DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION

RH-TP-12-30,206

In re: 5759 13th Street, NW, Unit 104

Ward Four (4)

LISA TERRY
Tenant/Appellant

v.

GABEN MANAGEMENT, LLC
Housing Provider/Appellee

ORDER DISMISSING APPEAL

December 8, 2014

SZEGEDY-MASZAK, CHAIRMAN. This case is on appeal to the Rental Housing Commission (Commission) from a decision and order issued by the Office of Administrative Hearings (OAH) based on a petition filed 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 (Rental Housing Act), D.C. LAW 6-10, D.C. OFFICIAL CODE §§ 42-3501.01-3509.07 (2001), the District of Columbia Administrative Procedure Act (DCAPA), D.C. OFFICIAL CODE §§ 2-501- 2-510 (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] OAH assumed jurisdiction over the conduct of hearings on tenant petitions from the Rental Accommodations and Conversion Division (RACD) and the Rent Administrator pursuant to the OAH Establishment Act, D.C. OFFICIAL CODE § 2-1831.03(b-1)(1) (Supp. 2005). The functions and duties of the RACD were transferred to DHCD by the Fiscal Year Budget Support Act of 2007, D.C. Law 17-20, 54 DCR 7052 (September 18, 2007) (codified at D.C. OFFICIAL CODE § 42-3502.03a (Supp. 2008)).

I. PROCEDURAL HISTORY

On March 2, 2012, the Tenant/Appellant Lisa Terry (Tenant) filed Tenant Petition RH-TP-12-30,206 (Tenant Petition) against the Housing Provider/Appellee Gaben Management, LLC (Housing Provider), regarding a Housing Accommodation located at 5759 13th Street, NW, Unit 104 (Housing Accommodation), claiming the following violations of the Act:[2]

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

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

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

4. Housing provider, manager, or other agent for housing provider has taken action in violation of the Act.

See Tenant Petition at 1-3; R. at 10-12.

On September 17, 2012, in response to the Tenant's motion for summary judgment and the Housing Provider's opposition thereto, Administrative Law Judge Erika Pierson (ALJ) issued a final order, Terry v. Gaben Mgmt., LLC, RH-TP-12-30,206 (OAH Sept. 17, 2012) (Final Order). In the Final Order the ALJ made the following findings of fact:[3]

1. The housing accommodation is a multi-family dwelling located at 5759 13th Street, NW, apartment 104.

2. On April 27, 2010, Tenant signed a lease with Housing Provider for "Jack Taylor and Lisa Terry" to rent apartment 104 for a period of four months commencing April 1, 2010, and terminating July 31, 2010, at the monthly rent of $890.

[2] The Tenant's claims are recited herein using the same language as appears in the Tenant Petition.

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

3. The lease contains a holdover provision which provides: "[S]hould the Lessee continue in possession after the end of the term herein with the permission of Lessor, the tenancy thus created can be terminated by either party giving to the other party not less than thirty (30) days' written notice . . . In so continuing, Lessee agrees to pay the same monthly rental . . ."

4. Tenant Lisa Terry never actually resided in the apartment. Tenant Jack Taylor was a former tenant of Lisa Terry and was in need of temporary housing when Tenant Terry sold the property in which he lived. Tenant Taylor has disabilities requiring assistance. Tenant Terry had a relationship with Housing Provider and asked Housing Provider to provide temporary housing for Tenant Taylor.

5. Tenant Taylor received rent subsidies from the Department of Mental Health which were paid to Tenant Terry. Housing Provider required Tenant Terry to also be on the lease because she was assuming financial responsibility for the rent payments as she was the recipient of Tenant Taylor's rent subsidy. It was Tenant Terry's intent to have Mr. Taylor's rent subsidy transferred to Housing Provider, but this did not occur.

6. Tenant Taylor did not vacate the premises on July 31, 2010, as agreed in the lease.

7. On November 18, 2010, Tenants gave Housing Provider written notice of their intent to terminate the lease agreement effective December 31, 2010. The notice further stated that Tenant Taylor may decide to pursue a lease between himself and Housing Provider, but that after December 31, 2010, there would be no joint responsibility for the rent payments.

8. Tenants did not vacate the premises by December 31, 2010, and did not pay rent thereafter. Therefore, Housing Provider sought possession of the rental unit by filling a complaint in the Landlord/Tenant Branch of the District of Columbia Superior Court ("LTB"), which was docketed as Case No. 2011-LTB-2462. The complaint named both Tenant Terry and Tenant Taylor. During the LTB case, Tenant Taylor made some rent payments to the court registry.

