

**DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION**

RH-TP-12-30,279

*In re:* 2727 29<sup>th</sup> St., N.W., Unit 410

Ward Three (3)

**MUNEER A. SHEIKH**

Tenant/Appellant

v.

**SMITH PROPERTY HOLDINGS THREE (DC) LP**

Housing Provider/Appellee

**DECISION AND ORDER**

July 29, 2015

**McKOIN, COMMISSIONER.** 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).<sup>1</sup> The applicable provisions of the Rental Housing Act of 1985 (Act), D.C. Law 6-10, D.C. OFFICIAL CODE §§ 42-3501.01 -3509.07 (2001), the District of Columbia Administrative Procedure Act (DCAPA), D.C. OFFICIAL CODE §§ 2-501 -510 (2001), and the District of Columbia Municipal Regulations (DCMR), 1 DCMR §§ 2800-2899 (2004), 1 DCMR §§ 2920-2941 (2004), 14 DCMR §§ 3800-4399 (2004) govern these proceedings.

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<sup>1</sup> OAH assumed jurisdiction over tenant petitions from the Department of Consumer and Regulatory Affairs (DCRA), Rental Accommodations and Conversion Division (RACD) pursuant to the Office of Administrative Hearings Establishment Act, DC. Law 14-76, D.C. OFFICIAL CODE § 2-1831.03(b-1)(1) (2007 Repl.). The functions and duties of RACD in DCRA were transferred to DHCD effective October 1, 2007, by the Rental Housing Operations Transfer Amendment Act of 2007, D.C. Law 17-20, D.C. OFFICIAL CODE § 42-3502.04b (2010 Repl.).

## I. PROCEDURAL HISTORY

On August 22, 2012, Tenant/Appellant Muneer A. Sheikh (Tenant), resident of 2727 29th Street NW (Housing Accommodation), Unit 410, filed Tenant Petition RH-TP-12-30,279 (Tenant Petition) with the RAD, against Smith Property Holdings Three (DC) LP (Housing Provider). Record for RH-TP-12-30,279 (R.) at 11-24. Administrative Law Judge Erika Pierson (ALJ) issued an order on November 30, 2012, permitting the Tenant to file an amended petition (Amended Tenant Petition). Sheikh v. Smith Prop. Holdings Three (DC) LP, RH-TP-12-30,279 (OAH Nov. 30, 2012) (Order Granting Amendment); R. at 55-58.<sup>2</sup>

The Amended Tenant Petition asserts the following claims against the Housing Provider:<sup>3</sup>

1. [The Housing Provider] has not filed the required Certificate of Notice of Rent Adjustment for a vacancy increase taken around September 22, 2011.
2. The last legal rent increase was taken August 1, 2011 and set the monthly rent amount at \$1,924. However, the [Housing Provider] has required the Tenant to pay \$2,500 a month since the September 2011 [sic] based on the illegal vacancy increase taken but never filed with RAD.
3. [The Housing Provider] has since implemented an Increase of General Applicability and has increased the required rent to \$2,640 effective October 1, 2012. Because this increase was based off the rent level set by the illegal vacancy increase[,] it is invalid. *See Taylor v. Woodner Apts.*, 2008 DCOAH [sic] at 11 (holding that a housing provider was barred from implementing a subsequent increase based on a prior illegal increase).
4. The comparable unit used to establish the new rent rate is not substantially similar to the Tenant's unit. . . . The unit cited by [the Housing Provider] as the comparable unit for which the vacancy increase was based, is a completely different floor plan from [the] Tenant's unit.

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<sup>2</sup> The ALJ ordered that the Tenant supplement the Amended Tenant Petition "no later than December 21, 2012, by stating with specificity, what services and/or facilities were permanently eliminated" as per the Tenant's claim in the Tenant Petition that "[s]ervices and/or facilities provided as part of rent and/or tenancy ha[d] been permanently eliminated." Order Granting Amendment at 2; R. at 57. The tenant subsequently withdrew that claim. *See* Opp'n to Housing Provider's Mot. To Strike Amendment and Dismiss Petition at 3; R. at 102.

<sup>3</sup> The claims raised in the Amended Tenant Petition are recited here using the language of the Tenant in the Amended Tenant Petition.

5. When a housing provider knowingly received rent above the rent ceiling for the unit in question[,] RAD shall require a rent refund of the overpaid rent, or other applicable relief as stated in the regulation. 14 D.C.M.R. § 4217.1; Taylor, 2008 DCOAH [sic] at 11.

Amended Tenant Petition at 1-2; R. at 46-47.

An evidentiary hearing on this matter were held on July 2, 2013, and a final order was issued on January 29, 2014: Sheikh v. Smith Property Holdings Three (DC) LP, RH-TP-12-30,279 (OAH Jan. 29, 2014) (Final Order); R. at 374-77.

The ALJ made the following findings of fact in the Final Order, in relevant part:<sup>4</sup>

1. Tenant Muneer A. Sheikh has resided in Unit 410 at 2727 29th Street, NW, known as “Cleveland House,” (Housing Accommodation) since September 23, 2011. The Housing Accommodation is currently owned by Equity Residential which purchased Smith Property Holdings Three in February 2013.

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#### **Tenant’s Rent and the Vacancy Increase**

7. When Tenant Sheikh moved into the apartment in September 2011, he signed a lease agreeing to a monthly rent of \$2,500, with a rent concession of \$500 per month for the first year. RX 218. Therefore, Tenant actually paid \$2,000 per month for the first 12 months of tenancy.
8. The previous rent charged for the unit was \$1,924, which was filed with the RAD on August 31, 2011 when Housing Provider filed a “Certificate of Notice to the RAD of Adjustments in Rent Charged.” PX 6. The Certificate of Notice reflects that the rent was increased for unit 410 from \$1,846 to \$1,924, effective August 1, 2011. The increase was authorized by the 2011 CPI-W increase of 2.2%.
9. When the previous tenant vacated the apartment, Housing Provider took a vacancy increase of \$576 which resulted in Tenant’s current rent charged of \$2,500. In taking the vacancy increase, Housing Provider increased the rent to that of a comparable unit. Unit 423 was the comparable unit and Housing Provider’s rent ledger for that unit reflects the rent charged was \$2,500. RX 216.

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<sup>4</sup> The findings of fact are recited here using the language and numbering of the ALJ in the Final Order.

