DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION

RH-TP-07-29,064

In re: 1315 Peabody Street, NW, Unit 2A

Ward Four (4)

AHMED, INC.
Housing Provider/Appellant

v.

JOSE OSMIN TORRES and
LORENA LEIVA
Tenants/Appellees

DECISION AND ORDER

October 28, 2014

SZEGEDY-MASZAK, CHAIRMAN. This case is on appeal to the Rental Housing Commission (Commission) from a final order issued by the Office of Administrative Hearings (OAH), based on a petition filed in the Rental Accommodations Division (RAD) of the District of Columbia Department of Housing and Community Development (DHCD).[1] The applicable provisions of the Rental Housing Act of 1985 (Act), D.C. Law 6-10, D.C. OFFICIAL CODE §§ 42-3501.01-3509.07 (2001), the District of Columbia Administrative Procedure Act ("DCAPA"), D.C. OFFICIAL CODE §§ 2-501-510 (2001), and the District of Columbia Municipal Regulations ("DCMR"), 1 DCMR §§ 2800-2899 (2004), 1 DCMR §§ 2920-2941 (2004), 14 DCMR §§ 3800-4399 (2004) govern these proceedings.

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

I. PROCEDURAL HISTORY

On September 13, 2007, Tenants/Appellees Jose Osmin Torres and Lorena Leiva (Tenants), residents of 1315 Peabody Street., NW, Unit 2A (Housing Accommodation), filed Tenant Petition RH-TP-07-29,064 (Tenant Petition) with DCRA against Mollie Rosendorf. *See* Tenant Petition at 1-2; Record for RH-TP-07-29,064 (R.) at 24-25. On April 4, 2008, Administrative Law Judge (ALJ) Claudia Barber entered an Order incorporating the agreement of both parties to substitute Ahmed, Inc. (Housing Provider) as the Housing Provider/Respondent. *See* Torres v. Ahmed, Inc., RH-TP-07-29,064 (OAH Apr. 4, 2008) at 1; R. at 146. The ALJ accepted the Tenants' amended petition (Amended Tenant Petition), at a status hearing on April 2, 2008. Hearing CD (OAH Apr. 2, 2008) at 2:40:00. *See also* Torres, RH-TP-07-29,064 (OAH Apr. 15, 2010) at 2-3; R. at 299-300. The Amended Tenant Petition asserts the following claims against the Housing Provider:[2]

1. Rent increases taken in 2006 and 2007 were made while [Tenants'] unit was not in substantial compliance with the D[.]C[.] Housing Regulations.

2. The [Tenants'] unit has suffered from substantial and/or prolonged violations of the D.C. [H]ousing [R]egulations.

3. Services and/or facilities provided as part of rent and/or tenancy have been substantially reduced, where the [H]ousing [P]rovider failed to remedy substantial and prolonged housing code violations.

4. The rent ceiling filed with the RACD for [Tenants'] unit was improper.

5. The rent charged exceeded the maximum allowable rent for [Tenants'] unit.

6. Rent increases taken in 2006 and 2007 were unlawful because the [H]ousing [P]rovider failed to certify to [Tenants] that the unit and

[2] The claims raised in the Amended Tenant Petition are recited here using the language of the Tenants in the Amended Tenant Petition.

common elements of the [H]ousing [A]ccommodation were in substantial compliance with the Housing Regulations.

Amended Tenant Petition at 2-6; R. at 112-116.

Evidentiary hearings were held in this matter on April 30, 2008, May 1, 2008, June 13, 2008, and July 1, 2008. *See* R. at 140-41, 147-49, 164-65, 175-76. A final order was issued on February 19, 2010: Torres, RH-TP-07-29,064 (OAH Feb. 19, 2010) (Final Order) at 1-29; R. at 180-208. On March 8, 2010, the Tenants filed a Motion for Reconsideration and a Motion for Attorney's Fees. *See* Motion for Reconsideration at 1; Petitioners' Motion for Attorney's Fees at 1; R. at 221, 244. On April 15, 2010, the ALJ issued an Order Granting Reconsideration, an Order Granting Motion for Attorney's Fees, and an Amended Final Order, Torres, RH-TP-07-29,064 (OAH Apr. 15, 2010) (Amended Final Order), to clarify her findings regarding the issues of bad faith and treble damages. Amended Final Order at 1-30; R. at 272-301. *See also* Torres, RH-TP-07-29,064 (OAH Apr. 15, 2010) (Order Granting Reconsideration) at 1; Torres, RH-TP-07-29,064 (OAH Apr. 15, 2010) (Order Granting Motion for Attorney's Fees) at 1; R. at 305, 316.

The ALJ made the following findings of fact in the Amended Final Order:[3]

1. On September 13, 2007, Jose Osmin Torres and Lorena Leiva filed Tenant Petition 29,064, alleging, *inter alia*, rent increases were taken while their unit was not in substantial compliance with the D.C. Housing Regulations, and services and facilities had been substantially reduced in violation of the Act.

2. Tenants/Petitioners entered into a lease agreement with the Housing Provider for the Property on December 16, 2004. (PX 111). Tenants/Petitioners moved into their unit in late December 2004.

3. Torres lives there with Lorena Leiva and their five-year old son.

[3] The findings of fact are recited here using the language of the ALJ in the Amended Final Order, except that the Commission numbered the ALJ's credibility determinations, by continuing the numbering from the findings of fact, for ease of reference.

4. The building consists of 18 units. Tenants/Petitioners' unit, 1315 Peabody Street, N.W. #2A, is on the basement floor.

5. A Certificate of Election of Adjustment of General Applicability filed July 11, 2005, reflects that the prior rent ceiling for Unit 2A was $622, the prior rent charged was $570, the new rent ceiling was $640 and the new rent charged was $570 as of July 1, 2005. (PX 105).

6. A Certificate of Election of Adjustment of General Applicability filed July 10, 2006, reflects that the prior rent ceiling for Unit 2A was $640, the prior rent charged was $570, the new rent ceiling was $667 and new rent charged was $594, effective July 1, 2006. (PX 100) [sic].

7. Housing Provider filed with the Rent Administrator on July 10, 2006, an affidavit of service of Notice of Rent Adjustment, which reflects that Tenants/Petitioners were served on May 25, 2006, with the Notice of a Rent Adjustment. PX 101.

8. A Tenant Notice of Increase of General Applicability dated May 22, 2007, reflects that the current rent ceiling for the Property was $667, [the] current rent charged was $594, and [the] new rent ceiling was $691 and [the] new rent charged [was] $615[,] effective July 1, 2007. PX 103.

9. Housing Provider filed on July 16, 2007 with RACD, a Certificate of Notice of Increase in Rent Charged, which reflects that the previous rent as of July 1, 2007 for Unit 2A was $594, and the new rent would be $615 effective July 1, 2007. PX 104 [sic].

10. Tenants/Petitioners paid each of the rent increases implemented during their tenancy.

11. By implementing these rent increases while the Property was not in substantial compliance with the housing code for a prolonged period of time demonstrates bad faith on the part of the housing provider.

12. Jose Osmin Torres verbally reported to Mr. Yang,[4] the same property manager who leased the premises to him in January 2007 about a problem with bed bugs. He showed him blood stains on the bed. The bed bugs continued and were not treated and eradicated until November 2007. *Such inaction on the part of the Housing Provider displays a deliberate refusal to perform without a reasonable excuse, or heedless disregard of duty.*

[4] The Commission notes that the Housing Provider's agent was identified as Mr. John and Mr. Yang by counsel for the Tenants and counsel for the Housing Provider, in reference to the same person. The Amended Final Order noted this confusion, Amended Final Order at 7; R. at 295, and referred to the Housing Provider's agent as "Mr. Yang."

13. On January 29, 2007, Tenants/Petitioners sent to Housing Provider a list of immediate repairs that where necessary, PX 109, which included:

    a. Dust left by electrical repairmen

    b. Phone line disconnected

    c. Rodent and insect infestation since he moved in the premises

    d. Window screen from living room and kitchen were [sic] broke [sic] and need to change to new one

    e. Kitchen floor loose

    f. Emergency window lock is damaged

    g. Peeling paint in kitchen and living room ceiling

    h. Peeling pain[t] in living room and bedroom walls

    i. Mold in bedroom walls

    j. Peeling paint in water pipes located in the bathroom

    k. No cold water in unit

    l. Bedroom and living room outlets were damaged

    m. Entire unit needs paining. PX 109.

