DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION

RH-TP-10-29,840

In re: 4545 Connecticut Ave., NW, Unit 928

Ward Three (3)

JO CARPENTER
Tenant/Appellant

v.

THE MARKSWRIGHT COMPANY, INC.
Housing Provider/Appellee

DECISION AND ORDER

June 5, 2013

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),[1] based on a petition filed in the Rental Accommodations Division (RAD) of the District of Columbia Department of Housing and Community Development (DHCD). 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 Supp. 2008), and the District of Columbia Municipal Regulations (DCMR), 1 DCMR §§ 2800-2899, 1 DCMR §§ 2920-2941, 14 DCMR §§ 3800-4399 (2004) govern these proceedings.

[1] The Office of Administrative Hearings (OAH) assumed jurisdiction over tenant petitions from the Rental Accommodations and Conversion Division (RACD) of the Department of Consumer and Regulatory Affairs (DCRA) 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 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).

I. PROCEDURAL HISTORY

On March 16, 2010, Tenant/Appellant Jo Carpenter (Tenant), a resident of 4545 Connecticut Ave., NW, Unit 928 (Housing Accommodation) filed Tenant Petition RH-TP-10-29,840 (Tenant Petition) with RAD, claiming that Housing Provider/Appellee The Markswright Company, Inc. (Housing Provider) violated the Act as follows:

1. The building where my/our rental unit(s) is located is not properly registered with the RAD.

2. The rent increase was larger than the increase allowed by any applicable provision of the Act.

3. There was no proper 30-day notice of rent increase before the increase was charged.

4. The landlord (housing provider) did not file the correct rent increase forms with the RAD.

5. The rent increase was made while my/our units were not in substantial compliance with DC Housing Regulations.

6. The rent charge filed with the RAD exceeds the legally-calculated rent for my/our unit(s).

Tenant Petition at 2; Record (R.) at 45.

Thereafter a Case Management Order (CMO) was issued setting a hearing for July 23, 2010. Carpenter v. Markswright Co., RH-TP-10-29,840 (OAH June 24, 2010) at 1-2; R. at 61-62. The hearing was continued twice, once at the Housing Provider's request, and once at the Tenant's request. *See* Housing Provider/Respondent's Consent Motion for Continuance at 1; Petitioner Jo Carpenter's Consent Motion for Continuance at 1; R. at 67, 86. Prior to the hearing, the Tenant filed a Praecipe withdrawing her claims related to "compliance of the unit with DC Housing Regulations." Tenant's Praecipe at 1; R. at 104. An evidentiary hearing was held in this matter on May 17, 2011. R. at 101-102. Administrative Law Judge Margaret

Mangan (ALJ) issued her Final Order on August 26, 2011. *See* Carpenter, RH-TP-10-29,840 (OAH Aug. 26, 2011) (Final Order) at 1; R. at 137.

The ALJ made the following findings of fact in the Final Order:[2]

1. The housing accommodation at issue is Unit 928 of 4545 Connecticut Avenue, Northwest. Tenant has rented Unit 928 since September 1, 2002. Housing Provider increased her rent in 2007 and 2009.

2. The Markswright Company, Inc. is a property management and development firm. It manages the housing accommodation at issue and has not disputed being the housing provider in this case.

3. On September 24, 2007, Housing Provider served Tenant with a notice that her rent would increase from $2,499 to $2,636; Tenant received the notice. PX 114. On October 16, 2007, Housing Provider filed a Certificate of Notice of Increase in Rent Charged with the Rental Accommodations Division (RAD) for the rent increase. RX 200. The effective date of rent increase [sic] was November 1, 2007. Lucy Bolton, the Assistant Property Manager, signed the 2007 notice of rent increase.

4. On August 25, 2009, Housing Provider served Tenant with a notice of rent increase from $2,636 to $2,815; she received the notice. PX 115. Ten days later, on September 4, 2009, Housing Provider filed a Certificate of Notice to RAD of Adjustments in Rent Charged, reflecting the rent increase. RX 201. The effective date of the rent increase was October 1, 2009. Lucy Bolton, the Assistant Property Manager, signed the 2009 notice of rent increase.

5. Charles Adamavage is the Property Manager for the Property and had a valid property manager's license during the period relevant to this claim, March 2007 to March 2010. Lucy Bolton, who works under Mr. Adamavage, is not a licensed property manager. PX 116.

Final Order at 3; R. at 135. The ALJ made the following conclusions of law in the Final Order:[3]

A. Jurisdiction and Burden of Proof

1. This matter is governed by the Rental Housing Act of 1985 (Act), D.C. Official Code §§ 42-3501.01-3509.07, the District of Columbia Administrative Procedure Act (DCAPA), D.C. Official Code §§ 2-501-510, the District of Columbia Municipal

[2] The findings of fact are recited here using the language of the ALJ in the Final Order.