9. The docket sheet for 2011-LTB-2462, which was attached to Tenant's motion, reflects that on April 27, 2011, the LTB Judge granted Housing Provider judgment for possession, which was stayed until May 4, 2011.

10. Tenants vacated the housing accommodation on May 11, 2011.

11. On May 26, 2011, Housing Provider sent Tenants a letter stating their security deposit plus interest was being credited toward the back rent and

other fees owed totaling $9,533.55. The letter stated that Tenants had unpaid rent in the amount of $3,741.22, which Housing Provider was doubling because Tenants failed to vacate by January 1, 2011, after giving notice to do so.

12. On July 18, 2011, Housing Provider filed a Complaint for Money Owed in D.C. Superior Court Civil Division, which was docketed as Case No. 2011-CA-5706. Housing Provider sought back rent in the amount $3,741.22 for January through May 2011, and double rent for failure to vacate, plus attorney's fees and costs. That case is still pending.

13. On March 2, 2012, Tenant filed the instant tenant petition alleging that Housing Provider violated the Act by charging double rent for January – May 2011, which amounted to an illegal rent increase.

Final Order at 2-5; R. at 124-21 (footnotes omitted).

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

. . .[5]

A. Legal Standard for Summary Judgment

1. The rules of this administrative court provide that a party may request that an Administrative Law Judge decide a case summarily, without an evidentiary hearing, so long as the motion includes sufficient evidence. OAH Rule 2819. The summary judgment standard set forth in the Super [sic] Ct. Civ. R. 56(c) provides:

> The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.

2. The District of Columbia Court of Appeals described the substantive standard for entry of summary judgment in *Behradrezaee v. Dashtara*, 910 A.2d 349, 364 (D.C. 2006):

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

[5] The Commission has omitted a recitation of the ALJ's statement of jurisdiction. *See* Final Order at 5; R. at 121.

> Summary judgment is appropriate only if no genuine issue of material fact exists and the movant is entitled to judgment as a matter of law. *GLM P'ship v. Hartford Cas. Ins. Co.*, 753 A.2d 995, 997-998 [sic] (D.C. 2000) (*citing Colbert v. Georgetown Univ.*, 641 A.2d 469, 472 (D.C. 1994) (*en banc*)). ["]A motion for summary judgment is properly granted if (1) taking all reasonable inferences in the light most favorable to the nonmoving party, (2) a reasonable juror, acting reasonably, could not find for the nonmoving party, (3) under the appropriate burden of proof.["] *Kendrick v. Fox Television*, 659 A.2d 814, 818 (D.C. 1995) (quoting *Nader v. de Toledano*, 408 A.2d 31, 42 (D.C. 1979)).

3. Although the moving party has the burden of demonstrating the absence of a genuine issue of material fact, "[o]nce the movant has made such a prima facie showing, the nonmoving party has the burden of producing evidence that shows there is 'sufficient evidence supporting the claimed factual dispute ... to require a jury or judge to resolve the parties' differing versions of the truth at trial." *Kendrick v. Fox Television*, 659 A.2d at 818 (*quoting Nader v. de Toledano*, 408 A.2d at 48 [sic].

4. I find there is no genuine issue as to any material facts in this case, which turns strictly on a legal issue. Therefore, the case is appropriate for a motion for summary judgment.

B. Discussion

5. This case presents an issue of first impression for OAH and one that has not been addressed by the District of Columbia Court of Appeals or the Rental Housing Commission. The issue in this case is whether the provision allowing for a housing provider to charge a holdover tenant double rent when the tenant fails to vacate after giving 30-days written notice to do so (D.C. Official Code § 42-3207), was superseded by the Rental Housing Act of 1985, and if so, whether Housing Provider's demand for double rent after Tenant vacated the unit violated the Act. The statutory provisions in question, enacted in 1901, are as follows:

> **§ 42-3202. Notice to quit – Month to month or quarter to quarter tenancy; expiration of notice**
>
> A tenancy from month to month, or from quarter to quarter, may be terminated by a 30 days [sic] notice in writing from the landlord to the tenant to quit, or by such a notice from the tenant to the landlord of his intention to quit, said notice to expire, in either case on the day of the month from which such tenancy commenced to run.

§ 42-3207. Refusal to surrender possession; double rent

If the tenant, after having given notice of his intention to quit as aforesaid, shall refuse, without reasonable excuse, to surrender possession according to such notice, he shall be liable to the landlord for rent at double the rate of rent payable according to the terms of tenancy for all the time that the tenant shall so wrongfully hold over, to be recovered in the same way as the rent accruing before the termination of the tenancy.