14. On July 25, 2007, Tenants/Petitioner[s] sent to Housing Provider an additional list of immediate repairs, PX 109a, as follows:

    a. Rodents and insect infestation still in unit

    b. Window screen[s] from the living room and kitchen are broken and need changing

    c. Kitchen floor loose

    d. Emergency window lock damaged

    e. Peeling paint in kitchen and living room walls

    f. Entire unit needed painting

    g. Four windows need new blinds

    h. Window in living room hard to open[.]

15. Tenants/Petitioners provided photographs of holes in the walls, peeling paint, mold on the walls, cockroaches, and other deplorable conditions of the Property in January 2007 and March 2008, which accurately depict conditions of the Property as of January 2007 and through the date of the hearing. (PX 110 a-o). *Such inaction on the part of the Housing Provider displays a deliberate refusal to perform without a reasonable excuse, or heedless disregard of duty.*

16. Rodents and insects were not eliminated from premises by trapping or baiting or both. This has been a prolonged condition at the Property since 2005. *Such inaction on the part of the Housing Provider displays a deliberate refusal to perform without a reasonable excuse, or heedless disregard of duty.*

Amended Final Order at 4-7; R. at 295-98 (emphasis in original). The ALJ made the following conclusions of law relevant to this appeal of the Amended Final Order:[5]

A. Rent Increases Where Illegally Taken While Unit 2A Was Not in Substantial Compliance with D.C. Housing Regulations

1. Tenants/Petitioners proved by a preponderance of evidence that the Housing Provider increased Tenants/Petitioners' rent in 2006 and 2007, while their unit was not in substantial compliance with the housing regulations. To establish that Tenants/Petitioners' unit is in substantial violation of the housing code, tenants must present evidence that the housing provider was on notice of the violations. *Gavin v. Fred A. Smith Co.*, TP 21,918 (RHC Nov. 18, 1992) at 4. Based on the available evidence in this case, Housing Provider was placed on notice through Tenants/Petitioners' verbal contacts with Mr. Yang in January 2007 and letters sent in January 2007 and July 2007. PX 109 and 109a. I give little weight to the testimony of Saifur Kahn that all repairs on the letter dated January 29, 2007, were completed because these same repairs were mentioned again in the July 2007 letter. PX 109a.

2. The controlling statue that governs this claim is D.C. Official Code § 42-3502.08(a)(1), which remained unchanged when the Act was amended in 2006. The Act states in pertinent part:

> (a)(1) Notwithstanding any provision of this chapter, the rent for any rental unit shall not be increased above the base rent unless:
>
> (A) The rental unit and the common elements are in substantial compliance with the housing regulations, if noncompliance is not

[5] The conclusions of law are recited here using the language of the ALJ in the Amended Final Order, except that the Commission has numbered the ALJ's paragraphs for ease of reference.

the result of tenant neglect or misconduct. Evidence of substantial noncompliance shall be limited to housing regulations violation notices issued by the District of Columbia Department of Consumer and Regulatory Affairs and other offers of proof the Rental Housing Commission shall consider acceptable through its rulemaking procedures[.]

3. Also 14 DCMR [§] 4216.2 states: for purposes of this subtitle, "substantial compliance with the housing code" means the absence of any substantial housing violations as defined in § 103(35) of the Act including, but not limited to, the following:

> . . .
>
> (e) Defective electrical wiring, outlets, or fixtures;
> (f) Exposed electrical wiring or outlets not properly covered;
> (g) Leaks in the roof or walls;
> (h) Defective drains, sewage system, or toilet facilities;
> (i) Infestation of insects or rodents;
> . . .
> (n) Plaster falling or in immediate danger of falling;
> (o) Dangerous porches, stairs, or railings;
> (p) Floor, wall, or ceilings with substantial holes;
> . . .
> (s) Fire hazards or absence of required fire prevention or fire control;
> . . .
> (u) Large number of housing code violations, each of which may be either substantial or non-substantial, the aggregate of which is substantial, because of the number of violations. [(omissions original)]

4. There is an abundance of evidence that rent increases were taken in 2006 and 2007, PX 100 and PX 103, when there was an infestation of mice, rats and cockroaches. PX 112. The photographs [in] PX 110 sufficiently corroborate Tenants/Petitioners' testimony of roaches and insect infestation, molding, and peeling paint, which clearly establishes unsanitary conditions at the Property.

5. According to the testimony of the Tenants/Petitioners, which I give great weight because they live daily in these conditions, the cockroaches, mice, and rodent problems were never abated, and bed bugs existed from January 2007 through November 2007. The infestation problem alone is a violation of 14 DCMR [§] 4216.2. The mice infestation problem was chronic and constitutes a prolonged violation of the housing regulations involving the health, safety and security of the tenants, as well as habitability of the premises. The [H]ousing [P]rovider simply failed to maintain common areas by abating the

rodent infestation with aggressive pest control services. This behavior warrants a finding of bad faith and justifies an award of treble damages.

6. There is also record evidence presented that Tenant[s]/Petitioner[s] had the following additional problems at the time of their 2006 and 2007 rent increases:

    a. Window screen[s] from the living room and kitchen are broken and need changing

    b. Kitchen floor loose

    c. Emergency window lock damaged

    d. Peeling paint in kitchen and living room walls

    e. Entire unit needed painting

    f. Four windows needed new blinds

    g. Window in living room hard to open[.]

7. The testimony of the Tenants/Petitioners supports a finding and conclusion that the photographs, PX 110 a - o, reflect the conditions inside the Property as of January 2007 and continuing until at least a month and a half before the April 30, 2008 hearing reconvened. Therefore, these conditions existed at the time of the 2007 rent increase. Tenants/Petitioners also reported these incidents to the property manager's employee Mr. Yang, but they were not entirely fixed.

8. Tenants/Petitioners are entitled to rent refunds for 2006 and 2007, because the mice or rodent and roach problem has been excessive and prolonged since 2005. I, therefore, am rolling back the rents for 2006, and continuing through July 1, 2007 to the rent Tenant[s]/Petitioner[s] paid before the July 1, 2006 rent increase, which was $570 per month, PX 111, pursuant to D. C. [sic[Official Code § 42-3502.08 (a)(2).

9. Tenant[s]/Petitioner[s] paid $594 as a result of the rent increase implemented on July 1, 2006, and paid $615 as a result of the rent increase implemented on July 1, 2007. PX 103 and PX 104. That rent will be refunded. Tenant[s are] due a refund of $24 per month for a period of 12 months through June 30, 2007, and another rent refund of $45 for a period of 12 months from July 1, 2007 through July 1, 2008, the date of the hearing. The refund due is $829.35 for illegal rent increases taken in 2006 and 2007. I am awarding treble damages; therefore, the refund due is $2,488.05. The D.C. Court of Appeals has established that the wrong was demanding the increased rent, not receiving it. Therefore, Tenant[s]/Petitioner[s] is [sic] entitled to this refund

regardless of proof that they paid the 2006 and 2007 increases. *Kapusta v. [D.C.] Rental Hous. Comm'n*, 704 A.2d 286 (D.C. 1997). Interest is calculated through the date of the decision. 14 DCMR [§] 3826.2.

. . .[6]

B. Services and Facilities Provided in Connection with the Rental of Tenant's Unit Were Substantially Reduced

10. The Rental Housing Act contains separate definitions for "related services" and "related facilities." "Related services" are defined as:

> 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 § 42-3501.03(27).

11. "Related facility" is defined as:

> any facility, furnishing, or equipment made available to a tenant by a housing provider, the use of which is authorized by the payment of the rent charged for a rental unit, including any use of a kitchen, bath, laundry facility, parking facility, or the common use of any common room, yard, or other common area.

D.C. Official Code § 42-3501.03(26).

12. The key difference between the two definitions is that services are related only when they are required by law or agreement, while related facilities may include any equipment that is made available to a tenant under the lease.

13. Tenants/Petitioners met their burden of proof by a preponderance of evidence that services were reduced because of the failed extermination services, resulting in [a] chronic insect and rodent infestation problem and bed bug problem. Based on the testimony of the pest control owner, Mr. Hughes, Tenants/Petitioners maintained a clean apartment. This was also the testimony of the Tenants/Petitioners. In light of this testimony, I conclude that the insect and rodent infestation in the apartment was not caused by the Tenants/Petitioners, but was caused by the failure of the Housing Provider to

[6] The Commission omits a recitation of the "Interest for 2006 and 2007 Rent Refunds" table. Amended Final Order at 13-14; R. at 288-89.

maintain the residential building in a rodent-proof or reasonably insect-proof condition in violation of 14 DCMR [§] 805.3, which was the Housing Provider's responsibility. 14 DCMR [§] 805.3. See also invoice of American Pest Control servicing several units in the same complex. RX 207. The rodent and roach problem lasted since 2005 when they moved in the premises, and continued through the date of the hearing. I do not credit Housing Provider's pest control expert that the roaches and rodents disappeared. It is obvious from the photographs that roaches and mold are in the apartment and that the apartment had not been painted where the mold existed. There also was no evidence from the Housing Provider based on contractor invoices or otherwise, that corroborates his testimony that painting was completed of the entire unit after 2004.