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

Regulations (DCMR), 1 DCMR 2800-2899, 1 DCMR 2920-2941, and 14 DCMR 4100-4399.

2. "In contested cases, except as may otherwise be provided by law . . . the proponent of a rule or order shall have the burden of proof." D.C. Official Code § 2-509(b). "[A] party must prove each fact essential to his or her claim by a preponderance of the evidence so that the Administrative Law Judge finds that it is more likely than not that each fact is proven." OAH Rule 2932.2. In this case, Tenant is the proponent of the relief sought and has the burden to prove by a preponderance of the evidence that Housing Provider violated the Act when it increased the rent.

B. Rent Increases

3. Pursuant to the Act, a housing provider may not increase the rent for any rental unit unless: (1) the rental unit is in substantial compliance with the Housing Regulations, (2) the housing accommodation is registered under D.C. Official Code § 42-3502.05, (3) the housing provider of the housing accommodation is licensed properly under the law if the law requires licensing, (4) the manager of the accommodation is registered properly under the District's Housing Regulations if the regulations require registration, and (5) there is proper notice in accordance with D.C. Official Code § 42-3509.04. D.C. Official Code § 42-3502.08(a)(1). Additionally, the housing provider must give the tenant 30-days written notice of the rent increase. 14 DCMR 4205.4(a); D.C. Official Code § 42-3509.04(b).

4. The Act defines a housing accommodation as "any structure or building in the District containing 1 or more rental units and the land appurtenant thereto." D.C. Official Code § 42-3501.03(14). A housing provider is a "landlord, an owner, lessor, sublessor, assignee, or their agent, or any other person receiving or entitled to receive rents or benefits for the use or occupancy of any rental unit within a housing accommodation within the District." D.C. Official Code § 42-3501.03(15). The rental unit at issue meets the definition of a housing accommodation, and the Markswright Company satisfies the definition of a housing provider because it acts as an agent of the owner, lessor, sublessor, or assignee.

C. Rent Increase Requirements

5. Tenant claims that Housing Provider did not perfect the rent increases filed with RAD because the person who signed the forms, Lucy Bolton, was not a registered manager or licensed housing provider. Tenants relies on language [sic] of D.C. Official Code § 42-3502.08, § 47-2853.143 [sic], and *Sawyer Prop. Mgmt. of Maryland, Inc. v. D.C. Rental Hous. Comm'n*, 877 A.2d 96 (D.C. 2005). The Act requires that rent may not be increased unless "the manager of the accommodation, when other that [sic] the housing provider, is properly licensed under a statute or regulations [sic] if the statute or regulation requires registration." D.C. Official Code § 42-3502.08(a)(1)(D). Next, Tenant cites § 47-2853.143, which states, "Unless licensed under this subchapter, no person shall use the term or words 'property manager' to imply that he or she is

licensed as a property manager in the District." The D.C. Court of Appeals held that housing providers must be in "strict compliance" with reporting and monitoring requirements, and that a housing provider must "take and perfect" rent ceiling adjustments. *Sawyer Prop. Mgmt.*, 877 A.2d 96, 103.

6. From these statutory provisions and *Sawyer, supra*, the Tenant concludes that rent increases were invalid because an unlicensed employee signed the rent increase forms. The Tenant is correct that, for the purpose of effectively and efficiently enforcing the rent-control program, housing providers are subject to strict compliance of the law; however, the Tenant misappropriates the "perfect" language of *Sawyer* and misconstrues the Act.

7. In *Sawyer*, the court upheld the Rental Housing Commission's (RHC) decision to deny a rent increase because the housing provider failed to "properly perfect" the filing requirements for adjusting the rent ceiling; the housing provider did not meet the 30-day deadline to file a Certification of Election of General Applicability. *Id.* at 100, 102. The court concluded that the rent ceiling adjustment forms must be perfected in order for a rent adjustment to be valid. The court iterated the "perfect" language directly from the 14 DCMR 4200-4218, which pertained only to rent ceiling adjustments. *Id.* at 103; 14 DCMR 4200.5 (a rent ceiling adjustment is any increase or decrease in a rent ceiling that is authorized by the Act, and taken and perfected by the housing provider); 14 DCMR 4206.4 (a housing provider who so elects shall take and perfect a rent ceiling adjustment of general applicability); 14 DCMR 4204.9 (any rent ceiling adjustment authorized by the Act and this chapter shall be taken and perfected within the time provided in this chapter, and shall be considered taken and perfected only if the housing provider has filed with the Rent Administrator).

8. Although, [sic] rent ceilings were abolished in 2006, the *Sawyer* court clarified that the Regulations governed only the filing requirements for rent ceiling adjustments; the Act governed filing requirements for rent increases. *Sawyer Prop. Mgmt.*, 877 A.2d 96, 106.

> There is a fundamental difference, manifest throughout the rent control regulations, between increasing the rent ceiling and increasing the rent. The regulation that Sawyer attacks addresses the former, and the statute, the latter. The regulation imposes filing requirements for the perfection of rent ceiling adjustments of general applicability, not for rent increases based on those adjustments.

