DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION

RH-TP-10-29,891

In re: 3536 Center Street, N.W., Unit 36

Ward Two (2)

BADEBANA ATCHOLE
Tenant/Appellant

v.

CRAIG ROYAL
Housing Provider/Appellee

DECISISON AND ORDER

March 27, 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- 2-510 (2001 Supp. 2008), and the District of Columbia Municipal Regulations (DCMR), 1 DCMR §§ 2800-2899 (2004), 1 DCMR §§ 2920-2941 (2004), 14 DCMR §§ 3800-4399 (2004) govern these proceedings.

[1] The Office of Administrative Hearings (OAH) assumed jurisdiction over the conduct of hearings on tenant petitions from the RACD and the Rent Administrator pursuant to the OAH Establishment Act, D.C. OFFICIAL CODE §2-1831.01, - 1831.03(b-1)(1) (2001 Supp. 2005). The functions and duties of the RACD were transferred to the Rental Accommodations Division (RAD) of the Department of Housing and Community Development (DHCD) by the Fiscal Year Budget Support Act of 2007, D.C. Law 17-20, 54 DCR 7052 (September 18, 2007) (codified at D.C. OFFICIAL CODE § 42-3502.03a (2001 Supp. 2008)).

I. PROCEDURAL HISTORY

On May 17, 2010, Tenant/Appellant Badebana Atchole (Tenant), residing in Unit 36 of 3536 Center Street, N.W. (Housing Accommodation), filed Tenant Petition RH-TP-10-29,891 (Tenant Petition) with RAD, claiming that Housing Provider/Appellee Craig Royal (Housing Provider) violated the Act as follows:[2] (1) "[t]he rent increase was larger than the increase allowed by any applicable provision of the Act;" and (2) "[t]he rent increase was made while my/our units were not in substantial compliance with DC Housing Regulations." Tenant Petition at 1-2; Record for Tenant Petition (R.) at 22-23.

On September 7, 2010, Administrative Law Judge Caryn L. Hines (ALJ) issued a case management order (CMO) scheduling a hearing for October 21, 2010. CMO at 1-2; R. at 34-5. On November 10, 2011, the ALJ issued a final order, Badebana Atchole v. Craig Royal, RH-TP-10-29,891 (OAH Nov. 10, 2011) (Final Order). The ALJ made the following findings of fact in the Final Order:[3]

1. The Housing Accommodation is located at 3536 Center Street NW, Unit 36.

2. Tenant has resided in the Housing Accommodation since May 3, 1999. Petitioner's Exhibit (PX) 101.

3. Housing Provider purchased the 22-unit building from Ymos, Inc. on February 24, 2008. PX 107.

4. Ymos, Inc. increased Tenant's rent from $770 to $822, effective July 1, 2009. PX 106.

5. Housing Provider took possession of the building in which the Housing Accommodation is located on December 28, 2009. On that date Housing Provider asked the tenants if they had any problems within their units. Tenant did not raise any concerns about housing code violations in his unit at this time. PX 109 and Respondent's Exhibit (RX) 209.

[2] The claims are recited herein using the language of the Tenant Petition.

[3] The ALJ's findings of fact are recited herein using the language of the Final Order.

6. Tenant's unit was infested with mice, bedbugs, and roaches from the beginning of his tenancy in 1999 until June 2010. PXs 113, 123-125, 127 and RX 209.

7. On January 7, 2010, Tenant defaulted on his rent payment. Housing Provider sought payment of the rent in the Superior Court of the District of Columbia (Superior Court). PX 110.

8. The parties had a hearing on January 14, 2010, in Superior Court at which Housing Provider learned that Department of Consumer and Regulatory Affairs (DCRA) cited him for various housing code violations and had issued Notices of Violation on April 7, 2009. After learning of the violations, Housing Provider sent his Property Manager, Brian Brown to inspect Tenant's unit. All of the violations were abated except the bedbugs, mice, and roach infestation. PXs 103, 109, 110 and RX 207.

9. On multiple occasions beginning January 21, 2010, Housing Provider asked Tenant to give him a key to Tenant's apartment. Tenant refused. Tenant also postponed extermination appointments that conflicted with his schedule. PXs 109, 110 and 112.

10. Housing Provider served Tenant with a Notice of Increase in Rent Charged on March 30, 2010, increasing Tenant's rent by $20 per month from $822 to $842. Housing Provider based the rent increase on the Consumer Price Index, Urban Wage Earners and Clerical Workers, Washington-Baltimore, DC-Md-Va-Wv. (CPI-W). The rent increase was effective July 1, 2010. PX 105.

11. On May 19, 2010, a DCRA inspector inspected Tenant's unit and cited Housing Provider for seven housing code violations which included cracks on the wall, dampness and an infestation of roaches, bedbugs "or other type of vermin." PX 102.

12. DCRA deemed all of the violations abated on June 18, 2010. RX 209.

13. On September 17, 2010, Tenant notified Brian Brown, the Property Manager that the hallways needed to be cleaned more often. PX 112.

Final Order at 2-4; R. at 61-63.

The ALJ made the following conclusions of law:[4]

B. Tenant's Claims Concerning Substantial Housing Code Violations and Services and Facilities Reductions[5]

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

1. Claim that the rent increase in 2009 by Ymos, Inc., is improper because substantial housing code violations existed

1. Tenant claims that significant housing code violations existed throughout his tenancy. Specifically, he claims the violations existed at the time that his previous housing provider Ymos, Inc. increased his rent in 2009, therefore making the subsequent rent increase by Housing Provider Craig Royal in 2010 illegal.

2. Under the Act, a housing provider is prohibited from increasing rent unless the rental unit and the common areas of the housing accommodation are in "substantial compliance" with the housing regulations. D.C. OFFICIAL CODE § 42-3502.08(a)(1)(A) [(2001)]. The Act defines a "substantial violation" as: "the presence of any housing condition, the existence of which violates the housing regulations . . . and may endanger or materially impair the health and safety of any tenant or person occupying the property." D.C. OFFICIAL CODE § 42-3502.1(35).

3. The rental housing regulations, in turn, list specific conditions that constitute substantial housing violations. 14 DCMR [§] 4216.2 [(2004)]. These include: "[I]nfestation of insects or rodents." 14 DCMR [§] 4216.2(i).

