase or decrease the rent ceiling, as applicable, to reflect proportionally the value of the change in services or facilities.

See also 14 DCMR 4211.6 (2004);[8] Kuratu v. Ahmed, Inc., RH-TP-07-28,985 (RHC Dec. 27, 2012); Pena, RH-TP-06-28,817; Zucker v. NWJ Mgmt., TP27,690 (RHC May 16, 2005). Furthermore, the failure of a housing provider to furnish the services and facilities required by the D.C. housing regulations amounts to a reduction in services and facilities. *See* Jonathan Woodner Co. v. Enobakhare, TP 27,730 (RHC Feb. 3, 2005) (citing Shapiro v. Comer, TP 21,742 (RHC Aug. 19, 1993)); Cascade Park Apartments v. Walker, TP 26,197 (RHC Jan. 14, 2005).

In addition, the Commission has stated:

> [F]or a tenant to successfully pursue a claim of reduction or elimination of services, a three-prong test must be satisfied. First, the tenant must provide evidence of a reduction or elimination of services, and the fact-finder must find that the housing provider eliminated or substantially reduced a service or services at the tenant's rental unit. Second, the tenant must establish the duration of the reduction in services, and present evidence to support his allegations. Third, the tenant must show that the housing provider had knowledge of the alleged reduction of services.

Ford, TP 23,973 (citations omitted). *See also* Pena, RH-TP-06-28,817; 1773 Lanier Place, N.W., Tenants' Ass'n v. Drell, TP 27,344 (RHC Aug 31, 2009). If a tenant proves each element of the

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[8] 14 DCMR § 4211.6 (2004) states the following:

> If related services or facilities at a rental unit or housing accommodation decrease by accident, inadvertence or neglect by the housing provider and are not promptly restored to the previous level, the housing provider shall promptly reduce the rent for the rental unit or housing accommodation by an amount which reflects the monthly value of the decrease in related services or facilities.

claim, the ALJ may reduce the rent to reflect the value of the reduced services.[9] *See* D.C. OFFICIAL CODE § 42-3502.11 (2001); 14 DCMR §§ 4211.6-.7 (2004).[10]

The Commission notes that the Tenant's statement of Issue Two in the Notice of Appeal suffers from the same procedural deficiencies as the statement of Issue One. *See* Notice of Appeal at 2-3. Like the Tenant's statement of Issue One, the Commission observes that the Tenant's statement of Issue Two appears merely to be a summary of the Tenant's factual contentions regarding the claims that were raised in the Tenant Petition, distinguished only by its focus on the reduction in services and/or facilities and retaliation claims, respectively. *See id.* As with the Tenant's statement of Issue One, the Commission is unable to discern in the Tenant's statement of Issue Two any specific allegations of error made by the ALJ.[11] *See* 14 DCMR §§ 3802.5(b), 3802.13 (2004); Sellers, RH-TP-08-29,437; Levy, RH-TP-06-28,830; RH-TP-06-28,835; Tenants of 1460 Irving St., N.W., CIs 20,760-20,763; Norwood, TP 27,678.

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[9] The Commission notes that a claim predicated on reduction in services and facilities, unlike the registration claim in Issue One, may be adjudicated independent from a contest, challenge or claim regarding a contemporaneous rent increase. *Compare* D.C. OFFICIAL CODE § 3502.08(a)(1)(B) (2001), *with* D.C. OFFICIAL CODE § 42-3502.11 (2001). *Compare also* 14 DCMR § 4214.3(f) (2004), *with* 14 DCMR § 4214.4(d) (2004).

[10] 14 DCMR §§ 4211.6-.7 (2004) provide the following:

> 4211.6 If related services or facilities at a rental unit or housing accommodation decrease by accident, inadvertence or neglect by the housing provider and are not promptly restored to the previous level, the housing provider shall promptly reduce the rent for the rental unit or housing accommodation by an amount which reflects the monthly value of the decrease in related services or facilities.
>
> 4211.7 The Rent Administrator on his or her own motion or by tenant petition may review and adjust a rent decrease implemented under § 4211.6, and a housing provider who fails to promptly and adequately reduce rent under § 4211.6 may be liable for additional penalties under the Act.

[11] As the Commission stated previously, *see supra* at 15-16, although *pro se* pleadings are construed liberally, the Commission is unable to act as counsel for either party. *See* Padou, 998 A.2d at 292 (D.C. 2010); Flax, 935 A.2d at 1107 n.14; Sellers, RH-TP-08-29,437; Shipe, RH-TP-08-29,411.