Sawyer Prop. Mgmt., 877 A.2d 96, 106.

9. Concerning filing requirements for rent increases, the Act states:

> (1) A housing provider shall file the following notices with the Rent Administrator:

(A) A copy of the rent increase notice given to the tenant for a rent increase under § 42-3502.08(h)(2), within 30 days after the effective date of the increase; provided, that if rent increases are given to multiple tenants with the same effective date, the housing provider shall file a sample rent increase notice and a list attached stating the unit number, tenant name, previous rent charged, new rent charged, and effective date for each rent increase;

(B) A copy of the notice given to the tenant for an increase under § 42-3502.13(d) stating the calculation of the initial rent charged in the lease (based on increases during the preceding 3 years) within 30 days of the commencement of the lease term;

(C) A notice of a change in ownership or management of the housing accommodation, or change in the services and facilities included in the rent charged, within 30 days after the change.

D.C. Official Code § 42-3502.05(g)[.]

10. The rent increase notice that the housing provider must file with RAD should "contain a statement of the current rent, the increased rent, and the utilities covered by the rent which justify the adjustment or other justification for the rent increase," and a summary of the tenant's rights. D.C. Official Code § 42-3502.08(f). Additionally, the DCMR states that notice must include the amount of the rent adjustment, and the date when the adjusted rent is due. 14 DCMR 4205.4. The housing provider must also certify in the notice that the "rental unit and the common elements of the housing accommodations are in substantial compliance with the housing regulations or, if not in substantial compliance, that any noncompliance is the result of tenant neglect or misconduct." *Id.* In this case, Housing Provider complied with each requirement.

11. The Act does not mandate a signature on the rent increase notice forms that a housing provider must file with RAD. Therefore, the Act does not require the signature of a licensed property manager within its filing provisions. D.C. Official Code § 47-2853.143, Tenant's contentions notwithstanding, would not apply, even if OAH jurisdiction applied. Accordingly, Tenant has not proven that the rent increase forms were filed improperly.

12. Tenant also claims that Housing Provider did not file the correct rent increase forms with RAD. Housing Provider submitted into evidence the 2007 Certificate of Notice to RAD of Adjustment in Rent Charged and the 2009 Certificate of Notice of Increase in Rent Charged, which are required by the Act. RX 200; RX 201. Tenant did not submit any evidence to show that those forms filed with RAD were not the correct rent increase forms, or that Housing Provider did not provide the correct rent increase forms to RAD. Thus, Tenant failed to prove that Housing Provider filed the incorrect rent increase forms with RAD.

D. Failure to Prove Rent Increases Surpassed the Legal Limit, Rent Exceeded the Legally Calculated Rent Ceiling, Improper Notice of Rent Increase, and Housing Accommodation Not Properly Registered.

1. Rent Increase Amounts in Accordance with the Rental Housing Act[.]

13. Tenant claims that the rent increases surpassed the increases allowed under the Act, but failed to provide evidence to support her claim. The Act states:

> (b) On an annual basis, the Rental Housing Commission shall determine an adjustment of general applicability in the rent charged established by subsection (a) of this section. This adjustment of general applicability shall be equal to the change during the previous calendar year, ending each December 31, in the Washington, D.C., Standard Metropolitan Statistical Area Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W) for all items during the preceding calendar year. No adjustment of general applicability shall exceed 10%.
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> ...
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> (f)(1) Unless permitted under § 42-3502.10(j), a capital improvement increase in the rent charged as provided under § 42-3502.10 shall not be assessed against any elderly tenant or tenant with a disability who leases and occupies a rental unit regulated under this chapter.
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> ...
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> (f)(2)(B) "Elderly tenant" means an individual who is, and who proves to the satisfaction of the Rent Administrator that he or she is, at least 62 years of age, and has an income of not more than $40,000 per year at the time of approval by the Rent Administrator of a petition for capital improvements pursuant to 42-3502.10.

D.C. Official Code § 42-3502.06[.]

14. The RHC determines the rent adjustment amount and bases it on the percentage change of the previous calendar year for the Washington, D.C. Standard Metropolitan Statistical Area Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W). In 2007, the RHC's CPI-W-based increase was 3.5%; in 2009, it was 4.9%. In addition to the CPI-W based rent increase, the housing provider can charge an additional 2% rent increase, but the rent increase cannot exceed 10%. D.C. Official Code §§ 42-3502.06(b), 42-3502.08(h)(2). For "elderly tenants," the housing provider cannot increase their rent more than 5%, or charge elderly tenants a capital improvement increase. D.C. Official Code § 42-3502.08(h)(2).