§ 42-3211. Action in ejectment – Claims for arrears of rent, double rent, and waste; jurisdiction of court; money judgment

In either case, the landlord may join with his claim for recovery of the possession of the leased premises a claim for all arrears of rent accrued to the termination of the tenancy, and, **when the tenant has given notice, for double rent from the termination of the tenancy to the verdict,** or judgment, if the trial be by the court and for damages for waste; provided, that in such action before the Superior Court of the District of Columbia the amount so claimed shall be within its jurisdiction. If judgment for possession be rendered in favor of the plaintiff, he shall be entitled, at the same time, to a judgment for said arrears of rent, and for said double rent, as the case may be, to the date of the verdict or judgment as aforesaid, and for damages for waste.

6. Tenant argues that § 42-3207 is inconsistent and in conflict with the rent increase provisions of the Act and is only applicable to commercial leases. Housing Provider argues that § 42-3211, makes clear that the provisions for double rent also applies to residential leases and asserts that OAH lacks jurisdiction over this issue because the double rent was demanded after Tenant vacated the premises and it did not amount to a rent increase.

7. Both parties raise interesting arguments, but neither party presented any legal support for their arguments, most likely because there is no direct authority on this issue. I begin my analysis by looking at the primary jurisdiction of OAH. "Primary jurisdiction comes into play whenever enforcement of the claim requires the resolution of issues, which under a regulatory scheme, have been placed within the special competence of an administrative body." *Bedell v. Clark*, TP 24,979 (RHC Apr. 29, 2003) at 6 (citing Fisher v. Peters, [sic] TP 23,261 (RHC Sept. 5, 1996)). The Rental Housing Act confers primary jurisdiction upon this administrative court over the validity of rent levels and increases. *Kennedy v. D.C. Rental Hous. Comm'n*, 709 A.2d 94 n.1 (D.C. 1998); *Drayton v. Porestsky*

Mgmt., Inc., 461 A.2d 1115, 1120 (D.C. 1983). OAh [sic] and D.C. Superior Court have concurrent jurisdiction over other allegations under the Act that are not related to the rent charged. I raise the issue of primary jurisdiction because whether OAH has jurisdiction of this issue depends on whether Housing Provider's demand for double rent pursuant to § 42-3207 amounts to a rent increase under the Act.

8. Sections 42-3207 and 3211 were enacted prior to the Rental Housing Act of 1985 and have not been repealed. Indeed, there have over the years been several statutory provisions in conflict with the Rental Housing Act and the Court of Appeals has held that courts must yield to the more recently enacted rent control regulations. *See Burns v. Harvey*, 524 A.2d 35 (D.C. 1987) (holding that former § 45-2551 superseded § 45-1408 and prevents a tenant from waiving right to written notice before eviction); *Jack Spicer Real Estate, Inc. v. Gassaway*, 353 A.2d 288, 291-92 (D.C. 196) (holding the notice to quit provisions in former § 45-1401 were in conflict with and superseded by § 45-2551). However, it is not clear if § 42-3207 indeed conflicts with D.C. Official Code § 42-3502.08(h)(2), which sets forth the methods and amounts by which rents can be increased under the Act. Such increases must be authorized by the Act, filed with the Rental Accommodations Division, and preceded by a proper 30-day notice of rent increase. D.C. Official Code § 42-3502.08; 14 DCMR [§] 4205.4. Clearly, a housing provider, cannot under the Act, double a Tenant's rent.

9. Tenant correctly states that the only cases from the District of Columbia Court of Appeals applying § 42-3207 are in the context of commercial leases or predate the passage of the Rental Housing Act of 1985: *Sanchez v. Eleven Fourteen, Inc.*, 623 A.2d 1179 (D.C. 1993) [sic] *Horn & Hardart Co. v. Nat'l Railroad Passenger Corp.*, 659 F.Supp. 1258 (D.C. Cir. 1987); *Paton v. Rose*, 205 A.2d 609 (D.C. App. 1965). In *Sanchez v. Eleven Fourteen, Inc.*, the issue before the Court was whether a commercial subtenant, who was a holdover, was liable for double rent based on a specific lease provision. 623 A.2d 1179. Section 42-3207 was not an issue in the case, but the Court analogized the double rent provision in the lease to § 42-3207, stating that a "double-rent provision in a lease presents no anomaly in our law." *Id.* at 1182. The Court further held that "A holdover tenant is bound by the terms and conditions of the original lease and is liable to the landlord at least for rent or its equivalent." *Id.* In *Horn & Hardart Co.*, the District Court held that § 42-3207 (formerly § 45 -1407 [sic]), did not apply to that case because it was the housing provider that gave notice, not the tenant. The Court noted that "this provision has never been explicated by the District of Columbia courts." 659 F.Supp. at 1267. However, the Court characterized the double rent in § 42-3207 as