4. Tenant is challenging the rent increase that took effect on July 1, 2009, when Ymos, Inc. was his housing provider. Although, Housing Provider Craig Royal signed and dated the multi-unit sales contract on February 18, 2008, for reasons not entirely clear to this administrative court he did not take possession of the building until December 28, 2009. PX 107. However, tenants are obligated to provide notice of conditions existing within their units. Tenant provided no evidence that he provided notice of these violations to Ymos, Inc., the previous housing provider. Housing Provider Craig Royal did not receive notice of any violations until the proceeding on January 14, 2010, in Superior Court. Because Tenant provided no evidence that he provided notice of substantial housing code violations existing when Ymos, Inc. increased his rent, he has not met his burden of proof. *See* OAH 2822.1 [(1 DCMR § 2822.1)]. Also see DCAPA, D.C. OFFICIAL CODE §[ ]2-509(b) ("[i]n contested cases . . . the proponent of rule or order shall have the burden of proof"); *Battle v. McElvene*, TP 24,752 (RHC May 18, 2000) (dismissal with prejudice was appropriate when the tenant failed to sustain his burden of proof under the DCAPA); *Parecco v. D.C. Rental Hous. Comm'n*, 885 A.2d 327, 334 (D.C. 2005) (tenant has the burden of proof in rental housing cases).

2. Substantial Housing Code Violations in 2010, under Craig Royal, current Housing Provider

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[5] The Commission omits the ALJ's statement concerning jurisdiction from its recitation of the ALJ's conclusions of law. *See* Final Order at 4; R. at 61.

5. Tenant asserts that the Housing Accommodation is infested with bedbugs, roaches, and mice when Housing Provider Craig Royal increased his rent. On December 29, 2009, eleven days after taking possession of the building in which the Housing Accommodation is located, Housing Provider Craig Royal requested that all tenants notify him of any problems in their units. Tenant never mentioned any problems in his unit to Housing Provider. Thus, Housing Provider had no notice of the infestation in Tenant's apartment.

6. When Tenant failed to pay his rent in January 2010, Housing Provider sought possession in Superior Court where he learned for the first time that DCRA had issued notices of violations for Tenant's unit on April 7, 2009. Housing Provider then sent his property manager, Brian Brown to inspect Tenant's unit and all of the violations were abated except for the bedbug, mice and roach infestation. PXs 103, 109, 110 and RX 207. Beginning on January 21, 2010, Housing Provider asked Tenant on multiple occasions to give him a key to Tenant's apartment. Tenant refused. Also Tenant postponed appointments for extermination that conflicted with his schedule. PXs 109, 110 and 112. Therefore, I conclude that but for Tenant's refusal to allow Housing Provider access, the infestation would have been exterminated earlier. *Hudley v. McNair*, TP 24,040 (RHC June 30, 1999) at 11.

7. On March 30, 2010, Housing Provider served Tenant a Notice of Increase in Rent based on the CPI-W increasing Tenant's rent by $20 per month from $822 to $842, with an effective date of July 1, 2010. PX 105. On May 19, 2010, DCRA cited Housing Provider for an infestation of roaches, bedbugs "or other type of vermin." PX 102. Housing Provider exterminated the infestation. On June 18, 2010, DCRA deemed the infestation of insects abated. RX 209. At the time the 2010 rent increase was in effect, Housing Provider had abated all of the substantial housing code violations and therefore no housing code violations existed when the 2010 rent increase went into effect. Based upon the above, Housing Provider's rent increase was proper.

3. Services and Facilities Reduction

8. The Rental Housing Act provides that where "related services or related facilities supplied by a housing provider for a housing accommodation . . . are substantially increased or decreased, the Rent Administrator [now the Administrative Law Judge] may increase or decrease the rent charged, as applicable, to reflect proportionally the value of the change in services or facilities." D.C. OFFICIAL CODE § 42-3502.11. In turn, an Administrative Law Judge may award a rent refund to (sic) a housing provider who "substantially reduces or eliminates related services previously provided for a rental unit." D.C. OFFICIAL CODE § 42-3509.01(a).

9. "Related services" under the Act 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).

10. "Related facility" is defined as:

> [A]ny 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).

11. 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. Tenant's claim for reduction of services requires a three-part analysis.

12. First, the reduction in services must be "substantially" reduced. D.C. OFFICIAL CODE § 42-3509.01(a). Although the Act does not say what constitutes a substantial reduction in services, the District of Columbia Court of Appeals has applied the Act's definition of a "substantial violation" as a measure of a substantial reduction in services. This requires a housing condition in violation of a statute or regulation that "may endanger or materially impair the health and safety of any tenant or person occupying the property." *Parecco*, 885 A.2d at 337 (D.C. 2005) [sic] (quoting D.C. OFFICIAL CODE § 42-3501.03(35)).

13. Second, the evidence must show that Housing Providers [sic] did not act "promptly" to restore the service to its previous level. *Parecco*, 885 A.2d at 337; 14 DCMR [§] 4211.6.

14. Finally, Tenant must present "competent evidence of the existence, duration, and severity of the reduced services." *Jonathan Woodner Co. v. Enobakhare*, TP 27,730 (RHC Feb. 3, 2005) at 11 (citations omitted). For discrepancies inside the rental unit, Tenant must show that they gave Housing Providers [sic] notice of the condition that needed attention and the opportunity to correct it. *See Hudley v. McNair*, TP 24,040 (RHC June 30, 1999) at 11 ("If the tenant claims a reduction of services in the interior of his unit, he must

give the housing provider notice of the allegations that constitute violations of the housing code.") (citing *Hall v. DeFabio*, TP 11,554 (RHC Mar. 6, 1989)).