14. The services and facilities provision of the Act before August 2006, D.C. Official Code § 42-3502.11 (2001), provides:

> If the Rent Administrator [Administrative Law Judge] 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 [Administrative Law Judge] may increase or decrease the rent ceiling, as applicable, to reflect proportionally the value of the change in services or facilities.

15. The services and facilities provision of the Act after August 2006, D.C. Official Code § 42-3502.11 (2001), provides:

> If the Rent Administrator [Administrative Law Judge] 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 [Administrative Law Judge] may increase or decrease the rent charged, as applicable, to reflect proportionally the value of the change in services or facilities.[7]

Also, the Controlling Regulation is 14 DCMR [§] 4211.6, which states in pertinent part:

> 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 renal unit

[7] The Commission notes that the duplicate recitation of the services and facilities provision of the Act, D.C. OFFICIAL CODE § 42-3502.11, appears in the Amended Final Order. *See* Amended Final Order at 16; R. at 286.

or housing accommodation by an amount which reflects the monthly value of the decrease in related services or facilities.

16. The Rental Housing Commission has held consistently that the hearing examiner, now administrative law judge, is not required to assess the value of a reduction in services and facilities with "scientific precision," but may instead rely on his or her "knowledge, expertise, and discretion as long as there is substantial evidence in the record regarding the nature of the violation, duration, and substantially." *Kemp v. Marshall Heights Cmty*[.], *Dev.*, TP 24,786 (RHC Aug. 1, 2000) at 8 (*citing Calomiris v. Misuriello*[,] TP 4809 (RHC Aug. 30, 1982) and *Nicholls v. Tenants of 5005, 07, 09 D Street, S.E.*, TP 11,302 (RHC Sept. 6, 1985)). It is not necessary for an administrative law judge to receive expert testimony or precise evidence concerning the degree to which services and facilities have been reduced in order to compensate tenants for the value of the reduced services. "[E]vidence of the existence, duration and severity of a reduction in services and/or facilities is competent evidence upon with the [judge] can find the dollar value of a rent roll back [sic]." *George I. Borgner, Inc. v. Woodson*, TP 11,848 (RHC, June 10, 1987) at 11.

17. In compliance with this provision, I will assign a value of $100 per month for the insect or roach and rodent infestation problem, another $50 per month for the damaged walls with holes, mold and peeling paint and another $10 per month for damaged window problems. These are clearly prolonged conditions that have never been fully eradicated by the Housing Provider. Since the Housing Provider was placed on notice of the bed bugs as of January 2007, and the problem persisted until November 2007, I will award an additional reduction in rent of $100 for the months of January 2007 through November 2007.

18. I am reducing the rent ceiling prior to August 2006 from $622 to $522 since the rent charged from January 2005 through July 1, 2005 was $570. *See, e.g., Johnathan Woodner Co. v. Enobakhare*, TP 27,730 (RHC Feb. 3, 2005) at 14 ("[t]he housing provider is liable for a rent refund only if the rent charged is higher than the reduced ceiling"); *Hiatt Place P'ship v. Hiatt Place Tenants' Assoc.*, TP 21,149 (RHC May 1, 1991) at 26 (same holding). Therefore, Tenants/Petitioners are entitled to a rent reduction of $48 per month from January 2005 through June 30, 2005, which totals $288. From July 1, 2005 through June 30, 2006, Tenants/Petitioners are entitled to a rent reduction of another $48 per month, which totals $576. From the time period July 1, 2006 through August 2006, Tenants/Petitioners are entitled to a rent reduction from $594 to $522 for two months, which totals $144. After August 2006, Tenants/Petitioners are entitled to a rent refund and/or rollback for the insect and rodent infestation problem of $100 per month for approximately 22 months, which totals $2,203. The rent refund for the bed bugs from January 2007 through November 2007 totals $1,100. I am trebling damages for the

rodent infestation and bed bug problem. Therefore, the total award for these two issues is $9,909.

19. In addition, I will award another $50 per month of rent refund for the damaged walls and peeling paint and $10 per month for the window malfunctions covering the same time period January 2007 through July 1, 2008. The refund for these items totals $1,081.80. I am also trebling damages here because the problems persisted for more than a year. Total damages for this issue is $3,245.40.

20. Interest calculations under 14 DCMR [§] 3826.2 are calculated from the date of the violation (or when service was interrupted) to the date of the issuance of the decision. 14 DCMR [§] 3826.2.[8]

. . .

C. Housing Provider's 2006 Rent Ceiling Adjustment was Proper

. . .[9]

D. Tenants' Claim There was No Certification in the Notice of Increase

. . .[10]

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[8] The Commission omits a recitation of the following tables: "Interest Calculation for Rent Reduction," "Interest Calculation for Mice and Roaches," "Interest Calculation for Bed Bugs," "Interest Calculation for Peeling Paint and Damaged Walls," and "Interest for Window Defects," because neither party has appealed the ALJ's conclusions related to this issue. *See* Amended Final Order at 18-21; R. at 281-84. Furthermore the Commission, in its discretion, determines that the information in the tables is not material or relevant to the Commission's determination of the issues in this appeal. *See, e.g.,* Karpinski v. Evolve Prop. Mgmt., LLC, RH-TP-09-29,590 (RHC Aug. 19, 2014) at n.6; Smith Prop. Holdings Five (D.C.) L.P. v. Morris, RH-TP-06-28,794 (RHC July 2, 2014) at n.6; Carmel Partners, Inc. v. Levy, RH-TP-06-28,830; RH-TP-06-28,835 (RHC May 16, 2014) at n.14.

[9] The Commission omits a recitation of the ALJ's conclusions of law supporting her determination that the 2006 rent ceiling adjustment was proper, because neither party has appealed the ALJ's conclusions related to this issue. *See* Amended Final Order at 21-24; R. at 278-81. Furthermore the Commission, in its discretion, determines that the conclusions of law supporting her determination that the 2006 rent ceiling adjustment was proper is not material or relevant to the Commission's determination of the issues in this appeal. *See, e.g.,* Karpinski, RH-TP-09-29,590 at n.6; Morris, RH-TP-06-28,794 at n.6; Levy, RH-TP-06-28,830; RH-TP-06-28,835 at n.14.

[10] The Commission omits a recitation of the ALJ's conclusions of law supporting her determination that the Tenants failed to prove that the Notice of Increase did not contain the required certification, because neither party has appealed the ALJ's conclusions related to this issue. *See* Amended Final Order at 24-25; R. at 277-78. Furthermore the Commission, in its discretion, determines that the conclusions of law supporting her determination that the Tenants failed to prove that the Notice of Increase did not contain the required certification is not material or relevant to the Commission's determination of the issues in this appeal. *See, e.g.,* Karpinski, RH-TP-09-29,590 at n.6; Morris, RH-TP-06-28,794 at n.6; Levy, RH-TP-06-28,830; RH-TP-06-28,835 at n.14.

E. Tenants Made a Valid Claim that the Rent Charged Exceeded the Maximum Allowable Rent for Tenants' Unit

21. Tenants/Petitioners proved their claim that the rent charged exceeded the maximum allowable rent for Tenants' unit only to the extent that they proved that Housing Provider's rent increases were invalid on other grounds. Tenant has proven that Housing Provider's 2006, and 2007 rent increases were illegal because the building was not in substantial compliance with the housing code at the time of the rent increases. In addition, I am rolling back Tenants' rent on account of excessive and prolonged housing code violations, and hold that the maximum allowable rent is the rent as adjusted for the rollback. Tenant has not offered proof of any independent grounds of proof [sic] that the rent charged exceeded the maximum allowable rent.