However, the Commission observes that the ALJ committed plain error in her consideration of the Tenant's claim regarding a reduction in services and/or facilities.[12] 14 DCMR § 3807.4 (2004). *See* Munonye, RH-TP-07-29,164. *See also*, Lenkin Co. Mgmt., Inc., 642 A.2d at 1286; Proctor, 484 A.2d at 550); Drell, TP 27,344.

In this case, the ALJ found that the extermination and maintenance services at issue were related services for purposes of the Act. Final Order at 15-16; R. at 176-77 (citing D.C. OFFICIAL CODE § 42-3501.03(27) (2001)). The Commission observes that the ALJ cited the correct definition of a related service – D.C. OFFICIAL CODE §§ 42-3501.03(27) – and that substantial evidence supports the ALJ's determination that the Housing Provider was required "by law and the lease to provide extermination and maintenance services to rid [the Tenant's] unit of the mouse."[13] *See id.*

However, the ALJ determined that the Tenant had not carried her burden of proof in demonstrating that the Housing Provider had "reduced services previously provided and...failed to provide such services within a reasonable time after notice of the need for services." *See id.* at 16; R. at 176 (citing Jonathan Woodner Co., TP 27,730 at 11; Washington Realty Co. v. Rowe, TP 11,802 (RHC May 14, 1986); Lustine Realty v. Pinson, TP 20,117 (RHC Jan. 13, 1989) at 4).

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[12] The Commission's regulations provide that: "[r]eview by the Commission shall be limited to the issues raised in the notice of appeal; provided, that the Commission may correct plain error." 14 DCMR § 3807.4 (2004) (emphasis added). *See* Munonye v. Hercules Real Estate Servs., RH-TP-07-29,164 (RHC July 7, 2011). *See also*, Lenkin Co. Mgmt., Inc. v. D.C. Rental Hous. Comm'n, 642 A.2d 1282, 1286 (D.C. 1994); Proctor v. D.C. Rental Hous. Comm'n., 484 A.2d 542, 550 (D.C. 1984) (holding that the Commission has discretion to consider issues not raised in notice of appeal that constitute "plain error"); Drell, TP 27,344 (the Commission found "plain error" in ALJ's failure to make sufficient findings of fact to support an imposition of fines).

[13] For example, the ALJ found that the parties' lease agreement required the Housing Provider to maintain the Tenant's unit "in a safe, sanitary, and habitable manner in compliance with District of Columbia Law." Final Order at 15; R. at 177 (*citing* PX 101). In addition, the ALJ determined that the mouse entered the Tenant's unit through holes in the walls, indicating that Housing Provider "failed to maintain the rental unit in rodent proof condition" in accordance with District regulations. Final Order at 15-16; R. at 176-77 (*citing* 14 DCMR 805.2, 805.3 (2004)).

In arriving at this determination, the ALJ proceeded to apply the following test to determine whether those services had been reduced:

> To prevail in a petition alleging reduction in related services, a tenant must demonstrate that a housing provider reduced services previously provided and that the housing provider failed to provide such services within a reasonable time after notice of the need for services.

Final order at 16; R. at 176 (citing Jonathan Woodner Co., TP 27,730 at 11; Washington Realty Co., TP 11,802; Lustine Realty, TP 20,117 at 4). The ALJ stated that the evidence had shown that the Housing Provider provided monthly extermination services, and also responded "timely and reasonably to Tenant's many requests for maintenance services." *See id.* (citing PXs 103-A, 103-B, 103-C, 104, 108, 113 and RXs 200, 200-A through 200-E, 211, and 212).[14] Thereafter, the ALJ concluded that, in light of the Housing Provider's provision of extermination services to the Tenant's unit, the Tenant had failed to demonstrate by a preponderance of the evidence that

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[14] The exhibits cited by the ALJ in support of her conclusion that the Housing Provider provided maintenance services and responded "timely and reasonably" to the Tenant's maintenance requests, were characterized by the ALJ in the Final Order, respectively, as follows:

> PX 103-A – "Letter to Oscar Gomez from Roshah Dejean, dated February 22, 2007"
> PX 103-B – "E-mail exchange, dated May 4, 2007"
> PX 103-C – "E-mail to Oscar Gomez from Roshah Dejean, dated August 7, 2007"
> PX 104 – "E-mail exchange, dated August 8, 2007"
> PX 108 – "Service Notice, American Pest Mgmt., Inc., dated August 15, 2007"
> PX 113 – "E-mail from Roshah Dejean to Oscar Gomez, dated June 12, 2007"
> RX 200 – "Service Notice, American Pest Mgmt[.], Inc., dated July 18, 2007"
> RX 200-A – "Service Notice, American Pest Mgmt[.], Inc., dated April 28, 2007"
> RX 200-B – "Service Notice, American Pest Mgmt[.], Inc., dated May 16, 2007"
> RX 200-C – "Service Notice, American Pest Mgmt[.], Inc., dated June 20, 2007"
> RX 200-D – "Service Notice, American Pest Mgmt[.], Inc., dated May 2, 2007"
> RX 200-E – "Service Notice, American Pest Mgmt[.], Inc., dated August 15, 2007"
> RX 211 – "E-mail between Roshah Dejean and Oscar Gomez, dated May 4, 2007"
> RX 212 – "E-mail between Roshah Dejean and Oscar Gomez, dated July 17, and 18, 2007"