a. Mice Infestation

15. Tenant's unit was infested with mice from the beginning of his tenancy in 1999 until June 18, 2010, when DCRA deemed the condition abated. I conclude that while Tenant proffered evidence that might "endanger or materially impair the health and safety of any tenant or person occupying the property," he failed to give Housing Provider notice that the condition existed until the proceeding on January 14, 2010, in Superior Court. *See Parecco*, 885 A.2d at 337. However, when Housing Provider learned of the condition, he promptly scheduled extermination appointments for Tenant's unit. On multiple occasions beginning on January 21, 2010, Tenant was asked to supply Housing Provider with a key to his apartment so that Housing Provider could provide extermination services in the unit, but refused to do so. Tenant also was unwilling to accommodate the exterminators and postponed extermination appointments because they conflicted with his schedule. Tenant must give Housing Provider an opportunity to abate the problem. *See Hudley v. McNair*, TP 24,040 (RHC June 30, 1999) at 11. I conclude that Tenant's refusal to either give Housing Provider a key or to be present at the unit to let the exterminators in contributed to the length that it took for this condition to be abated. Tenant provided no evidence as to why he would not let Housing Provider have a key to his unit or why the extermination appointments repeatedly conflicted with his schedule. The condition was deemed abated by DCRA on June 18, 2010. RX 209. Because Housing Provider exterminated the infestation, I find that he did not substantially reduce services and facilities connected with Tenant's unit.

b. Common Areas

16. Tenant testified that he told Housing Provider on September 17, 2010, that the hallways were not clean. Tenant did not introduce any evidence at the hearing specifically as to what was unclean about the hallways. Because this claim is nebulous with respect to how this condition endangered or materially impaired Tenant's health and safety, Tenant has not met his burden of proof. *See* OAH 2822.1 [(1 DCMR § 2822.1)]. Also see DCAPA, D.C. OFFICIAL CODE § 2-509(b) ("[i]n contested cases . . . the proponent of rule or order shall have the burden of proof"); *Battle v. McElvene*, TP 24,752 (RHC May 18, 2000) (dismissal with prejudice was appropriate when the tenant failed to sustain his burden of proof under the DCAPA); *Parreco*, 885 A.2d at 334 (D.C. 2005) [sic] (tenant has the burden of proof in rental housing cases).

17. Additionally, the tenant petition was filed on May 17, 2010. Tenant complained about the condition of the hallways on September 17, 2010, which is after the tenant petition was filed. Tenant did not seek to amend his petition

to include the September 2010 condition. The filing date of the tenant petition is the cut-off date for a tenant's claims. *See Menor v. Weinbaum*, TP 22,769 (RHC Aug. 4, 1993) at 5. Therefore, absent an amendment to the tenant petition, the claim is barred.

Final Order at 5-11; R. at 54-60. Accordingly, the ALJ dismissed the Tenant Petition with prejudice. Final Order at 12; R. at 53.

On November 30, 2011, the Tenant filed a timely notice of appeal for RH-TP-10-29,891 (Notice of Appeal) with the Commission raising the following issues:[6]

1. The Rent Administrator concluded that Appellant "provided no evidence that he provided notice of [housing code] violations to Ymos, Inc, the previous housing provider." (Order, at 6). It later states, however, that the Department of Consumer & Regulatory Affairs ("DCRA") issued notices of violations for Appellant's unit on April 7, 2009, less than three months prior to the July 1, 2009 rent increase challenged by Appellants. (Order, at 7). A housing provider is deemed to have sufficient notice where DCRA issues notices of violations. In concluding Appellant had failed to provide notice to Ymos, Inc., the Rent Administrator failed to consider the April 2009 DCRA notices, constituting an abuse of discretion.

2. Because the July 1, 2009 rent increase was illegal, as Ymos, Inc. did have sufficient notice of substantial housing code violations existing at the time, Appellee's subsequent rent increase is illegal, as it exceeds the maximum increase allowed by law.

3. The Rent Administrator determined that [A]ppellant failed to give adequate notice to Appellee of the problems in his unit. (Order, at 6). Appellee had constructive notice of the substantial housing code violations in Appellant's unit. Appellee signed a contract for sale, purchasing the building in February 2008, from the previous housing provider Ymos, Inc. As such, Appellee had effectively purchased the property by April 2009, when DCRA issued Notices of Violations for Appellant's unit. DCRA-issued notices are sufficient to meet the statutory notice requirement. As owner of the building at the time, Appellee received constructive notice of all violations in Appellant's unit when Ymos, Inc. received Notices of Violations from DCRA.

4. The Rent Administrator acknowledged a discrepancy in the timeline of ownership: "Although Housing Provider Craig Royal signed and dated the multi-unit sales contract on February 18, 2008, *for reasons not entirely clear to this administrative court*, he did not take possession of the building until December 28, 2010." (Order, at 5-6) (emphasis added). The Rent

[6] The issues on appeal are recited herein using the language of the Notice of Appeal.

Administrator abused its discretion by acknowledging the discrepancy and yet failing to inquire as to the legal ownership of the building in April 2009, when the DCRA issued notices of violations for Appellant's unit. Appellant should not be penalized for this discrepancy.

5. The Rent Administrator concluded that Appellant refused to grant Appellee access to correct the bedbug, mice and rodent infestations. (Order, at 7). To arrive at this conclusion, the Rent Administrator noted that Appellant postponed extermination appointments. However, it ignored evidence in the very same exhibits it cited, explaining that Appellant was often alerted of appointments the evening before the scheduled appointment time and was thus unable to prepare the unit accordingly for the treatments. (*See* PX 112). The Rent Administrator thus failed to consider the whole record and based its conclusions on an incomplete review of the evidence.

Notice of Appeal at 1-2.

The Commission held a hearing on August 30, 2012.

II. ISSUES ON APPEAL[7]

1. Whether the ALJ erred in finding that the Tenant failed to give notice of housing code violations to the previous housing provider, Ymos, Inc.

2. Whether, because the July 1, 2009 rent increase was illegal, as Ymos, Inc. did have sufficient notice of substantial housing code violations existing at the time, Appellee's subsequent rent increase is illegal, as it exceeds the maximum increase allowed by law.

3. Whether the ALJ erred in determining that the Tenant failed to give adequate notice to the Housing Provider of housing code violations in his unit, prior to the July, 2009 rent increase.

4. Whether the ALJ erred by failing to inquire into the legal ownership of the building in April, 2009.

5. Whether the ALJ erred by determining that the Tenant failed to grant the Housing Provider access to his unit in order to correct existing housing code violations.