15. In November 2007, Housing Provider increased Tenant's rent from $2,499 to $2,636, a 5.5% increase. RX 200. In October 2009, Housing Provider increased Tenant's rent from $2,636 to $2,815, a 6.8% increase. RX 201. At the hearing, Tenant

claimed elderly status, but conceded that she did not file an Elderly and Disabled Status Application with RAD and thus, was not considered elderly under the Act. D.C. Official Code § 42-3502.06(f)(2)(B); 14 DCMR 4210.49. Based on the facts presented, Tenant failed to prove that the rent increases were larger than the increase allowed by the Act.

2. Rent Ceiling Not Applicable to Rent Increases in 2007 and 2009.

16. Tenant argues that her rent exceeded the legally calculated rent ceiling for her rental unit. Rent ceilings were abolished by the Rent Control Reform and Amendment Act of 2006, which amended the Rental Housing Act of 1985 to provide that permissible rent ceilings would be based on the present rent charged for a housing unit rather than the rent ceiling. D.C. Official Code § 42-3502.06 (2006). The amendment was effective August 6, 2006. Since there was no rent ceiling established in 2007 or 2009, Tenant fails to prove this claim.

3. Rent Increase Notices in Compliance with the Rental Housing Act[.]

17. Tenant claims that there were no proper 30-day notices of the rent increases before their effective date. The applicable rule provides:

> (b) No rent increases, whether under this chapter, the Rental Accommodations Act of 1975, the Rental Housing Act of 1977, the Rental Housing Act of 1980, or any administrative decisions issued under these acts, shall be effective until the first day on which rent is normally paid occurring more than 30 days after notice of the increase is given to the tenant.

D.C. Official Code § 42-3509.04[.]

18. In 2007, Housing Provider gave Tenant more than 30 days of notice for the rent increase. Housing Provider served the notice on September 24, 2007 and the effective date of rent increase was November 1, 2007. RX 200; PX 114. For the 2009 rent increase, Housing Provider also provided Tenant with more than 30 days of notice. Housing Provider sent Tenant notice on August 25, 2009 and it increased the rent on October 1, 2009. RX 201; PX 115. Accordingly, Housing Provider sent proper 30-day notice for the 2007 and 2009 rent increases.

4. Failure to Prove Housing Accommodation Not Registered.

19. Tenant claims that during her rent increases in 2007 and 2009, the housing accommodation was not properly registered. The Act mandates that the housing provider register the housing accommodation in order to increase the rent. D.C. Official Code § 42-3502.08(a)(1). Tenant did not submit any evidence to adequately support her claim. In fact, on RX 201, Certificate of Notice of Adjustments in Rent Charged, are basic business and registration numbers that have not been challenged.

20. Tenant has not met her burden of proving that her rent was illegally increased. Thus, Housing Provider did not violate the Act or Housing Regulations when it increased Tenant's rent in 2007 and 2009. I dismiss all of Tenant's claims.

Final Order at 4-11; R. at 127-34 (footnotes omitted).

On September 12, 2011, Tenant filed a timely Notice of Appeal with the Commission asserting that the ALJ made the following errors:[4]

1. The [ALJ] erred by holding that an unlicensed employee may sign the rent increase forms which clearly require the Housing Provider's [s]ignature. The [ALJ] erred because the forms specifically request a signature from the Housing Provider.... By holding that it was proper for Lucy Bolton, an employee and not property manager, to sign the forms the [ALJ] has erred and the decision should be reversed.

2. The [ALJ] erred in her reading of Sawyer Property Management of Maryland, Inc. v. District of Columbia Rental Housing Commission [sic], 877 A.2d 96, 103 (D.C. App. [sic] 2005).... The [ALJ] erred because the DC Official Code § 47-2614.2 requires that, "A property manager is responsible for the day-to-day supervision of each person who engages in property management, ministerial, or clerical functions on behalf of the property manager."

3. The [ALJ] erred in admitting into evidence RX200 and RX201.

Notice of Appeal at 1-3. The Commission held a hearing on this matter on February 14, 2013.

II. ISSUES ON APPEAL

1. Whether the ALJ erred by holding that an unlicensed employee may sign the rent increase forms which clearly require the Housing Provider's signature.

2. Whether the ALJ erred in her reading of Sawyer Prop. Mgmt. v. D.C. Rental Hous. Comm'n, 877 A.2d 96, 103 (D.C. 2005).[5]

3. Whether the ALJ erred in admitting into evidence RX 200 and RX 201.

[4] In the Notice of Appeal, the Tenant combines a statement of the alleged errors with the supporting argument. Accordingly, the Commission will only list here those portions of the Notice of Appeal that appear to be allegations of error.

[5] The DCCA's decision in Sawyer Prop. Mgmt. v. D.C. Rental Hous. Comm'n, 877 A.2d 96, 102-103 (D.C. 2005) will be referred to hereinafter simply as "Sawyer," with appropriate page references as required.