See Final Order at 22-23; R. at 169-170. Copies of the exhibits cited by the ALJ can be found in the record at: 218-225, 234, 244, 257-262, 283-286.

the Housing Provider had reduced related services despite evidence of an ongoing mouse infestation. *See id.*

The Commission notes that, although the ALJ references the housing code in the Final Order, the ALJ does not address the applicability of the housing code requirements to the question of whether services and facilities have been reduced. *See* Final Order at 15-16; R. at 176-77. The D.C. Housing Code contains the follow requirement:

> No person shall rent or offer to rent any habitation or the furnishings of a habitation, unless the habitation and its furnishings are in a clean, safe, and sanitary condition, in repair, and free from rodents or vermin.

14 DCMR § 400.3 (2004) (emphasis added). *See, e.g.* Tenants of Quebec House v. Quebec House Assocs., CI 20,432 & 20,434 (RHC Sept. 24, 1992); Corcoran House Tenants Ass'n v. Corcoran House Assocs., CI 20,479 (RHC Aug. 26, 1992). In addition, the Act's regulation at 14 DCMR § 4216.2 (2004) provides a list of housing code violations that are considered "substantial" as a matter of law, including "[i]nfestation of insects or rodents." *See* 14 DCMR § 4216.2(i) (2004). *See also, e.g.* Hamilton v. Mass. Mut. Life Ins. Co., TP 24,805 (RHC July 31, 2000); Leebaert v. Garber, TP 23,340 & TP 23,341 (RHC Aug. 14, 1997); Stancil v. Carter, TP 23,265 (RHC July 31, 1997).

The Commission has held that a housing provider's failure to provide services required by the housing code constitutes a reduction in services under the Act. *See* D.C. OFFICIAL CODE § 42-3501.03(27) (2001) (defining "related services" as those "provided by a housing provider, required by law or by the terms of the rental agreement, to a tenant in connection with the use and occupancy of a rental unit . . . .") (emphasis added); Kuratu, RH-TP-07-28,985; Hemby v. Residential Rescue, Inc., TP 27,887 (RHC Apr. 16, 2004); Shapiro, TP 21,742. Furthermore, the Commission has determined that it was error for a hearing examiner to conclude that,

because of the provision of related extermination services, a housing provider's failure to actually abate a continuing rodent infestation in the Tenant's unit did not amount to a reduction in services and/or facilities in violation of the Act. *See* Cascade Park Apartments, TP 26,197; Jonathan Woodner Co., TP 27,730.

The Commission observes that the facts of this case are analogous to the case of Cascade Park Apartments, TP 26,197, in which a hearing examiner concluded that there was no reduction in services or facilities related to a mouse infestation because there was no reduction in the extermination services provided by the housing provider in an attempt to control the infestation. *See* Cascade Park Apartments, TP 26,197. In Cascade Park Apartments, TP 26,197, the Commission reversed the decision of the hearing examiner, determining that an unabated rodent infestation constitutes a reduction in services because the housing provider had failed to provide services required by the housing code. *See id.* The Commission explained its determination that unsuccessful efforts to abate the infestation were not a defense to the reduction in services claim, as follows:

> [T]hese matters are irrelevant to the question of whether the tenants were substantially deprived of a service which the landlord contracted to provide." The...[DCCA in Interstate Gen. Corp. v. D.C. Rental Hous. Comm'n, 501 A.2d 1261 (D.C. 1985),] rejected the housing provider's argument that [D.C. OFFICIAL CODE] § 42-3502.11 'is couched in such a way as to imply that the landlord's conduct must constitute willful neglect or affirmative wrongdoing *before a reduction in service can be termed substantial*.' This is not the case.

See id. (quoting Interstate Gen. Corp., 501 A.2d at 1261) (emphasis in original).