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[7] The Commission, in its discretion, has rephrased the issues on appeal in this section of its Decision and Order to clearly identify the allegations of the ALJ's error(s) in the Final Order, and to omit the Tenant's supporting assertions that were included in the statements of the issues on appeal. *See, e.g.* Gelman Mgmt. Co. v. Campbell, RH-TP-06-29,715 (RHC Dec. 23, 2013) at n.16; Smith Prop. Holdings Five (D.C.) L.P. v. Morris, RH-TP-06-28,794 (RHC Dec. 23, 2013) at n.12; Jackson v. Peters, RH-TP-12-28,898 (RHC Sept. 27, 2013). For the complete language of the Tenant's Notice of Appeal, *see supra* at 8-9. *See* Notice of Appeal at 1-2.

III. DISCUSSION OF ISSUES ON APPEAL

A. Whether the ALJ erred in finding that the Tenant failed to give notice of housing code violations to the previous housing provider, Ymos, Inc.

The Tenant asserts that the ALJ erred by failing to conclude that a Notice of Violation, issued by DCRA on April 7, 2009, constituted sufficient notice of housing code violations to the previous owner of the Housing Accommodation, Ymos, Inc.,[8] in the Tenant's unit prior to a July 1, 2009 rent increase. Notice of Appeal at 1.

The Commission's standard of review of the ALJ's decision is derived from the DCAPA, *see* D.C. OFFICIAL CODE § 2-509 (2001), and provides 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). "Substantial evidence" has been defined as such relevant evidence as a reasonable mind might accept as able to support a conclusion. *See* Fort Chaplin Park Assocs. v. D.C. Rental Hous. Comm'n, 649 A.2d 1076, 1079 (D.C. 1994); Marguerite Corsetti Trust v. Segreti, RH-TP-06-28,207 (RHC Sept. 18, 2012); Hago v. Gewirz, RH-TP-08-11,552 & RH-TP-08-12,085 (RHC Aug. 4, 2011).

The Act provides that the rent for any rental unit may not be increased unless the unit is in substantial compliance with the housing regulations. D.C. OFFICIAL CODE § 42-3502.08(a)(1)(A).[9] *See, e.g.* Dreyfuss Mgmt., LLC v. Beckford, RH-TP-07-28,895 (RHC Sept.

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[8] The Commission's review of the record reveals that the Tenant Petition named only Craig Royal as the Housing Provider. Tenant Petition at 1; R. at 23. The Housing Provider testified at the OAH hearing, and the Tenant did not contest, that he took possession of the Housing Accommodation from the previous owner in December, 2009. Hearing CD (OAH Oct. 21, 2010) at 1:48. *See also, infra* at p. 16 n.11.

[9] D.C. OFFICIAL CODE § 42-3502.08(a)(1)(A) provides, in relevant part, 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: (A) The rental unit and the common elements are in substantial compliance with the housing regulations . . . ."

27, 2013); Caesar Arms, LLC v. Lizama, RH-TP-07-29,063 (RHC Sept. 27, 2013); 1773 Lanier Place, N.W., Tenants' Ass'n v. Drell, TP 27,344 (RHC Aug. 31, 2009). However, if the housing provider was first notified of the housing code violations after the date of the rent increase, the increase is valid. *See* H.G. Smithy Co. v. Alston, TP 25,033 (RHC Sept. 30, 2003) at 10 (citing Gavin v. Fred A. Smith Co., TP 21,918 (RHC Nov. 18, 1992)). *See also* Dreyfuss Mgmt., LLC, RH-TP-07-28,895; Caesar Arms, LLC, RH-TP-07-29,063.

The Commission observes that the ALJ determined that Ymos, Inc. increased the Tenant's rent on July 1, 2009, from $770 to $822 per month. Final Order at 2; R. at 63. The ALJ further determined that DCRA had issued Notice of Violation for the Tenant's unit on April 7, 2009. *See id.* at 3; R. at 62. Finally, the ALJ stated the following, in relevant part:

> Tenant provided no evidence that he provided notice of these violations to Ymos, Inc., the previous housing provider . . . . Because Tenant provided no evidence that he provided notice of substantial housing code violations existing when Ymos, Inc. increased his rent, he has not met his burden of proof. *See* OAH 2822.1 [(1 DCMR § 2822.1)].

Final Order at 6; R. at 59.

The Commission's review of the record reveals that the Tenant submitted into evidence at the OAH hearing a DCRA Notice of Violation, dated April 7, 2009. Tenant's Exhibit 103 at 1; R. at 113. *See also* Final Order at 13; R. at 52. The Notice of Violation identifies seven (7) violations in the Tenant's unit at the Housing Accommodation, and identifies the owner of the building as "Ymos Inc." Tenant's Exhibit 103 at 1-4; R. at 113-17. The Commission further observes that, although Ymos, Inc. is identified on the Notice of Violation as the owner of the Housing Accommodation, the following fields, in relevant part, were blank on the Notice of Violation: "name of person notified," "signature of person receiving notice," and "date/time of service or posting." *See id.*

Based on its review of the record, the Commission is satisfied that the April 7, 2009 Notice of Violation admitted into evidence in this case contained no written (or other) indicia that it had been served on the owner of the building at that time, Ymos, Inc. *See* Tenant's Exhibit 103 at 1-4; R. at 113-17. Additionally, the Commission's review of the parties' testimony at the OAH hearing reveals that the Tenant did not offer any additional testimony or documentary evidence concerning service to Ymos, Inc. of the April 7, 2009 Notice of Violation, or any other method by which Ymos, Inc. was notified of housing code violations prior to the rent increase. *See* Hearing CD (OAH Oct. 21, 2010). Accordingly, the Commission determines that the ALJ's conclusion that the Tenant failed to meet his burden of proof to demonstrate that he provided notice to Ymos, Inc. of housing code violations in his unit prior to the July 1, 2009 rent increase is supported by substantial record evidence. *See* Dreyfuss Mgmt., LLC, RH-TP-07-28,895; Caesar Arms, LLC, RH-TP-07-29,063; H.G. Smithy Co., TP 25,033. *See also* Final Order at 5-6; R. at 59-60; Hearing CD (OAH Oct. 21, 2010); Tenant's Exhibit 103; R. at 113-17.