"a statutory remedy that may supplement but may not supplant the intentions of private parties to contract." *Id.*

10. There is nothing in the Rental Housing Act that leads me to conclude that the Council of the District of Columbia intended to supersede § 42-3207, a statute that is not enforced by OAH. The provision for double rent is limited to a very narrow circumstance – when a holdover tenant fails to vacate after giving 30-days written notice. The Rental Housing Act protects a rent paying tenant's right to continue occupancy after the expiration of a lease by automatically converting the tenancy to month-to-month. D.C. Official Code § 42-3505.01. Any rent increases during a month-to-month tenancy must be in compliance with the Act. Once a tenant provides written notice to quit, as Tenant did in this case, that notice cannot be unilaterally rescinded, and at the end of the notice period, the tenant is no longer entitled to possession of the rental unit:

> Neither landlord nor tenant, after giving notice as aforesaid, shall be entitled to recall the notice so given without the consent of the other party, but after the expiration of the notice given by the tenant as aforesaid the landlord shall be entitled to the possession as if he had given the proper notice to quit; and after the expiration of the notice given by the landlord as aforesaid the tenant shall be entitled to quit as if he had given the proper notice of his intention to quit.

11. D.C. Official Code § 42-3205; *Burns v. Harvey*, 524 A.2d at 38. Section 42-3207 is a remedy for the tenant's failure to vacate pursuant to the notice because the tenant is no longer entitled to possession. The Rental Housing Act defines a "Tenant" as "tenant, subtenant, lessee, sublessee, or **other person entitled to the possession,** occupancy, or the benefits of any rental unit owned by another person." D.C. Official Code § 42-3501.03(36) (emphasis added). In this case, at the expiration of Tenant's 30-day notice, January 1, 2011, Tenant was no longer entitled to possession of the rental unit. I note that § 42-3211, which Housing Provider relies on heavily in its reply motion, provides that where a tenant has given 30-day's notice to quit and fails to vacate, a housing provider may join with a claim for possession, a claim for double rent "from the termination of the tenancy to the verdict." This provision seems to support the conclusion that a tenant is no longer entitled to possession at the end of the 30-day notice to quit. This does not mean that Tenant was no longer entitled to the protections of the Rental Housing Act, but it triggered Housing Provider's right to seek damages pursuant to § 42-3207. Housing Provider could not, on January 1, 2011, charge Tenant double rent, and that is not what it did. After Tenant vacated the premises, Housing Provider filed a complaint for money owed in D.C. Superior

Court, which included double rent without a judgment from D.C. Superior Court. As there was no demand for an increased rent while Tenant was actually residing at the housing accommodation, I am hard pressed to find an improper rent increase under the Rental Housing Act that would trigger a rent refund (of unpaid rent) and treble damages as requested by Tenant. Therefore, I find that Housing Provider's post-tenancy demand for double rent between January and May 2011, falls outside the rent increase provisions of the Rental Housing Act and OAH lacks jurisdiction to resolve the dispute.

12. I find that the double rent provision of § 42-3207 is a statutory remedy in contract that has not been superseded by the Rental Housing Act, and can only be sought through the District of Columbia Superior Court for a holdover tenant who fails to vacate the premises after giving written notice of intent to do so. *Cf. See* [sic] *Sanchez v. Eleven Fourteen, Inc.*, 623 A.2d at 1181.

13. Accordingly, Tenant's motion for summary judgment is denied and the tenant petition is dismissed for lack of subject matter jurisdiction.

Final Order at 5-12; R. at 114-21 (footnotes omitted).[6]

On October 1, 2012, the Tenant, Lisa Terry, filed a Notice of Appeal ("Notice of Appeal") with the Commission, providing that the ALJ made the following errors:[7]

1. The double rent provision in D.C. Code Title 42-3211 and 42-3707 (1901) was superseded by the passage of the Rental Housing Act in 1985.

2. The double rent statutes are inapplicable to residential properties under the Rental Housing Act.

3. Double rent being sought by the Landlord/Respondent/Appellees is a rent increase under the Rental Housing Act.

---

[6] The Commission notes that an ALJ is permitted to dismiss a tenant petition without holding a hearing where the ALJ determines that the Act does not provide relief for the claims in the tenant petition. 1 DCMR § 2930.2 (2011) ("An Administrative Law Judge may dismiss any petition or any claim in a petition without holding a hearing if the Rental Housing act does not provide relief for the claim(2). The Administrative Law Judge shall first give the parties notice and an opportunity to respond."). Furthermore, the Commission is satisfied that the Final Order constituted notice of the ALJ's intention to dismiss the Tenant Petition in this case for lack of subject matter jurisdiction, and the parties had the opportunity to respond to the Final Order by filing a motion for reconsideration. *Id.*; Final Order at 13; R. at 113. The Commission's review of the record reveals that neither party availed itself of the opportunity to file a motion for reconsideration with the ALJ.