Similarly, in Jonathan Woodner Co., TP 27,730, the housing provider defended against the tenant's claim of a reduction in services by offering evidence of its efforts to correct the complained of infestation problem. *See* Jonathan Woodner Co., TP 27,730. The Commission affirmed the hearing examiner's finding that the housing provider had violated the services and

facilities provision of the Act, where the "undisputed evidence" was that the tenant's unit was infested with mice. *See id.*

The Commission observes that, although the record in this case indicates that the Housing Provider offered the Tenant extermination services, the record also reveals that the extermination services did not abate the Tenant's mouse infestation. *See* Final Order at 5-9, 15-16; R. at 176-77, 183-87. Based on its review of the record, the Commission determines that the ALJ erred in her interpretation of the Act by failing to consider whether the unabated rodent infestation in the Tenant's unit, despite the extermination services provided by the Housing Provider, constituted a failure of the Housing Provider to furnish the services and facilities required by the D.C. Housing Code, and therefore a reduction in services and facilities under the Act. *See* Cascade Park Apartments, TP 26,197; Jonathan Woodner Co., TP 27,730. *See also* D.C. OFFICIAL CODE § 42-3502.11 (2001); 14 DCMR §§ 400.3, 4216.2(i) (2004); Kuratu, RH-TP-07-28,985; Hemby, TP 27,887; Shapiro, TP 21,742.

Accordingly, the Commission reverses the ALJ's determination that the Tenant failed to demonstrate that the Housing Provider reduced related services. *See* 14 DCMR § 3807.1 (2004); Cascade Park Apartments, TP 26,197; Jonathan Woodner Co., TP 27,730. *See also* Final Order at 16; R. at 176. The Commission remands this case for further conclusions of law, related to the Tenant's claim of a reduction in services arising from a mouse infestation. Specifically, the Commission instructs the ALJ to make conclusions of law related to whether the Tenant has met her burden of proof for each of the three (3) factors enumerated in Ford, TP 23,973: (1) whether a related service was substantially reduced; (2) the duration of the reduction in services; and (3) whether the Housing Provider had knowledge of the reduction in services. *See* Ford, TP 23,973. *See also, supra* at 21-22. Furthermore, in addressing the first element under Ford, TP 23,973, the

Commission instructs the ALJ to make conclusions of law regarding whether the mouse infestation constituted a housing code violation, and thus a substantial reduction in services. *See* D.C. OFFICIAL CODE § 42-3502.11 (2001); 14 DCMR §§ 400.3, 4216.2(i) (2004); Cascade Park Apartments, TP 26,197; Jonathan Woodner Co., TP 27,730. *See also, supra* at 21, 26-27. Finally, if the ALJ determines that the Tenant has met her burden of proof on the reduction in services claim, the Commission instructs the ALJ to assess the damages, if any, that the Tenant is entitled to as a result of the reduction in services. *See* D.C. OFFICIAL CODE § 42-3502.11 (2001); 14 DCMR §§ 4211.6-.7 (2004). *See also, supra* at 22.

If, on remand, the ALJ determines that further factual development is needed in order to make the additional conclusions of law, as outlined above, the ALJ may, in her discretion, hold an evidentiary hearing limited to the foregoing legal standards. *See* D.C. OFFICIAL CODE § 42-3502.11 (2001); 14 DCMR §§ 400.3, 4216.2(i) (2004); Ford, TP 23,973 Cascade Park Apartments, TP 26,197; Jonathan Woodner Co., TP 27,730.

IV. CONCLUSION

In accordance with the foregoing, the Commission dismisses the Tenant's first issue on appeal. *See* 14 DCMR §§ 3802.5(b), 3802.13 (2004); Sellers, RH-TP-08-29,437; Levy, RH-TP-06-28,830; RH-TP-06-28,835. Furthermore, with respect to the second issue, the Commission reverses the ALJ's determination that the Tenant failed to demonstrate that the Housing Provider reduced related services with respect to the infestation of mice in the Tenant's unit. 14 DCMR § 3807.1 (2004). The Commission remands this case to OAH to determine and formulate, from the existing record, additional conclusions of law consistent with the Commission's instructions as elaborated *supra* at 27-28. *See* D.C. OFFICIAL CODE § 42-3502.11 (2001); 14 DCMR §§ 400.3, 4216.2(i) (2004); Jonathan Woodner Co., TP 27,730; Cascade Park Apartments, TP

26,197; Ford, TP 23,973. If the ALJ determines that additional fact-finding is necessary to appropriately address the Commission's instructions regarding conclusions of law and any award of damages as elaborated *supra* at 27-28, the ALJ is directed to conduct a limited evidentiary hearing for such purposes.

SO ORDERED

PETER B. 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** in RH-TP-07-29,050 was mailed, postage prepaid, by first class U.S. mail on this **15th day** of **August, 2013** to:

Roshah Dejean
2439 Ontario Road NW, #b
Washington, D.C. 20009

Mark Raddatz, Esq.
1627 Connecticut Ave., NW
Unit 6
Washington, D.C. 20009

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