Nonetheless, the Commission notes that, even if the Tenant had sustained his burden of proof to show that Ymos, Inc. had been on notice of housing code violations prior to the 2009 rent increase, the ALJ's finding of fact on this issue did not affect the outcome of this case. The Commission's review of the record reveals that the Housing Provider who was named by the Tenant in the Tenant Petition, and who was identified throughout the OAH proceedings, and on appeal, in the case caption was Craig Royal. *See, e.g.,* Notice of Appeal at 1; Final Order at 1; R. at 64; Tenant Petition at 1; R. at 23. *See supra* at p. 10 n.8. Although the ALJ found that Ymos, Inc. was the housing provider prior to Craig Royal, and was the housing provider at the time that the Tenant's rent was increased on July 1, 2009, *see* Final Order at 2, R. at 63, the Commission observes that the Tenant did not identify Ymos, Inc. as a housing provider in the Tenant Petition,

and did not seek to otherwise join Ymos, Inc. at any time throughout the proceedings on the Tenant Petition as a second housing provider, or otherwise as a party to the Tenant Petition. *See* Hearing CD (OAH Oct. 21, 2010); Tenant Petition at 1; R. at 23. Furthermore, the Commission's review of the record reveals that the Tenant filed a separate tenant petition against Ymos, Inc., on the same date that he filed the Tenant Petition at issue in this case, alleging that the July 1, 2009 rent increase was improper. Hearing CD (OAH Oct. 21, 2010) at 2:12-12; Tenant Petition at 13; R. at 11. The record does not indicate the status and/or outcome of that tenant petition. *See* Final Order at 1-12; R. at 53-64; Hearing CD (OAH Oct. 21, 2010).

Accordingly, the Commission observes that, in the context of addressing this issue, the relevant inquiry for the purposes of this Tenant Petition was whether the Housing Provider named and identified in the Tenant Petition, Craig Royal, was on notice of the housing code violations in the Tenant's unit at the time that the rent was increased on July 1, 2009. Dreyfuss Mgmt., LLC, RH-TP-07-28,895; Caesar Arms, LLC, RH-TP-07-29,063; H.G. Smithy Co., TP 25,033. For the above reasons, although the Commission is satisfied that substantial evidence in the record supports the ALJ's determination that Ymos, Inc. had not been on notice of housing code violations in the Tenant's unit prior to the 2009 rent increase, this determination by the ALJ did not affect the outcome of this case since Craig Royal, not Ymos, Inc., is the sole housing provider-party for purposes of RH-TP-10-29,891. *See, e.g.,* Dreyfuss Mgmt., LLC, RH-TP-07-28,895; Caesar Arms, LLC, RH-TP-07-29,063; H.G. Smithy Co., TP 25,033. *See also* Final Order at 5-6; R. at 59-60; Hearing CD (OAH Oct. 21, 2010); Tenant's Exhibit 103; R. at 113-17.

B. Whether, because the July 1, 2009 rent increase was illegal, as Ymos, Inc. did have sufficient notice of substantial housing code violations existing at the time, Appellee's subsequent rent increase is illegal, as it exceeds the maximum increase allowed by law.

The Tenant contends on appeal that the Housing Provider's rent increase after he purchased the Housing Accommodation was illegal, because it exceeds the maximum increase allowed by law. *See* Notice of Appeal at 1. The only support offered by the Tenant on this issue is the following assertion: "the July 1, 2009 rent increase was illegal, as Ymos, Inc. did have sufficient notice of substantial housing code violations existing at the time." Notice of Appeal at 1. The Commission is satisfied that it has conclusively dealt with this issue in its consideration of issue "A", regarding whether Ymos, Inc. had notice of housing code violations in the Tenant's unit. *See supra* at 10-13.

As the Commission stated previously, the ALJ's conclusion that the Tenant failed to meet his burden of proof to demonstrate that he provided notice to Ymos, Inc. of housing code violations in his unit prior to the July 1, 2009 rent increase is supported by substantial record evidence. *See* Dreyfuss Mgmt., LLC, RH-TP-07-28,895; Caesar Arms, LLC, RH-TP-07-29,063; H.G. Smithy Co., TP 25,033. *See also supra* at 11-12. Specifically, the Commission stated that the April 7, 2009 Notice of Violation introduced into evidence by the Tenant failed to show that Ymos, Inc. was on notice of housing code violations in the Tenants unit, since this Notice of Violation contained no indicia that it had actually been served on Ymos, Inc. *See* Tenant's Exhibit 103 at 1-4; R. at 113-17. *See also supra* at 12.

Accordingly, having previously determined that the Tenant failed to meet his burden of proof to show that Ymos, Inc. was on notice of housing code violations at the time of the July 1, 2009 rent increase, the Commission determines that issue "B" regarding an alleged subsequent illegal rent increase is without merit, and thus dismisses this issue on appeal.

C. Whether the ALJ erred in determining that the Tenant failed to give adequate notice to the Housing Provider of housing code violations in his unit, prior to the July, 2009 rent increase.

The Tenant contends on appeal that the ALJ erred in determining that he failed to give adequate notice to the Housing Provider of housing code violations in his unit prior to the July 1, 2009 rent increase, because the Housing Provider had "constructive notice" of substantial housing code violations in the Tenant's unit. Notice of Appeal at 1. The Tenant asserts that the Housing Provider had constructive notice of the housing code violations as early as April, 2009, when DCRA issued a Notice of Violation for the Tenant's unit, because the Housing Provider had signed a sales contract in February 2008, and thus had "effectively purchased" the property at the time the Notice of Violation was issued. *See id.* at 1-2.

As the Commission stated previously, the Act provides that the rent for any rental unit may not be increased unless the unit is in substantial compliance with the housing regulations. D.C. OFFICIAL CODE § 42-3502.08(a)(1)(A). *See, e.g.* Dreyfuss Mgmt., LLC, RH-TP-07-28,895; Caesar Arms, LLC, RH-TP-07-29,063; Drell, TP 27,344. However, if the housing provider was first notified of the housing code violations after the date of the rent increase, the increase is valid. *See* Dreyfuss Mgmt., LLC, RH-TP-07-28,895; Caesar Arms, LLC, RH-TP-07-29,063; H.G. Smithy Co., TP 25,033.