F. Housing Provider is Subject to Statutory Penalties for Violation of the Act

22. To impose a fine, the Act requires that the violation in question be "willful." Willfulness, in turn, requires more than mere violation of the Act. It requires that the Housing Provider "intended to violate or was aware that it was violating a provision of the Rental Housing Act." *Miller v. D.C. Rental Hous. Comm'n*, 870 A.2d 556, 558 (D.C. 2005). Tenant must show that Housing Provider intended to violate the law or possessed a culpable mental state. *Quality Mgmt. Inc. v. D.C. Rental Hous. Comm'n*, 505 A.2d 73, 76, n.6 (D.C. 1985). I reach this conclusion based on the failure to make extensive repairs, *i.e.* defective windows, incomplete walls and ceilings with cracks, insect and rodent infestation, bed bugs lasting from January 2007 through November 2007, that remained unattended after being notified repeatedly by the Tenants. Such conduct in allowing bed bug problems to exist for 11 months is egregious, displays a deliberate refusal to perform without a reasonable excuse, and was a heedless disregard of duty. *See Vicente v. Jackson*, TP 27,614 at 12; *Carter v. Davis*, TP 23,535-23,553 at 7. The Housing Provider was placed on notice of the unsanitary conditions at the Property in 2005, when it was verbally informed of the insect and rodent infestation by both Tenants/Petitioners. This is when the building is required ratproofing [sic] and aggressive rodent preventative measures. Tenants/Petitioners also constantly made Housing Provider aware of their severe bed bugs and mice problems by reporting these matters to Mr. Yang in January 2007, and the problem was not corrected until November 2007. Mr. Torres also gave graphic details that his family members sustained bites as a result of the bed bug problem, and this was shown to Mr. Yang.

23. It is obvious that the Housing Provider was taking insufficient steps to eradicate the mice, bed bug, and rodent problems by periodically bringing in an exterminator who was clearly not addressing the problem. Requiring tenants to live with bed bugs for more than 30 days is egregious conduct on

the part of the [H]ousing [P]rovider. I do not credit the testimony of the [H]ousing [P]rovider's exterminator that bed bugs come from foreign countries, especially since there was no evidence that [T]enants traveled to foreign countries and caused the bed bugs to be present in their home. Housing Provider's actions in failing to eliminate the bed bug problem, which caused injury to the [T]enants[,] was bad faith. The same holds true for the insufficient repairs on conditions causing the holes in the wall to prevent rodent entry. It is obvious that artificial repairs were completed, and the root of the problem never addressed to prevent rodent entry by covering holes in the walls and eliminating rat burrows. Nor was the root of the problem addressed by scraping, spackling and repainting the walls to prevent peeling paint.

24. I conclude that Housing Provider willfully violated the Act after being placed on notice of the chronic insect, rodent and bed bug problems and not fully eradicating the problem. The Housing Provider has been an experienced housing provider for many years, managing a building consisting of 18 units, and Tenants/Petitioners have resided in the unit since 2004. Therefore, Housing Provider's actions in failing to fully eradicate the problem since 2005 did rise to the level of being willful, grossly negligence [sic], bad faith, and a reckless disregard for maintaining and leasing an apartment in sanitary condition, *i.e.* intentional violation of the law, deliberate and the product of a conscious choice. *Borger Mgmt*[.], *Inc. v. Miller*, TP 27,445 (RHC Mar. 4, 2004).

25. The controlling statute governing penalties for violation[s] of the Act before August 2006, is D.C. Official Code § 42-3509.01(a), which provides:

> (a) Any person who knowingly . . . (2) substantially reduces or eliminates related services previously provided for a rental unit, shall be held liable by the Rent Administrator or Rental Housing Commission, as applicable, for the amount by which the rent exceeds the applicable rent ceiling or for treble that amount (in the event of bad faith) and/or for a roll back of the rent to the amount the Rent Administrator or Rental Housing Commission determines.
>
> (b) Any person who willfully . . . (3) commits any other act in violation of any provision of this chapter. . . shall be subject to a civil fine of not more than $5,000 for each violation.

The controlling statute governing penalties after August 2006 provides:

> (a) Any person who knowingly . . . (2) substantially reduces or eliminates related services previously provided for a rental unit, shall be held liable by the Rent Administrator or Rental Housing Commission, as applicable, for he amount by which the rent exceeds the applicable rent charged or for treble that amount (in the event of

bad faith) and/or a roll back of the rent to the amount the Rent Administrator or Rental Housing Commission determines.

26. Tenants/Petitioners met their burden of proof by a preponderance of evidence that the rent increases taken in 2006 and 2007 were in violation of the Act. D.C. Official Code § 42-3502.08. Tenants/Petitioners also met their burden of proof that services and facilities were reduced in violation of the Act.

27. I will impose a civil fine of $5,000 for the reduction in services and facilities by failing to provide proper extermination services to eliminate the chronic insect and rodent problems that remained a problem in Tenants/Petitioners' unit through the date of the hearing, and impose another $10,000 in fines for taking the illegal rent increases in 2006 and 2007, when the Property was not in substantial compliance with D.C. housing regulations.

28. In sum, the chronic mice problem and bed bugs problem are inexcusable and unsanitary conditions, which the Housing Provider did not take seriously. In accordance with the Act, total fines of $15,000 will be imposed. *See Borger Mgmt., Inc. v. Miller*, TP 27,445 (RHC Mar. 4, 2004).

Amended Final Order at 10-28 (footnotes omitted); R. at 274-92.

On April 28, 2010, the Housing Provider filed a timely Notice of Appeal of the Amended Final Order (Notice of Appeal),[11] which states the following:[12]

. . .

2. Regarding the reduction in services and facilities, Judge Barber found that the Respondent's conduct was willful based solely on the fact that the Respondent was informed of the conditions in the Premises by Petitioners in January, 2007, but did not fully correct the problems until November, 2007. Judge Barber supported her conclusion regarding the willfulness of the Respondent's conduct by stating that "such inaction on the part of the Housing Provider displays a deliberate refusal to perform without a reasonable excuse, or was a

[11] The Housing Provider filed two notices of appeal with the Commission: (1) on March 4, 2010 after the issuance of the Final Order; and (2) on April 28, 2010 after the issuance of the Amended Final Order. The Commission observes that the March 4, 2010 Notice of Appeal challenged the ALJ's imposition of $15,000 in statutory fines against the Housing Provider. The April 28, 2010 Notice of Appeal raised the same allegation regarding the imposition of fines, but presented additional argument on the issue. Accordingly, in its discretion, the Commission will address the issues on appeal as stated in the April 28, 2010 Notice of Appeal, and hereafter, the term "Notice of Appeal" will refer solely and exclusively to the April 28, 2010 Notice of Appeal.

[12] The Commission uses the language of the Housing Provider in the Notice of Appeal, except that the Commission has omitted the Housing Provider's recitation of facts, contained in the first numbered paragraph of the Notice of Appeal.

heedless disregard of duty." (Amended Final Order, April 15, 2010, page 7). Judge [B]arber further stated that the "Housing Provider willfully violated the Act after being placed on notice of the chronic insect, rodent, and bed bug problems and not fully eradicating the problems. In support of the finding of bad faith and the imposition of treble damages, the Court stated that "[t]his is outrageous to have a human being sleep on a mattress from January through November, when the bed is filled with bed buds [sic] causing bleeding and injury to one's skin without addressing the problem immediately." (Amended Final Order, April 15, 2010, page 9). Concerning the finding of illegal rent increases in 2006 and 2007 Judge Barber's Final Order does not support the imposition of a large statutory fine of $10,000.00 against the Respondent with any findings of willfulness or intent to violate the Act on behalf of the Respondent.

3. *Quality Mgmt. Inc. v. District of Columbia* [sic] *Rental Hous. Comm'n*, 505 A.2d 73, 75-76 (D.C. 1986), explores the vast difference between knowing and willful conduct and states "it is clear that the word 'willfully' as it is used in [§ 42-3509.01(b) of the D[.]C[. Official] Code demands a more culpable mental state than the word 'knowingly' as used in [§ 42-3509.01(a) of the D[.]C[. Official] Code] .... There is a difference. 'Willfully' goes to intent to violation the law." A [sic] further discussed in *Ratner Mgmt. v. Tenants of Shipley Park*, TP 11.613 [sic] (RHC Nov. 4, 1988), findings of intent and conscious choice are necessary to meet the heavy burden imposed by [§ 42-3509.01(b) of the DC Code] and sustain a finding of willfulness. In sum, "a fine may be imposed under § 42-3509.01(b) only where the housing provider intended to violate or was aware that it was violating a provision of the Rental Housing Act." *Miller v. District of Columbia* [sic] *Rental Housing* [sic] *Com'n* [sic], 870 A.2d 556, 559 (D.C., [sic] 2005). There is nothing in Judge Barber's Amended Final Order that suggests she took into account the definitional distinction between "knowing" and "willful" acts. Judge Barber's findings that the Respondent's conduct was willful, a condition precedent before the imposition of statutory penalties under § 42-3509.01(b) of the DC Code, was not substantially supported by findings of fact or conclusions of law.