III. DISCUSSION

1. **Whether the ALJ erred by holding that an unlicensed employee may sign the rent increase forms which clearly require the Housing Provider's signature.**

2. **Whether the [ALJ] erred in her reading of Sawyer, 877 A.2d 96.**

The Tenant asserts on appeal that the ALJ erred by allowing Lucy Bolton, an employee of the Housing Provider, to sign rent increase forms because, she argues, those forms require the signature of either the Housing Provider or a licensed (or registered) property manager. Notice of Appeal at 1-2. In support of her assertion, the Tenant cites D.C. OFFICIAL CODE §§ 42-3502.08(a)(1)(C)-(D) (2001), Sawyer, 877 A.2d at 103, and "D.C. Official Code § 47-2614.2." Notice of Appeal at 1-2. In the Final Order, the ALJ concluded the following regarding whether the Act contains a signature requirement for rent increase notices:

> The Act does not mandate a signature on the rent increase notice forms that a housing provider must file with RAD. Therefore the Act does not require the signature of a licensed property manager within its filing provisions.... Accordingly, Tenant has not proven that the rent increase forms were filed improperly.

Final Order at 8; R. at 130.

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

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

The Commission will sustain an ALJ's interpretation of the Act unless it is unreasonable or embodies a material misconception of the law, even if a different interpretation may also be supportable. *See* Dorchester House Assocs. Ltd. P'ship v. D.C. Rental Hous. Comm'n, 938 A.2d 696, 702 (D.C. 2007) (*citing* Sawyer, 877 A.2d at 102-103)). The Commission will defer to an

ALJ's decision so long as it flows rationally from the facts and is supported by substantial evidence. *See* Munchison v. D. C. Dept. of Public Works, 813 A.2d 203, 205 (D.C. 2002). *See also* Ruffin v. Sherman Arms, LLC, TP 27,982 (RHC July 29, 2005) at 10. As the DCCA has consistently held, "[p]articularly where there is a broad delegation of authority to an administrative agency, deference must be given to a reasonable construction of the regulatory statute by the agency." *See* 1773 Lanier Place, N.W., Tenants' Ass'n v. Drell, TP 27,344 (RHC Aug. 31, 2009) (*citing* Furtick v. D.C. Dep't of Emp't Servs., 921 A.2d 787, 790 (D.C. 2007); Hughes v. D.C. Dep't of Emp't Servs., 498 A.2d 567, 570 (D.C. 1985)). *See also* Watergate E. Comm. Against Hotel Conversion to Co-op Apartments v. D.C. Zoning Comm'n, 953 A.2d 1036, 1043 (D.C. 2008) (noting that deference is given to an agency's interpretation of a statute it administers unless the "interpretation is unreasonable or in contravention of the language or legislative history of the statute").

Tenant's first argument in support of this issue is that, under the Act, the signature of the Housing Provider or licensed (or registered) property manager is required on rent increase notices. Notice of Appeal at 1-2. D.C. OFFICIAL CODE §§ 42-3502.08(a)(1)(C)-(D) (2001) govern rent increases, and state the following:

> (a)(1) Notwithstanding any provision of this chapter, the rent for any rental unit shall not be increased above the base rent unless:
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> ...
>
> (C) The housing provider of a housing accommodation is properly licensed under a statute or regulations if the statute or regulations require licensing; [and]
>
> (D) The manager of the accommodation, when other than the housing provider, is properly registered under the housing regulations if the regulations require registration[.]

The Act imposes the following filing requirements regarding the rent increase notices at issue in this case:[6]

> A housing provider shall file the following notices with the Rent Administrator:
>
> (A) A copy of the rent increase notice given to the tenant for a rent increase under § 42-3502.08(h)(2), within 30 days after the effective date of the increase; provided, that if rent increases are given to multiple tenants with the same effective date, the housing provider shall file a sample rent increase notice and a list attached stating the unit number, tenant name, previous rent charged, new rent charged, and effective date for each increase;

D.C. OFFICIAL CODE § 42-3502.05 (2001 Supp. 2007). In addition to providing notice of the rent increase to the Tenant, the Housing Provider must also file a "Certificate of Election of Adjustment of General Applicability" with RAD, which shall:

> (a) Identify each rental unit to which the election applies;
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> (b) Set forth the amount of the adjustment elected to be taken, and the prior and new rent ceiling for each units; and
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> (c) Be filed and served within thirty (30) days following the date when the housing provider is first eligible to take the adjustment.

14 DCMR § 4204.10 (2004). Furthermore, the Housing Provider must comply with the following regulations – 14 DCMR §§ 4205.4, 4205.5 (2004) – governing implementation of rent increases, according to which, respectively:

> 4205.4 A housing provider shall implement a rent adjustment by taking the following actions, and no rent adjustment shall be deemed properly implemented unless the following actions were taken:
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> (a) The housing provider shall provide the tenant of the rental unit, not less than thirty (30) days written notice pursuant to § 904 of the Act, the following:
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> (1) The amount of the rent adjustment;
>
> (2) The amount of the adjusted rent;

[6] The rent increase forms at issue in this case are related to increases of general applicability under Section 208(h)(2) of the Act, D.C. OFFICIAL CODE § 42-3502.08(h)(2) (2001).