The Commission will uphold the ALJ's decision where it is supported by substantial evidence. 14 DCMR § 3807.1. The Commission has consistently stated that its role 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." Fort Chaplin Park Assocs., 649 A.2d at 1079; Commc'n Workers of Am. v. D.C. Comm'n on Human Rights, 367 A.2d 149, 152 (D.C. 1976); Marguerite Corsetti Trust, RH-TP-06-28,207; Turner v. Tscharner, TP 27,014 (RHC June 13, 2001) at 11; Gray v. Davis, TP 23,081 (RHC Dec. 7, 1993) at 5.

The Commission observes that the ALJ stated the following, in relevant part, regarding when the Housing Provider was put on notice of housing code violations in the Tenant's unit:

> 5. . . .On December 29, 2009, eleven days after taking possession of the building in which the Housing Accommodation is located, Housing Provider Craig Royal requested that all tenants notify him of any problems in their units. Tenant never mentioned any problems in his unit to Housing Provider. Thus, Housing Provider had no notice of the infestation in Tenant's apartment.
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> 6. When Tenant failed to pay his rent in January 2010, Housing Provider sought possession in Superior Court where he learned for the first time that DCRA had issued notices of violations for Tenant's unit on April 7, 2009 . . . .

Final Order at 6-7; R. at 58-9.

The Commission's review of the record reveals substantial evidence, including the Tenant's testimony and an exhibit submitted by the Housing Provider at the OAH hearing, supports the ALJ's determination that the Housing Provider was not on notice of the housing code violations in the Tenant's unit until January 2010, five (5) months after the July 1, 2009 rent increase. For example, in reference to the DCRA Notice of Violation dated April 7, 2009, the Tenant testified that the Housing Provider was aware of each of the violations in January, 2010. Hearing CD (OAH Oct. 21, 2010) at 12:42-48. Additionally, the Housing Provider submitted a letter dated February 3, 2010, addressed to the Tenant, in which he stated that he had been given a list of requested repairs for the Tenant's unit on January 15, 2010. *Id.* at 1:59-2:00; Housing Provider's Exhibit 204; R. at 189-91.

The Commission notes that the Tenant also asserts on appeal that the Housing Provider was on "constructive notice" of housing code violations in his unit at the time of the July 1, 2009 rent increase. Notice of Appeal at 1-2. Based on its review of the record, the Commission observes that the Tenant's assertions regarding "constructive notice" on appeal are substantially similar to the assertions that he made at the OAH hearing. *Compare* Notice of Appeal at 1-2,

with Hearing CD (OAH Oct. 21, 2010) at 10:31-32. At the OAH hearing, counsel for the Tenant represented that the April 7, 2009 DCRA Notice of Violation constituted "constructive notice to the new owner that there are housing code violations that could still be in place in the building."[10] Hearing CD (OAH Oct. 21, 2010) at 10:31-32.

The Commission's review of the record indicates that the Tenant did not define, explain or elaborate in any way the meaning of "constructive notice" in the context of the facts of this case. For example, the Commission observes that the Tenant did not provide any reference or citation to the Act and its regulations, or to any other statute or case law, to support for his contentions regarding "constructive notice" either at the OAH hearing or in the Notice of Appeal.

The Commission also notes that "[i]n contested cases, the proponent of a rule or order shall have the burden of proof." *See* D.C. OFFICIAL CODE § 2-509(b). *See also* Wilson v. KMG Mgmt., LLC, RH-TP-11-30,087 (RHC May 24, 2013); Barnes-Mosaid v. Zalco Realty, Inc., RH-TP-08-29,316 (RHC Feb. 24, 2012); Stancil v. Davis, TP 24,709 (RHC Oct. 30, 2000). Here, the Tenant was the proponent of the Tenant Petition, and therefore had the evidentiary burden of

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[10] Although the Tenant asserts in his Notice of Appeal that the Housing Provider was on "constructive notice" of the April, 2009 DCRA Notice of Violation because he had "effectively purchased" the Housing Accommodation at that time, the Commission's review of the record does not reveal substantial evidence to support this assertion. 14 DCMR § 3807.1; Notice of Appeal at 2. The Commission's review of the record reveals that the ALJ did not make any findings of fact or conclusions of law regarding the purchase date of the Housing Accommodation. *See generally* Final Order at 1-17; R. at 48-64. While the Commission notes that the record indicates that a "Multi-Unit Sales Contract" dated February 18, 2008, between the Housing Provider and Ymos, Inc., was marked for identification purposes, the Commission's review of the OAH hearing and the Final Order indicate that the sales contract was never offered or entered into evidence, and was therefore properly not considered by the ALJ in reaching her final decision on this issue. Final Order at 13; R. at 52; Hearing CD (OAH Oct. 21, 2010). *See* D.C. OFFICIAL CODE § 2-509; 14 DCMR § 3807.1. The Commission also notes that, in the Final Order, the ALJ determined that the Housing Provider took possession of the building on December 28, 2009. Final Order at 6; R. at 59. The Commission is satisfied, based on its review of the record, that the ALJ's finding regarding the date the Housing Provider took possession of the Housing Accommodation is supported by substantial evidence, including the Housing Provider's testimony at the OAH hearing. 14 DCMR § 3807.1; Hearing CD (OAH Oct. 21, 2007) at 1:49-50 (the Housing Provider stated that "the first day that I actually took possession was on [December] 28").

proof regarding the meaning and supporting factual basis for any claim regarding "constructive notice." *See* D.C. OFFICIAL CODE § 2-509(b); Wilson, RH-TP-11-30,087; Barnes-Mosaid, RH-TP-08-29,316; Stancil, TP 24,709. The Commission's review of the record does not indicate that the Tenant provided substantial evidence to support its contention regarding "constructive notice."[11] *See* 14 DCMR § 3807.1.

In accordance with the foregoing analysis, the Commission is satisfied based on its review of the record, that the ALJ's determination that the Housing Provider was not on notice of housing code violations in the Tenant's unit prior to the July 1, 2009 rent increase, was in accordance with the provisions of the Act and was supported by substantial evidence. 14 DCMR § 3807.1; Bank of Am., 2 A.3d at 1072-73; Fid. Nat'l Title Ins., 2 A.3d at 202 n.16; Dyer, 983 A.2d at 362; Lewis, 725 A.2d at 500; Dreyfuss Mgmt., LLC, RH-TP-07-28,895; Caesar Arms, LLC, RH-TP-07-29,063; H.G. Smithy Co., TP 25,033. Thus, the ALJ is affirmed on this issue.