4. Additionally, D[.]C[.] Official Code §42-3509.01(b) provides the trier of fact with discretion as to the amount of the statutory fine, up to $5,000.00. The fines imposed against the Respondent in the instant matter total $15,000.00, $5,000.00 for the reduction in services and facilities by failing to remedy the pest infestation and $10,000.00 for illegal rent increases in 2006 and 2007 while the Premises was not in compliance with DC housing regulations. The Court's Amended Final Order does not indicate that Judge Barber utilized her discretion when determining the amount of the fine. Further, the exorbitant amount of the fine is not commensurate with the harm to be deterred through the imposition of such a fine. In the event that the court [sic] declines to reverse its imposition of the excessive statutory fines, the Respondent

> respectfully requests that the Court [sic], in light of sufficient evidence that the Respondent did make some efforts to ameliorate the conditions in question by periodically bringing in an exterminator and making artificial repairs, substantially reduce the amount of the fine.

Notice of Appeal at 2-4.[13] The Commission held its hearing in on December 1, 2011.

The Commission notes that, on January 9, 2013, the Housing Provider filed a Consent Motion to Withdraw Appeal (Motion to Withdraw Appeal). The Motion to Withdraw Appeal stated that the parties had reached "a global settlement which settled issues between them in this case and other cases pending before the [OAH] and the D.C. Superior Court." Motion to Withdraw Appeal at 1. Notwithstanding the consent of the Tenants, the Commission denied the Housing Provider's motion for two key reasons: first, the Consent Order, implementing the "global settlement," which was stated to be attached to the Motion to Withdraw Appeal, was not, in fact, provided to the Commission; and second, the Motion to Withdraw Appeal did not state, nor did any evidence in the Commission's files indicate, that the $15,000.00 in civil fines ordered by the ALJ had been paid to the District. Ahmed, Inc. v. Torres, RH-TP-07-29,064 (RHC Jan. 31, 2013) at 3. Because the Commission, therefore, could not be satisfied that the settlement agreement resolved all issues arising from the Amended Final Order, the parties were given thirty (30) days to submit evidence of the satisfaction of the order to pay the civil fines. *Id.* at 4-5. No such evidence has been provided to the Commission since that time.

[13] The Housing Provider additionally filed, *pro se*, a Motion for Leave to Amend Notice of Appeal on February 9, 2011. The Commission denied that motion as untimely. *See* Ahmed, Inc. v. Torres, Order on Housing Provider's Motion to Amend Notice of Appeal, RH-TP-07-29,064 (RHC Apr. 15, 2014).

III. ISSUES ON APPEAL[14]

A. Whether the ALJ's determination that the Housing Provider willfully violated the Act by taking rent increases in 2006 and 2007 while the Housing Accommodation was not in substantial compliance with the D.C. Housing Code and is therefore subject to fines under D.C. OFFICIAL CODE § 42-3509.01(b) is supported by substantial evidence on the record.

B. Whether the ALJ's determination that the Housing Provider willfully violated the Act by reducing related services and facilities, and is therefore subject to fines under D.C. OFFICIAL CODE § 42-3509.01(b) is supported by substantial evidence on the record.

C. Whether the amount of statutory fines imposed against the Housing Provider is arbitrary, capricious, an abuse of discretion, not in accordance with the Act or unsupported by substantial evidence on the record.

IV. DISCUSSION OF ISSUES ON APPEAL

A. Whether the ALJ's determination that the Housing Provider willfully violated the Act by taking rent increases in 2006 and 2007 while the Housing Accommodation was not in substantial compliance with the D.C. Housing Code and is therefore subject to fines under D.C. OFFICIAL CODE § 42-3509.01(b) is supported by substantial evidence on the record.

B. Whether the ALJ's determination that the Housing Provider willfully violated the Act by reducing related services and facilities, and is therefore subject to fines under D.C. OFFICIAL CODE § 42-3509.01(b), is supported by substantial evidence on the record.

The Housing Provider objects on appeal to the ALJ's conclusion, in the Amended Final Order, that it willfully violated the Act by taking rent increases in 2006 and 2007 while the rental unit was not in compliance with the housing code, and by reducing services and facilities. *See* Notice of Appeal at 3. Specifically, the Housing Provider asserts that the ALJ erred by not considering the difference between "knowingly" violating the Act and "willfully" violating the

[14] The Commission, it its reasonable discretion, has recast the issues on appeal, consistent with the Housing Provider's language in the Notice of Appeal, to state the issues in a manner which clearly identifies the claim of error under the Act. *See, e.g.*, Bratcher v. Johnson, RH-TP-08-29,478 (RHC Mar. 25, 2014); Dreyfuss Mgmt., LLC v. Beckford, RH-TP-07-28,895 (RHC Sept. 27, 2013) at n. 17; Gelman Mgmt. Co. v. Campbell, RH-TP-09-29,715 (RHC Dec. 23, 2013); Barac Co. v. Tenants of 809 Kennedy St., NW, VA 02-107 (RHC Sept. 27, 2013); Ahmed, Inc. v. Avila, RH-TP-28,799 (RHC Oct. 9, 2012) at n.8.

Act. *Id.* Moreover, the Housing Provider argues that substantial evidence on the record does not support a finding that it willfully violated the Act when it took the 2006 and 2007 rent increases, and when services were reduced. *See id.*

The Commission's standard of review is found at 14 DCMR § 3807.1 (2004), and provides the following:

> The Commission shall reverse final decisions of the Rent Administrator which the Commission finds to be 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 of the proceeding before the Rent Administrator.

"Substantial evidence" has been consistently defined to mean "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." Fort Chaplin Park Assocs. v. D.C. Rental Hous. Comm'n, 649 A.2d 1076, 1079 n. 10, (D.C. 1994); Allen v. D.C. Rental Hous. Comm'n, 538 A.2d 752, 753 (D.C. 1988); Hardy v. Sigalas, RH-TP-09-29,503 (RHC July 21, 2014); Bohn Corp. v. Robinson, RH-TP-08-29,328 (RHC July 2, 2014). The role of the Commission "is not to 'weigh the testimony and substitute ourselves for the trier of fact who heard the conflicting testimony, observed the adversary witnesses, and determined the weight to be accorded their testimony.'" Washington Cmtys. v. Joyner, TP 28,151 (RHC Jul. 22, 2008) at 15 (quoting Fort Chaplin Park Assocs., 49 A.2d at 1079). *See also* Commc'ns Workers of Am. v. D.C. Comm'n on Human Rights, 367 A.2d 149, 152 (D.C. 1976); Dreyfuss Mgmt., LLC, RH-TP-07-28,895 at 42-47 (provided "a hearing examiner's decision . . . flows rationally from the facts and is supported by substantial evidence" the Commission will affirm).

The Commission's review of the Amended Final Order shows that the ALJ imposed $15,000 in civil fines against the Housing Provider: (1) $5,000 for the illegal rent increase in 2006 while the rental unit was not in substantial compliance with the housing code; (2) $5,000

for the illegal rent increase in 2007 while the rental unit was not in substantial compliance with the housing code; and (3) $5,000 for the reduction in services and facilities related to a chronic insect and rodent infestation. Amended Final Order at 28; R. at 274.

The Act provides that civil fines may be imposed on:

> Any person who wilfully (1) collects a rent increase after it has been disapproved under this chapter, until and unless the disapproval has been reversed by a court of competent jurisdiction, (2) makes a false statement in any document filed under this chapter, (3) commits any other act in violation of any provision of this chapter or of any final administrative order issued under this chapter, or (4) fails to meet obligations required under this chapter[.]

D.C. OFFICIAL CODE § 42-3509.01(b) (2001). In Miller v. D.C. Rental Hous. Comm'n, 870 A.2d 556 (D.C. 2005), the D.C. Court of Appeals (DCCA) upheld the Commission's definition of "willful," stating "that a fine may be imposed under § 42-3509.01(b) only where the housing provider intended to violate or was aware that it was violating a provision of the Rental Housing Act." *Id.* at 559. *See* Dreyfuss Mgmt., LLC, RH-TP-07-28,895; Marguerite Corsetti Trust v. Segreti, RH-TP-06-28,207 (RHC Sept. 18, 2012). The DCCA further clarified that a finding of willfulness requires a "more culpable mental state" than the mental state required for a finding that the housing provider acted "knowingly." Miller, 870 A.2d at 559 (quoting Quality Mgmt., Inc. v. D.C. Rental Hous. Comm'n, 505 A.2d 73, 75, n. 6 (D.C. 1986)). *See* Dreyfuss Mgmt., LLC, RH-TP-07-28,895; Marguerite Corsetti Trust, RH-TP-06-28,207.