(3) The date upon which the adjusted rent shall become due; and

(4) The date and authorization for the rent ceiling adjustment taken and perfected pursuant to 4202.9;

(b) The housing provider shall certify to the tenant, with the notice of rent adjustment, that the rental unit and the common elements of the housing accommodations are in substantial compliance with the housing regulations or if not in substantial compliance, that any noncompliance is the result of tenant neglect or misconduct;

(c) The housing provider shall advise the tenant, with the notice of rent adjustment by petition filed with the Rent Administrator; and

(d) The housing provider shall simultaneously file with the Rent Administrator a sample copy of the notice of rent adjustment along with an affidavit containing the names, unit numbers, date and type of service provided, certifying that the notice was served on all affected tenants in the housing accommodation.

4205.5 Notwithstanding § 4205.4, a housing provider shall not implement a rent adjustment for a rental unit unless all of the following conditions are met:

(a) The rental unit and the common elements of the housing accommodation are in substantial compliance with D.C. housing regulations, or any substantial noncompliance is the result of tenant neglect or misconduct;

(b) The housing provider has met the registration requirements of § 4102 with respect to the rental unit; and

(c) At least one hundred eighty (180) days shall have elapsed since the date of implementation of any prior rent increase.

The Commission is guided by well-established rules of statutory construction in this jurisdiction. *See* District of Columbia v. Edison Place, 892 A.2d 1108, 1111 (D.C. 2006); J. Parreco & Son v. D.C. Rental Hous. Comm'n, 567 A.2d 43, 45-46 (D.C. 1989); Tenants of 710 Jefferson St., N.W. v. Loney, SR 20,089 (RHC Sept. 3, 2008). The District of Columbia Court of Appeals (DCCA) has explained that a court must look at the plain meaning of the words of a statute when the words are clear and unambiguous. *See* Edison Place, 892 A.2d at 1111. *See also* Dorchester House Assocs. Ltd. P'ship, 938 A.2d at 702. Moreover, a court will construe the

words of a statute according to their ordinary sense and with the meaning commonly attributed to them. *See* Edison Place, 892 A.2d at 1111. Typically, when the plain meaning of the statutory language is unambiguous, the intent of the legislature is clear, and judicial inquiry is not required to proceed further. *See id.*

The Commission's review of the Act's statutory provisions and regulations governing the requirements for taking and giving notice of rent increases, as recited *supra* at 11-13, supports the ALJ's interpretation of these provisions and regulations because their words are clear and unambiguous, as is the meaning commonly attributed to them, and the intent of the legislature is clear. *See* D.C. OFFICIAL CODE §§ 42-3502.05, 3502.08(a)(1)(C)-(D) (2001 Supp. 2007); 14 DCMR §§ 4205.4, 4205.5, 4204.10 (2004). *See, e.g.*, Edison Place, 892 A.2d at 1111; J. Parreco & Son, 567 A.2d at 45-46; Dorchester House Assocs. Ltd. P'ship, 938 A.2d at 702. Therefore, the Commission is satisfied that the ALJ's determination that neither the Act nor its regulations require the signature of the Housing Provider or a licensed (or registered) property manager in a notice of a rent increase to a tenant is consistent with the language of the Act and its regulations, and is neither unreasonable nor embodies a material misconception of the Act. *See* D.C. OFFICIAL CODE §§ 42-3502.05, 3502.08(a)(1)(C)-(D) (2001 Supp. 2007); 14 DCMR §§ 4205.4, 4205.5, 4204.10 (2004). *See, e.g.*, Dorchester House Assocs. Ltd. P'ship, 938 A.2d at 702 (*citing* Sawyer, 877 A.2d at 102-103).

The Tenant next argues that Sawyer, 877 A.2d at 96, mandates "strict compliance" with rent control requirements under the Act: specifically the requirement that a signature by the housing provider or licensed (or registered) property manager is required in notices to tenants of a rent increase in order to properly perfect such a rent increase. Notice of Appeal at 2. Sawyer was an appeal to the DCCA from the Commission's decision disallowing a rent increase because

of, *inter alia*,[7] defects in the rent increase notice given to the tenant, specifically, that the rent increase notice failed to identify the previously authorized rent ceiling adjustment that the housing provider sought to implement. *See* Sawyer, 877 A.2d at 100, 102.[8]

Based upon its review of the record and the DCCA's opinion in Sawyer, the Commission is thus not persuaded by the Tenant's contentions regarding Sawyer for two reasons: (1) contrary to the Tenant's assertion, the ALJ's determination that the signature of a housing provider or licensed (or registered) property manager is not required on rent increase notices under the Act demonstrates "strict compliance" with the Act since there is no provision for such requirement in the Act or its regulations; and (2) the DCCA's decision in Sawyer did not address the Tenant's specific, substantive contention in this case that the ALJ erred in determining that the signature of a housing provider or licensed (or registered) property manager is required on rent increase notices under the Act. *See* Sawyer, 877 A.2d at 96-100.