D. Whether the ALJ erred by failing to inquire into the legal ownership of the building in April, 2009.

The Tenant contends on appeal, that the ALJ erred by failing to inquire into the legal ownership of the Housing Accommodation at the time that DCRA issued a Notice of Violation in April, 2009, after acknowledging what the Tenant characterizes as a "discrepancy in the timeline of ownership," between the date that the Housing Provider signed a sales contract in

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[11] For example, in its research regarding this issue, the Commission observes that, in the context of real estate transaction, the DCCA has held, under a doctrine entitled "*lis pendens*," that subsequent purchasers of real property are considered to be on "constructive notice" of claims contained in pending litigation which would affect the title to such property. *See* Fid. Nat'l Title Ins. Co. v. Tillerson, 2 A.3d 198, 202 n.16 (D.C. 2010) (quoting D.C. Council, Report on B. 13-267 at 3) (Dec. 10, 1999)). *See also* Bank of Am. v. Griffin, 2 A.3d 1070, 1072-73 (D.C. 2010); Lewis v. Jordan, 725 A.2d 495, 500 (D.C. 1999).

The Commission's review of the record indicates that the Tenant did not did not allege or posit any legal doctrine or theory (like "*lis pendens*" or otherwise) and submit accompanying evidentiary support at the OAH hearing to meet his burden of proof on his claim of "constructive notice." *See* D.C. OFFICIAL CODE § 2-509(b); Wilson, RH-TP-11-30,087; Barnes-Mosaid, RH-TP-08-29,316; Stancil, TP 24,709. Furthermore, the Commission makes no representation whatsoever of the possible applicability, if any, of any legal doctrine or theory (like "*lis pendens*") in this case.

2008, and the date that he took possession of the Housing Accommodation in December, 2009. Notice of Appeal at 2.

As the Commission has previously stated, the Commission shall reverse final decisions of the ALJ that are based on "arbitrary action, capricious action, or an abuse of discretion, or which contains conclusions of law not in accordance with the provisions of the Act, or findings of fact unsupported by substantial evidence on the record." 14 DCMR § 3807.1. *See, e.g.,* Levy, RH-TP-06-28,830; RH-TP-06-28,835; Ford v. Dudley, TP 23,973 (RHC June 3, 1999). Pursuant to the DCAPA, D.C. OFFICIAL CODE § 2-509(e), "[e]ach decision and order adverse to a party to the case . . . shall be in writing and shall be accompanied by findings of fact and conclusions of law . . . upon each *contested issue of fact.* D.C. OFFICIAL CODE § 2-509(e) (emphasis added). *See, e.g.,* Dreyfuss Mgmt., LLC, RH-TP-07-28,895; Washington v. A&A Marbury, LLC, RH-TP-11-30,151 (RHC Dec. 27, 2012); Falconi v. Abusam, RH-TP-07-28,879 (RHC Sept. 28, 2012).

The Commission's review of the Final Order reveals that the ALJ did not make any finding of fact or conclusion of law regarding the legal owner of the Housing Accommodation in April, 2009. *See* Final Order at 2-11; R. at 54-63. Based on its review of the record, the Commission determines that the ALJ's failure to make such a finding of fact or conclusion of law regarding the legal ownership of the building in April, 2009, was not error or otherwise an abuse of discretion, because the record reflects that the parties did not dispute the ownership of the Housing Accommodation in April 2009. Hearing CD (OAH Oct. 21, 2010). *See* D.C. OFFICIAL CODE § 2-509(e); Dreyfuss Mgmt., LLC, RH-TP-07-28,895; Washington v. A&A Marbury, LLC, RH-TP-11-30,151 (RHC Dec. 27, 2012); Falconi, RH-TP-07-28,879.

For example, the Commission observes that the Tenant testified at the OAH hearing that, at the time of the DCRA inspection on April 7, 2009, the owner of the building was Ymos, Inc., not the Housing Provider in this case. Hearing CD (OAH Oct. 21, 2010) at 10:27.[12] Furthermore, the Commission observes that at the OAH hearing, the Housing Provider testified, and counsel for the Housing Provider repeatedly represented, without contest or dispute, that the Housing Provider was *not* the owner of the building in April, 2009.[13] Hearing CD (OAH Oct. 21, 2010).

Accordingly, because the DCAPA does not require the ALJ to make findings of fact and conclusions of law regarding issues that are not in dispute, *see* D.C. OFFICIAL CODE § 2-509(e), and because the Commission's review of the record reveals that both parties testified that the owner of the Housing Accommodation in April, 2009, was Ymos, Inc., the Commission affirms the ALJ on this issue.[14] *See* Dreyfuss Mgmt., LLC, RH-TP-07-28,895; Washington, RH-TP-11-30,151; Falconi, RH-TP-07-28,879.

E. Whether the ALJ erred by determining that the Tenant failed to grant the Housing Provider access to his unit in order to correct existing housing code violations.

[12] The Commission observes that on direct examination, counsel for the Tenant asked, "You mentioned a 2009 [DCRA] inspection, now, who was the owner at the time of the 2009 inspection?" Hearing CD (OAH Oct. 21, 2010) at 10:27. The Tenant responded as follows: "It was Ymos." *Id.*

[13] For example, the Commission observes that when asked when he bought the Housing Accommodation, the Housing Provider responded as follows: " The purchase date was on December 23, [2009]." Hearing CD (OAH Oct. 21, 2010) at 1:49.

[14] Insofar as the Tenant alleges that the ALJ erred by failing to *sua sponte* inquire into the ownership of the building, the Commission notes that the "[i]n contested cases, the proponent of a rule or order shall have the burden of proof." *See* D.C. OFFICIAL CODE § 2-509(b). *See also* Wilson, RH-TP-11-30,087; Barnes-Mosaid , RH-TP-08-29,316; Stancil, TP 24,709. Here, the Tenant was the proponent of the Tenant Petition, and therefore if the Tenant wanted the ALJ to make a determination regarding the legal ownership of the building in April, 2009, the burden was on the Tenant to provide sufficient proof of such facts at the OAH hearing. *See* D.C. OFFICIAL CODE § 2-509(b); Wilson, RH-TP-11-30,087; Barnes-Mosaid, RH-TP-08-29,316; Stancil, TP 24,709.