A "knowing" violation of the Act requires "only a knowledge of essential facts bringing petitioner's conduct within the reach of [the Act.]" Quality Mgmt., 505 A.2d at 75. *See* Campbell, RH-TP-09-29,715; Caesar Arms, LLC v. Lizama, RH-TP-07-29,063 (RHC Sept. 27, 2013); Marguerite Corsetti Trust, RH-TP-06-28,207. Willfulness, on the other hand, must be demonstrated by "specific findings that the . . . violation . . . was committed with intent to violate the Act or at least with awareness that this [would] be the outcome." Miller, 870 A.2d at 558-59

(emphasis added). *See also* Bernstein Mgmt. Corp. v. D.C. Rental Hous. Comm'n, 952 A.2d 190, 199 (D.C. 2008) ("[W]illfulness 'goes to intent to violate the law' and 'demands a more culpable mental state,' than the word 'knowingly,' which 'is simply that you know what you are doing.'") (citing Quality Mgmt., 505 A.2d at 75-76 n.6); Dreyfuss Mgmt., LLC, RH-TP-07-28,895; Lizama, RH-TP-07-29,063. *Cf.* RECAP v. Powell, TP 27,042 (RHC Dec. 19, 2002) at 8-9 (determining that the housing provider who failed to fix the laundry room facilities in the housing accommodation while hospitalized for a health problem did not willfully violate the Act because he "performed the needed repairs when he was released [from the hospital] and able to do the repairs.").

Where there is substantial evidence that a housing provider was notified of housing code violations and nonetheless instituted a rent increase without correcting the violations, the Commission has found that an "ongoing failure to abate [an] infestation for several years was 'the product of a conscious choice[,]' . . . and demonstrates the [h]ousing [p]rovider was at least 'aware that it was violating a provision of the [Act].'" Lizama, RH-TP-07-29,063 at 33-34 (quoting 1773 Lanier Place Tenants' Ass'n v. Drell, TP 27,344 (RHC Aug. 31, 2009) at 87 (quoting Ratner Mgmt. Co. v. Tenants of Shipley Park, TP 11,613 (RHC Nov. 4, 1988)at 4-5), and Joyner, TP 28,151 at 13 (quoting Miller, 870 A.2d at 559)).

In the Amended Final Order, the ALJ begins the section imposing statutory fines against the Housing Provider with a discussion on the meaning of "willfulness" under the Act. Amended Final Order at 25; R. at 277 (quoting Miller, 870 A.2d at 558 and Quality Mgmt., 505 A.2d at 76 n.6). The ALJ determined that the Housing Provider had been on notice of an insect and rodent infestation in the Tenants' unit since 2005 and a bed bug infestation in the Tenants' unit since January 2007. Amended Final Order at 26; R. at 276. The ALJ points to extensive

evidence in support of her finding that the violations of the Act, including illegal rent increases and a reduction in services and facilities, occurred when the Housing Provider was aware that the Housing Accommodation was not in substantial compliance with the housing code. *Id.* at 25-28; R. at 274-77. The Housing Provider's failure to fully eradicate the rodent and insect infestation in the Tenants' unit since 2005, the ALJ reasoned, "did rise to the level of being willful, grossly negligence [sic], bad faith, and a reckless disregard for maintaining and leasing an apartment in sanitary condition." Amended Final Order at 27; R. at 275. The ALJ refers to the letters that the Tenants wrote to the Housing Provider, dated January 29, 2007 and July 25, 2007, stating that the Tenants had "constantly made [the] Housing Provider aware of their severe" infestation problems and other housing code violations. *See* Amended Final Order at 5-6, 26; R. at 296-97, 276. *See also* R. at 4-9. Such conduct, the ALJ found, "display[ed] a deliberate refusal to perform without a reasonable excuse, [and was a] heedless disregard of duty." Amended Final Order at 5; R. at 297.

The Commission determines, based on its review of the record, that the ALJ's conclusions of law concerning the Housing Provider's failure to successfully terminate the rodent and insect infestations and other housing code violations in the Tenants' unit are supported by substantial evidence on the record. Amended Final Order at 12, 15; R. at 287, 290. For example, substantial uncontested evidence on the record supports the ALJ's conclusion that numerous housing code violations existed, either continuously or periodically, between 2005 and 2008, which the Housing Provider failed to reasonably eliminate. Amended Final Order at 12, 15; R. at 287, 290.

The Tenants provided uncontested testimony at the OAH hearing that the cockroach and rodent infestations, which began two months after the Tenants moved into the Housing

Accommodation, were never successfully abated. Hearing CD (OAH April 30, 2008) at 1:43-1:55; Hearing CD (OAH May 1, 2008) at 12:51-12:59; PX 110b; R. at 358; RX 207; R. at 437-40. *See* 14 DCMR § 4216.2(i). Additionally, the Tenants testified that the bed bug infestation in their unit lasted from January 2007 through November 2007, in spite of the fact that the Housing Provider was informed of the problem. *See* 14 DCMR § 4216.2(i); Hearing CD (OAH April 30, 2008) at 1:18-1:25; Hearing CD (OAH May 1, 2008) at 1:16-1:25. The Commission notes that the Tenants also testified that the ceiling and walls in the Housing Accommodation were not properly painted, which resulted in pieces of plaster, paint, and cockroaches falling from the ceiling onto the floor and into the Tenants' food. 14 DCMR § 4216.2(n); Hearing CD (OAH April 30, 2008) at 1:07-1:16; PX 110a; R. at 378. Rats, mice, and cockroaches came into the Housing Accommodation through multiple holes in the walls. 14 DCMR § 4216.2(i), (p); Hearing CD (OAH April 30, 2008) at 2:00-2:10; PX 110d; R. at 368; PX 110e; R. at 370.

Furthermore, the Commission's review of the record reveals substantial evidence to support the ALJ's finding that, "[b]ased on the testimony of the pest control owner, Mr. Hughes, Tenants/Petitioners maintained a clean apartment. This was also the testimony of the Tenants." Amended Final Order at 15. R. at 287. The Tenants testified that they clean the Housing Accommodation every day. Hearing CD (OAH May 1, 2008) at 12:59-1:00. In addition to cleaning, the Tenants testified that they also purchased items to exterminate the cockroaches in the Housing Accommodation, including roach spray and roach boxes. Hearing CD (OAH May 1, 2008) at 1:02. Moreover, the Housing Provider's own witness, Mr. Hughes, testified that the Tenant's unit is very clean when he enters it to treat it for insects and rodents. Hearing CD (OAH June 13, 2008) at 13:06-13:07.

The Commission also finds substantial record evidence in support of the ALJ's finding that the Housing Provider was "an experienced housing provider," Amended Final Order at 27; R. at 275, including the direct, uncontested testimony from Mr. Kahn that he has been a project manager for about 15 years.[15] Hearing CD (June 13, 2008) at 13:34.

Finally, the Commission observes that a series of photographs were submitted into evidence at the OAH hearing corroborating the Tenants' testimony regarding insects and holes in the walls of their unit. PX 110(b)-(c), (h), (j)-(m); R. at 358, 360, 364, 384, 398, 402, 406-407. The Commission notes that the record also contains two letters submitted into evidence at the OAH hearing, sent from the Tenants to the Housing Provider dated January 29, 2007 and July 25, 2007, notifying the Housing Provider in writing of numerous repair issues in the Tenants' unit, including insect and rodent infestation. PX 109-109(a); R. at 352-56.

Based on its review of the record, the Commission is therefore satisfied that the ALJ appropriately applied the standard of "willfulness" as that term is defined by the Act, and that she made specific findings of fact that the Housing Provider intended to violate the Act. D.C. OFFICIAL CODE § 42-3509.01(b); Miller, 870 A.2d at 558; Quality Mgmt., 505 A.2d at 76 n.6; Lizama, RH-TP-07-29,063 at 33-34; Drell, TP 27,344 at 87. *See* Amended Final Order at 25-28; R. at 274-77. Additionally, the Commission determines that substantial evidence, including the testimony and exhibits presented at the OAH hearings as described *supra*, supports the ALJ's finding that the Housing Provider willfully violated the Act by increasing the Tenants' rent while it was aware that the Housing Accommodation was not in substantial compliance with the housing code, and by reducing services and facilities. *See* Amended Final Order at 9, 28; R. 274,

[15] The Commission notes that the first time Mr. Kahn was asked how long he has worked as a project manager, he said 20 to 25 years. Hearing CD (June 13, 2008) at 13:30-13:32.