Finally, for support of its contention that the Act contains a requirement that the signature of a housing provider or licensed (or registered) property manager is required on rent increase notices under the Act, the Tenant cites to the following provision in the D.C. OFFICIAL CODE: "D.C. OFFICIAL CODE § 47-2614.2." Notice of Appeal at 2. *See also* Hearing CD (RHC Mar. 28, 2013) at 2:08:18. The Commission's review of the D.C. OFFICIAL CODE reveals no such

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[7] The DCCA explained that the Commission disallowed the rent increase for the following three reasons: (1) defects in the housing provider's registration, (2) defects in the notice to the tenant, and (3) failure of the proposed rent increase to implement a properly perfected upward adjustment of the rent ceiling for the housing accommodation. *See* Sawyer, 877 A.2d at 100.

[8] The Commission notes that subsequent to the issuance by the DCCA of its decision in Sawyer, rent ceilings were abolished in the District, effective August 6, 2006. *See* D.C. OFFICIAL CODE § 42-3502.06 (2001 Supp. 2007). As the rent increases at issue in this case were taken in 2007 and 2009, after rent ceilings were abolished, the language in Sawyer related to the requirements for rent ceiling increases do not apply to the instant case. *See id. See also* Sawyer, 877 A.2d at 101-104. Additionally, the Commission observes that DCCA in its decision in Sawyer does not address whether a signature of a housing provider or licensed (or registered) property manager is required on rent increase notices. *See generally* Sawyer, 877 A.2d at 96.

provision – the final section contained within Title 47, Chapter 26, is section 2611. Accordingly, this citation offers no support to the Tenant's appeal.[9]

In this case, the Commission's review of the Act, the regulations, and Sawyer, does not reveal any requirement that rent increase notices contain any signature by the Housing Provider or licensed property manager, as urged by the Tenant. D.C. OFFICIAL CODE §§ 42-3502.05, 3502.08(a)(1)(C)-(D) (2001 Supp. 2007); 14 DCMR §§ 4205.4, 4205.5, 4204.10 (2004). *See* Sawyer, 877 A.2d at 96. Based on its review of the record, the Commission determines that the ALJ's decision is in accordance with the substantial evidence in the case and the provisions of the Act, and accordingly affirms the ALJ on this issue.

3. Whether the [ALJ] erred in admitting into evidence RX200 and RX201.

The Tenant argues in the Notice of Appeal that the ALJ erred in admitting the Housing Provider's exhibits 200 and 201 (RX 200 and RX 201), documents filed with RACD and RAD respectively, because the exhibits failed to meet the requirements of "Office of Administrative Hearings: Rules Applicable in Specific Classes of Cases Rule 2934." Notice of Appeal at 2. The Tenant quotes 1 DCMR § 2934.1 (2004), which provides as follows:

> Any party that wishes the Administrative Law Judge to review any document concerning a rental housing accommodation that has been filed with the RACD must introduce a

[9] The Commission observes that the Tenant quotes the following language in the Notice of Appeal, purportedly from D.C. OFFICIAL CODE § 47-2614.2: "A property manager is responsible for the day-to-day supervision of each person who engages in property management, ministerial, or clerical functions on behalf of the property manager." Notice of Appeal at 2. As the Commission explained above, there is no § 47-2614.2 in the D.C. OFFICIAL CODE. However, the Commission was able to find a similar quotation in D.C. OFFICIAL CODE § 47-2853.141 (2001), which states, in relevant part, the following:

> ...The property manager shall be held accountable for the day-to-day job-related activities of the property manager's employees. The property manager shall not perform any activities that relate to listing for sale, offering for sale, buying or offering to buy, negotiating the purchase, sale, or exchange of real estate, or negotiating a loan on real estate for a fee, commission, or other valuable consideration.

The Commission notes that this statute is not contained within the Act, and therefore the Commission lacks jurisdiction to determine whether any relief might be warranted based on D.C. OFFICIAL CODE § 47-2853.141 (2001). *See* D.C. OFFICIAL CODE §§ 42-3502.02, 3502.04(c) (2001).

copy of that document into evidence. The document shall be admitted into evidence only in the following circumstances:

(a) If a copy with an original file stamp (not a copy of the file stamp) is provided; or

(b) If a copy certified by the Rent Administrator or an authorized employee of RACD is provided.

An Administrative Law Judge shall permit a reasonable continuance to enable a party to obtain a copy of any such document.

While the ALJ does not specifically address the admission of exhibits in the Final Order, the ALJ made a finding of fact that the Housing Provider filed a Certificate of Notice of Increase in Rent Charged with RACD on October 16, 2007, and filed a Certificate of Notice with RAD on September 4, 2009. Final Order at 3; R. at 135.