The Tenant contends on appeal that the ALJ erred by finding that the Tenant refused to grant access to the Housing Provider for the purpose of abating the "bedbug, mice and rodent infestations." Notice of Appeal at 2. The Tenant states that the ALJ ignored evidence and testimony that he presented showing that he was often notified of extermination appointments the evening before scheduled appointments, and was thus unable to prepare the unit for the extermination treatments. *Id.*

The Commission has held that the burden of proof is on the tenant when asserting a claim of reduction or elimination of services under the Act. *See* Pena, RH-TP-06-28,817. *See also* D.C. OFFICIAL CODE § 2-509(b); Wilson, RH-TP-11-30,087; Barnes-Mosaid, RH-TP-08-29,316; Stancil, TP 24,709. The Commission will uphold an ALJ's decision where it is supported by substantial evidence. 14 DCMR § 3807.1. Where substantial evidence exists to support the ALJ's findings, even "the existence of substantial evidence to the contrary does not permit the reviewing agency to substitute [its] judgment for that of the examiner." *See* WMATA v. D.C. Dep't of Emp't Servs., 926 A.2d 140, 147 (D.C. 2007); Young v. D.C. Dept. of Emp't Servs., 865 A.2d 535, 540 (D.C. 2005); Marguerite Corsetti Trust, RH-TP-06-28,207; Hago, RH-TP-08-11,552 & RH-TP-08-12,085; Turner, TP 27,014 at 11. The Commission will not substitute its judgment of the evidence for that of the ALJ who had direct opportunity to assess witness testimony and credibility, as well as other evidence introduced by the parties. *See* WMATA, 926 A.2d at 147; Marguerite Corsetti Trust, RH-TP-06-28,207; Hago, RH-TP-08-11,552 & RH-TP-08-12,085.

In the Final Order, the ALJ determined that after the Tenant notified the Housing Provider on January 14, 2010 of the conditions in his unit, the Housing Provider "promptly scheduled extermination appointments" for the Tenant's unit, and asked the Tenant to provide

the Housing Provider with a key to the unit so that the Housing Provider could provide extermination services.[15] *See* Final Order at 10; R. at 55. The ALJ found, additionally, that the Tenant refused to provide the Housing Provider with a key to his unit, and postponed extermination appointments that conflicted with the Tenant's schedule. *See id.* Finally, the ALJ found that the Tenant provided no evidence to explain his refusal to provide the Housing Provider with a key to his unit, or why he repeatedly postponed extermination appointments. *See id.* Based upon the evidence in the record, the ALJ stated that the Tenant's refusal to cooperate with the Housing Provider by providing him with a key to the unit, and postponement of extermination appointments, contributed to the length of time it took the Housing Provider to abate the infestation. *See id.*

The Commission's review of the record reveals that the ALJ's determinations on this issue were supported by substantial record evidence, including the documentary evidence and testimony submitted at the OAH hearing. *See* 14 DCMR § 3807.1. For example, the Commission's review of the record revealed the following : (1) it was uncontested that the Housing Provider responded promptly and timely to the Tenant after being initially notified of the conditions in the unit on January 14, 2020; (2) the Tenant conceded during his cross-examination that he refused to provide the Housing Provider with a key to his unit (*see* Hearing CD (OAH Oct. 21, 2010) at 11:04); (3) Brian Brown, the property manager at the Housing

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[15] The District of Columbia Court of Appeals (DCCA) has stated that a tenant is entitled to a rent refund for a substantial reduction in services and/or facilities only if the services and/or facilities are not "'promptly restored to the previous level.'" Parreco v. D.C. Rental Hous. Comm'n, 885 A.2d 327, 337 (D.C. 2005) (quoting 14 DCMR § 4211.6); Dreyfuss Mgmt., TH-TP-07-28,895; Dejean v. Gomez, RH-TP-07-29,050 (RHC Aug. 15, 2013); Pena v. Woynarowsky, RH-TP-06-28,817 (RHC Feb. 3, 2012). The Commission observes that the Tenant has not appealed, and thus contested, the ALJ's finding that the Housing Provider "promptly scheduled extermination appointments" for the Tenant's unit. *See* Notice of Appeal at 1-2. Furthermore, the Commission is satisfied that this finding is supported by substantial record evidence, including the testimony of property manager Brian Brown who stated that he had made arrangements for an initial extermination of the Tenant's unit after his inspection of their unit on January 20, 2010, which extermination action occurred on February 23, 2010. Hearing CD (OAH Oct. 21, 2010) at 3:08.

Accommodation, testified that the Housing Provider always provided at least forty-eight (48) hours' notice to the Tenant prior to any extermination appointments (*see* Hearing CD (OAH Oct. 21, 2010) at 3:10); and (4) the Housing Provider submitted an Order from the Superior Court of the District of Columbia Civil Division, dated June 29, 2010, ordering the Tenant to allow an exterminator into his unit, and to thereafter grant access to the Housing Provider to "inspect and document repairs" in the unit. *See* Housing Provider's Exhibit 201; R. at 184.

Accordingly, the Commission is satisfied that the ALJ's findings of fact that the Tenant failed to provide the Housing Provider a key to his unit, and rescheduled extermination appointments, were in accordance with the provisions of the Act, and supported by substantial evidence, and thus affirms the ALJ on this issue. *See* D.C. OFFICIAL CODE § 42-3502.11 (2001 Supp. 2007); 14 DCMR § 3807.1; Parreco, 885 A.2d at 337; Dreyfuss Mgmt., TH-TP-07-28,895; Dejean, RH-TP-07-29,050; Pena, RH-TP-06-28,817.

IV. CONCLUSION

For the foregoing reasons, the ALJ's Final Order is affirmed.

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-10-29,891 was mailed, postage prepaid, by first class U.S. mail on this **27th day** of **March, 2014** to:

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