293; PX 110(a)-(o); R. at 357-413; Tenant Petition; R. at 4-9. *See also* Lizama, RH-TP-07-29,063 at 33-34.

Accordingly, where the Commission is satisfied that the ALJ's finding that the Housing Provider's violations of the Act were willful was in accordance with the relevant provisions of the Act and supported by substantial record evidence, the Commission affirms the ALJ on these issues. 14 DCMR § 3807.1. *See* D.C. OFFICIAL CODE § 42-3509.01(b); Miller, 870 A.2d at 558; Quality Mgmt., 505 A.2d at 76 n.6; Lizama, RH-TP-07-29,063 at 33-34; Drell, TP 27,344 at 87.

C. Whether the amount of statutory fines imposed against the Housing Provider is arbitrary, capricious, an abuse of discretion, not in accordance with the Act, or unsupported by substantial evidence on the record.

The Housing Provider requests that the Commission, should it decline to reverse the imposition of statutory fines, "substantially reduce the amount of the fine" in consideration of the "evidence that the [Housing Provider] did make some efforts to ameliorate the conditions in question by periodically bringing in an exterminator and making artificial repairs." Notice of Appeal at 3-4.

As noted *supra* at 19, the Commission will reverse final decisions that are "based upon 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. *See also* Lizama, RH-TP-07-29,063 (RHC Sep. 27, 2013) at 35. Under D.C. OFFICIAL CODE § 42-3509.01(b), any person who has willfully violated any provision of the Act is subject to a "fine of not more than $5,000 for each violation." D.C. OFFICIAL CODE § 42-3509.01(b). The Commission has noted that an ALJ's discretion regarding the imposition of fines is guided by the statutory maximum of $5,000. D.C. OFFICIAL CODE §§ 2-509 & 42-3509.01(b); Dreyfuss Mgmt., LLC, RH-TP-07-28,895;

Joyner, TP 28,151 at 17. The Commission relies on an ALJ's knowledge, experience, expertise and discretion in imposing fines, when those fines flow rationally from, and are based upon substantial record evidence. *See* Dreyfuss Mgmt., LLC, RH-TP-07-28,895; Joyner, TP 28,151 at 17 (citing Bernstein v. Estrill, TP 21,792 (RHC Aug. 12, 1991) at 5; Borgner v. Woodson, TP 11,848 (RHC June 10, 1987) at 11-15). As the Commission stated in Lizama, RH-TP-07-29,063:

> The Commission is unaware of any case wherein we have unilaterally reduced a fine imposed [by an ALJ or hearing examiner] pursuant to D.C. OFFICIAL CODE § 42-3509.01(b). . . . Instead, we have either affirmed or vacated the fine depending on whether the [ALJ or] hearing examiner made findings of fact and conclusions of law supported by substantial evidence in the record.

Lizama, RH-TP-07-29,063 at 34-36. *See e.g.*, Marguerite Corsetti Trust, RH-TP-06-28,207; Cascade Park Apartments v. Walker, TP 26,197 (RHC Jan. 14, 2005); Gomez, TP 27,179. However, on at least one occasion, we have reduced a fine that the Commission itself imposed. *See* Montgomery v. Offurum, TP 27,676 (RHC May 11, 2005) (fine reduced on reconsideration where housing provider showed that false registration information had been corrected).

The Commission has previously determined that the ALJ's imposition of fines for the illegal rent increases in July 2006 and July 2007, and for the reduction in services and facilities, was in accordance with the provisions of the Act and supported by substantial evidence on the record. *See* D.C. OFFICIAL CODE § 42-3509.01(b); 14 DCMR § 3807.1; Miller, 870 A.2d at 558; Quality Mgmt., 505 A.2d at 76 n.6; Lizama, RH-TP-07-29,063 at 33-34; Drell, TP 27,344 at 87; *supra* at 18-25. Additionally, the Commission observes that the fines imposed by the ALJ, $5,000 for the 2006 rent increase, $5,000 for the 2007 rent increase, and $5,000 for the reduction in services and facilities, do not exceed the statutory limit of $5,000 per violation. D.C. OFFICIAL CODE § 42-3509.01(b). *See* Amended Final Order at 25-28; R. at 274-77.

Still, where the Commission observes that the ALJ has awarded the maximum amount of fines for each violation, the Commission is not satisfied that the ALJ has made sufficient findings of fact to support her conclusions of law regarding the Housing Provider's efforts to mitigate or abate the insect and rodent infestation in the Tenants' unit. D.C. OFFICIAL CODE § 2-509(e).[16] *C.f.* Dreyfuss Mgmt., LLC, RH-TP-07-28,895 (noting that ALJ's findings and conclusions on issue of willfulness failed to mention or reference record evidence regarding housing provider's attempts to make repairs in the tenant's unit). For example, the ALJ made the following conclusions of law, in relevant part, regarding the Housing Provider's mitigation efforts:

> 22. . . . I reach this conclusion based on the failure to make extensive repairs, *i.e.* defective windows, incomplete walls and ceilings with cracks, insect and rodent infestation, bed bugs lasting from January 2007 through November 2007, that remained unattended after being notified repeatedly by the Tenants . . . . The Housing Provider was placed on notice of the unsanitary conditions at the Property in 2005, when it was verbally informed of the insect and rodent infestation by both Tenants/Petitioners. This is when the building is required ratproofing [sic] and aggressive rodent preventative measures . . . .
>
> 23. It is obvious that the Housing Provider was taking insufficient steps to eradicate the mice, bed bug, and rodent problems by periodically bringing in an exterminator who was clearly not addressing the problem . . . . The same holds true for the insufficient repairs on conditions causing the holes in the wall to prevent rodent entry. It is obvious that artificial repairs were

[16] D.C. OFFICIAL CODE § 2-509(e) provides, in relevant part, as follows:

> Every decision and order adverse to a party . . . shall be accompanied by findings of fact and conclusions of law. The findings of fact shall consist of a concise statement of the conclusions upon each contested issue of fact. Findings of fact and conclusions of law shall be supported by and in accordance with the reliable, probative, and substantial evidence.

The Commission has consistently held that conclusions of law must "flow rationally" from the findings of fact. *See, e.g.,* Perkins v. D.C. Dep't of Emp't Servs., 482 A.2d 401, 402 (D.C. 1984); Bower v. Chastleton Assocs., TP 27,838 (RHC Mar. 27, 2014); Washington v. A&A Marbury, LLC, RH-TP-11-30,151 (RHC Dec. 27, 2012). The DCAPA requires a detailed application of the applicable legal standards and tests to the facts of a case in order to allow the Commission to make a determination whether the conclusions of law flow or follow rationally from the findings of fact. *See, e.g.,* Majerle Mgmt. v. D.C. Rental Hous. Comm'n, 866 A.2d 41, 46 (D.C. 2004); ABC, Inc. v. D.C. Dep't of Emp't Servs., 822 A.2d 1085, 1089 (D.C. 2003); Perkins, 482 A.2d at 402; Bower, TP 27,838; Washington, RH-TP-11-30,151.

> completed, and the root of the problem never addressed to prevent rodent entry by covering holes in the walls and eliminating rat burrows. Nor was the root of the problem addressed by scraping, spackling and repainting the walls to prevent peeling paint.
>
> 24. . . . The Housing Provider has been an experienced housing provider for many years, managing a building consisting of 18 units, and Tenants/Petitioners have resided in the unit since 2004. Therefore, Housing Provider's actions in failing to fully eradicate the problem since 2005 did rise to the level of being willful, grossly negligence [sic], bad faith, and a reckless disregard for maintaining and leasing an apartment in sanitary condition, *i.e.* intentional violation of the law, deliberate and the product of a conscious choice. *Borger Mgmt*[.], *Inc. v. Miller*, TP 27,445 (RHC Mar. 4, 2004).
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> . . .
>
> 28. In sum, the chronic mice problem and bed bugs problem are inexcusable and unsanitary conditions, which the Housing Provider did not take seriously . . . .

Amended Final Order at 25-28; R. at 274-77 (emphasis added).