The Commission observes that, while the Tenant in the Notice of Appeal cites to the 2004 codification of the OAH regulations at 1 DCMR §§ 2800-2900 (2004), the 2004 codification was amended, and new OAH regulations were issued on January 1, 2011 at 1 DCMR §§ 2800-2900 (2011). The amended OAH rules were in effect at the time of the OAH hearing on May 17, 2011. *See* 1 DCMR §§ 2800-2900 (2011). The amended OAH regulations at 1 DCMR §§ 2933.1,-.2 (2011), regarding the admission of RAD documents into evidence state the following:

2933.1 Any party who wishes the Administrative Law Judge to consider a document that is on file with the RAD or any other District of Columbia agency must introduce a copy of that document into evidence. The Administrative Law Judge shall admit the document into evidence if he or she finds that it is relevant and is an accurate copy of a document on file with the RAD or other agency.

2933.2 A party can establish that a document is an accurate copy of a document on file with RAD or other agency by one of the following methods:

(a) Providing a copy with a legible original file stamp;

(b) Providing a copy with a legible copy of the original file stamp;

(c) Providing a copy certified by the Rent Administrator or an authorized employee of RAD;

(d) Providing testimony or other evidence that the Administrative Law Judge finds satisfactory; or

(e) If all parties consent to the admission of the document into evidence.

The Commission observes that the Tenant's objection to RX 200 at the OAH hearing went to the legibility of the file stamp currently required by the amended OAH regulation, not to the lack of an original file stamp which was required by the original OAH regulations.[10] *See* Hearing CD (OAH May 17, 2011) at 10:27. Additionally, the ALJ's ruling on the admissibility of RX 200 was based on the legibility of the file stamp – the ALJ stated on the record that "the date stamps are legible, your objection is overruled." *See id.* at 10:28.

As stated previously, the Commission's standard of review states the following:

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

14 DCMR § 3807.1 (2004).

The Commission is satisfied, based on its review of the record, that the ALJ's determination that the file stamp on RX 200 is legible, is supported by substantial evidence.[11] 14

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[10] Counsel for the Tenant made the following objection on the record:

> Your honor before we get into testimony on this exhibit I'd like to note an objection.... [T]his document fails to meet the evidentiary requirements of the rules of the OAH. While the rules of the OAH in rental housing cases allow for documents...from the agency to be presented as evidence without authentication from the agency's administrative personnel, the regulations very clearly point out that...the file stamp of the document must be legible.

Hearing CD (OAH May 17, 2011) at 10:27.

[11] The Commission does not address the ALJ's admission of RX 201 because the Commission's review of the record shows that the Tenant failed to make an objection to the admission of RX 201 on the record at the OAH

DCMR 3807.1 (2004). *See also* Final Order at 3; R. at 135. *See* RX 200; R. at 200. The Commission also notes that the Tenant did not object to the authenticity of RX 200 at the OAH hearing, nor did she contest the testimony of Housing Provider's witness that RX 200 was date stamped October 16, 2007. Hearing CD (OAH May 17, 2011) at 10:29. *See, e.g., supra* at 18 n.11; Jonathan Woodner Co., TP 27,730; Dey, TP 26,119.[12] Accordingly, the Commission affirms the ALJ on this issue.

IV. CONCLUSION

Based on the foregoing, the Commission affirms the ALJ on all issues.

SO ORDERED

PETER B. SZEGEDY-MASZAK, CHAIRMAN

RONALD A. YOUNG, COMMISSIONER

MARTA W. BERKLEY, COMMISSIONER

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hearing on May 17, 2011. Hearing CD (OAH May 17, 2011) at 10:29. Where a party fails to raise an issue before the ALJ, the Commission is not permitted to consider it on appeal, except when the Commission determines plain error. *See* 14 DCMR § 3807.1, .4 (2004). *See e.g.,* Jonathan Woodner Co. v. Enobakhare, TP 27,730 (RHC Feb. 3, 2005) ("[A]n appeal issue must be raised at the hearing level"); Parreco v. Akassy, TP 27,408 (RHC Dec. 8, 2003) (dismissing issue where housing provider had failed to raise it before the ALJ); Dey v. L.J. Dev., Inc., TP 26,119 (RHC Aug. 29, 2003) ("[I]f a party fails to raise an issue at the hearing, that party cannot raise that issue on appeal). The Commission determines for the reasons as noted in its discussion regarding the admission of RX200, supra at 16-19, that the ALJ's action does not amount to plain error.

[12] The Commission also observes that its review of the documents in the record in this case supports the reasonableness of the ALJ's determination that the file stamp on RX 200 is legible. *See* 14 DCMR § 3807.1.

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 DC 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
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-10-29,840 was mailed, postage prepaid, by first class U.S. mail on this **5th day** of **June, 2013** to:

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