Thus, the ALJ devoted four (4) conclusions of law to her determination that the Housing Provider's actions (or inaction) constituted "willfulness" under D.C. OFFICIAL CODE § 42-3509.01(b) and merited the maximum fine of $5,000 for, respectively, the 2006 rent increase, the 2007 rent increase, and the claimed reduction in services and facilities. *See supra.* However, the ALJ only made one finding of fact relevant to the Housing Provider's efforts to mitigate the insect and rodent infestation in the Tenant's unit, as follows:

> 16. Rodents and insects were not eliminated from premises by trapping or baiting or both. This has been a prolonged condition at the Property since 2005. *Such inaction on the part of the Housing Provider displays a deliberate refusal to perform without a reasonable excuse, or heedless disregard of duty.*

Amended Final Order at 7; R. at 295 (emphasis original).

As noted *supra* at 27 n.16, conclusions of law must "flow rationally" from the findings of fact. *See, e.g.,* Perkins, 482 A.2d at 402; Bower, TP 27,838; Washington, RH-TP-11-30,151. Similarly, regarding the imposition of fines under D.C. OFFICIAL CODE § 42-3509.01(b), such

fines are also required to "flow rationally from," and be based upon, substantial record evidence. *See* Dreyfuss Mgmt., LLC, RH-TP-07-28,895; Joyner, TP 28,151 at 17 (citing Bernstein, TP 21,792 at 5; Borgner, TP 11,848 at 11-15).

Based upon its review of the record, the Commission is unable to determine that the single finding of fact that "[r]odents and insects were not eliminated . . . by trapping or baiting or both" is sufficient to reasonably provide substantial evidentiary support for all of the following conclusions of law on the basis of which maximum fines were assessed under D.C. OFFICIAL CODE § 42-3509.01(b): (1) "the failure to make extensive repairs, *i.e.* defective windows, incomplete walls and ceilings with cracks, insect and rodent infestation, bed bugs lasting from January 2007 through November 2007;" (2) "taking insufficient steps to eradicate the mice, bed bug, and rodent problems by periodically bringing in an exterminator who was clearly not addressing the problem;" (3) "the root of the problem never [being] addressed to prevent rodent entry by covering holes in the walls and eliminating rat burrows;" and (4) "[rising] to the level of being willful, grossly negligence [sic], bad faith, and a reckless disregard for maintaining and leasing an apartment in sanitary condition." *See* Perkins, 482 A.2d at 402; Bower, TP 27,838; Washington, RH-TP-11-30,151; Dreyfuss Mgmt., LLC, RH-TP-07-28,895; Joyner, TP 28,151; Bernstein, TP 21,792 at 5; Borgner, TP 11,848. Conversely, the Commission is unable to determine that the four (4) conclusions of law cited above "flow rationally" from the single finding of fact described above. *See* Perkins, 482 A.2d at 402; Bower, TP 27,838; Washington, RH-TP-11-30,151; Dreyfuss Mgmt., LLC, RH-TP-07-28,895; Joyner, TP 28,151; Bernstein, TP 21,792 at 5; Borgner, TP 11,848. Finally, the Commission is unable to determine that the ALJ's conclusion that the Housing Provider's efforts to mitigate the insect and rodent infestation in the Tenants' unit primarily through service providers were insufficient to warrant any adjustment to

the amount of the fines imposed flowed rationally from the single finding of fact that "[r]odents and insects were not eliminated . . . by trapping or baiting or both."[17] D.C. OFFICIAL CODE § 2-509(e); Perkins, 482 A.2d at 402; Bower, TP 27,838; Washington, RH-TP-11-30,151.

Accordingly, the Commission vacates the ALJ's imposition of $15,000 in fines, and remands this case for the specific purpose of providing additional findings of fact from the existing record to support the four (4) conclusions of law recited *supra* at 29 in order to meet the requirements of the DCAPA, the Act, and Commission precedent.[18] *See* D.C. OFFICIAL CODE §§ 2-509(e) & 42-3509.01(b). *See also* Perkins, 482 A.2d at 402; Bower, TP 27,838; Washington, RH-TP-11-30,151; Dreyfuss Mgmt., LLC, RH-TP-07-28,895; Joyner, TP 28,151; Bernstein, TP 21,792 at 5; Borgner, TP 11,848. The Commission further instructs the ALJ on remand to make additional findings of fact to support her conclusion that the Housing Provider's efforts to mitigate the insect and rodent infestation in the Tenants' unit were insufficient to warrant any adjustment to the amount of the fines imposed. D.C. OFFICIAL CODE § 2-509(e); Perkins, 482 A.2d at 402; Bower, TP 27,838; Washington, RH-TP-11-30,151. As noted herein,

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[17] The Commission notes that its decision in this case is not meant to overturn or otherwise alter in any way, the Commission's holdings in previous cases that a housing provider's unsuccessful efforts to abate conditions in a tenant's unit, including rodent or insect infestations, are irrelevant to the question of whether services have been reduced in a tenant's unit. *See, e.g.*, Lizama, RH-TP-07-29,063; Dejean v. Gomez, RH-TP-07-29,050 (RHC Aug. 15, 2013); Jonathan Woodner Co. v. Enobakhare, TP 27,730 (RHC Feb. 3, 2005). In this case, the Commission is not holding that the Housing Provider's unsuccessful efforts to mitigate the insect and rodent infestation in the Tenants' unit should relieve him from liability, but merely that where the ALJ has awarded the maximum amount of civil fines as a result of the insect and rodent infestation, her findings of fact must support her conclusions of law regarding the Housing Provider's conduct, and that both the findings of fact and conclusions of law must be supported by substantial record evidence. *See* D.C. OFFICIAL CODE §§ 2-509(e) & 42-3509.01(b). *See also* Perkins, 482 A.2d at 402; Bower, TP 27,838; Washington, RH-TP-11-30,151; Dreyfuss Mgmt., LLC, RH-TP-07-28,895; Joyner, TP 28,151; Bernstein, TP 21,792 at 5; Borgner, TP 11,848.

[18] The Commission cautions the ALJ on remand to avoid mixing her findings of facts and conclusions of law. The Commission has stated that a failure to identify distinct findings of fact and conclusions of law "complicates the Commission's review" requiring the Commission to "identify distinct findings of fact and conclusions of law, identify particular findings of fact that support a particular conclusion of law, and to distinguish legal analyses from factual assertions." In re: 70% Voluntary Agreement Application for Rent Level Adjustment 548 7th St., S.E., VA 08,004 (RHC Dec. 27, 2012) at n.2 (citing Jackson v. Peters, RH-TP-07-28,898 (RHC Feb. 3, 2012)); Washington, RH-TP-11-30,151; Carmel Partners, Inc. v. Fahrenholz, TP 28, 273 (RHC Oct. 9, 2012) at n.7.

the Act requires that the conclusions of law in support of the ALJ's determination of the maximum amount of fines of $5,000 for each violation under D.C. OFFICIAL CODE § 42-3509.01(b), "flow rationally from, and are based upon, substantial record evidence. *See* Dreyfuss Mgmt., LLC, RH-TP-07-28,895; Joyner, TP 28,151; Bernstein, TP 21,792 at 5; Borgner, TP 11,848.

V. CONCLUSION

Based on the foregoing, the Commission affirms the ALJ's determinations that the Housing Provider willfully violated the Act by increasing the Tenants' rent in 2006 and 2007 while there were housing code violations in the Tenants' unit, and by reducing services and/or facilities.

The Commission vacates the ALJ's imposition of $15,000 in fines, and remands this case for the specific purpose of providing additional findings of fact from the existing record to support the four (4) conclusions of law recited *supra* at 29 in order to meet the requirements of the DCAPA, the Act and Commission precedent. *See* D.C. OFFICIAL CODE §§ 2-509(e) & 42-3509.01(b); Perkins, 482 A.2d at 402; Bower, TP 27,838; Washington, RH-TP-11-30,151; Dreyfuss Mgmt., LLC, RH-TP-07-28,895; Joyner, TP 28,151; Bernstein, TP 21,792 at 5; Borgner, TP 11,848. The Commission further instructs the ALJ on remand to make additional findings of fact to support her conclusion that the Housing Provider's efforts to mitigate the

insect and rodent infestation in the Tenants' unit were insufficient to warrant any adjustment to the amount of the fines imposed. D.C. OFFICIAL CODE § 2-509(e); Perkins, 482 A.2d at 402; Bower, TP 27,838; Washington, RH-TP-11-30,151.

SO ORDERED

PETER B. SZEGEDY-MASZAK, CHAIRMAN

RONALD A. YOUNG, COMMISSIONER

CLAUDIA L. McKOIN, 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-07-29,064 was mailed, postage prepaid, by first class U.S. mail on this **28th day** of **October, 2014** to:

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