[7] The Commission recites the issues on appeal as they appear in the Housing Provider's Notice of Appeal.

4. Double rent was waived by the Landlord/Respondent/Appellee when they sued the Tenant/Appellant for regular rent for a period after the Tenant's/Appellant's Notice to [V]acate 12-31-10 and the Landlord/Appellee sued the Tenant/Appellant for rent in January 2011 pursuant to the 2010 rent level.

5. The Landlord/Appellee never gave the Tenant/Appellant a thirty (30) day notice of the rent increase (i.e. double rent).

6. The mere intentional demand for double rent by the Landlord/Appellee entitles the Tenant/Appellant to treble damages for bad faith.

7. Appellant is entitled to a rent refund, interest, treble damages and attorney fees.

8. The Civil Action seeking double rent from the Tenant/Appellant was an unlawful rent increase.

9. The double rent sought by the Landlord/Appellee exceeds the rent charge on file with the Rental Accommodations Division (RAD).

10. The Landlord's/Appellee's demand for double rent is retaliatory, as it [sic] not allowed by law.

11. Tenant's/Appellant's case was dismissed by the Administrative Law Judge without a Motion to Dismiss/Summary Judgment being filed by the Landlord/Appellee.

12. Appellant reserves the right to amend this list of issues for the Commission.

Notice of Appeal at 2-3. The Tenant filed a brief on January 11, 2013 (Tenant's Brief), and the Housing Provider filed a responsive brief on January 24, 2013 (Housing Provider's Brief). The Commission held its hearing on March 5, 2013.

II. DISCUSSION

The Commission will defer to an ALJ's decision "so long as it flows rationally from the facts and is supported by substantial evidence." 14 DCMR § 3807.1 (2004); *see* Watkis v. Farmer, RH-TP-07-29,045 (RHC Aug. 15, 2013) (citing 1773 Lanier Place, N.W. Tenants' Ass'n v. Drell, TP 27,344 (RHC Aug. 31, 2009)); Eastern Savings Bank v. Mitchell, RH-TP-08-

29,397 (RHC Sept. 28, 2012); Borger Mgmt. v. Lee, RH-TP-06-28,854 (RHC Mar. 6, 2009). While the Commission's review of an issue is typically limited to the issues raised in the notice of appeal, it may always correct "plain error." 14 DCMR § 3807.4;[8] *see also*, Lenkin Co. Mgmt. v. D.C. Rental Hous. Comm'n, 642 A.2d 1282, 1286 (D.C. 1994); Proctor v. D.C. Rental Hous. Comm'n, 484 A.2d 542, 550 (D.C. 1984); Munonye v. Hercules Real Estate Servs., RH-TP-07-29,164 (RHC July 7, 2011); Drell, TP 27,344; Ford v. Dudley, TP 23,973 (RHC June 3, 1999).

Without the necessity of reaching the issue of whether the ALJ erred by finding that a demand for double rent under D.C. OFFICIAL CODE § 42-3211 (2001)[9] constitutes a rent increase for purposes of the Act, the Commission determines that the ALJ committed "plain error" by failing to inquire into whether the Tenant had standing under the Act to file the Tenant Petition challenging the demand for double rent.[10] Miller v. Daro Realty, RH-TP-08-29,407 (RHC Sept. 18, 2012) (the Commission has adopted the District of Columbia Court of Appeals' (DCCA)

---

[8] 14 DCMR § 3807.4 provides the following: "Review by the Commission shall be limited to the issues raised in the notice of appeal; provided, that the Commission may correct plain error."

[9] D.C. OFFICIAL CODE § 42-3211 provides, in relevant part, the following:

> [T]he landlord may join with his claim for recovery of the possession of the leased premises a claim for all arrears of rent accrued to the termination of the tenancy, and, when the tenant has given the notice, for double rent from the termination of the tenancy to the verdict, or judgment[.]

[10] On October 8, 2014, the Commission issued an order notifying the parties of its intent to take judicial notice of a final order entered by Judge Brian F. Holeman in the Superior Court for the District of Columbia, Civil Division, case number 2011 CA 5706 C, dated March 25, 2014. Terry v. Gaben Mgmt., LLC, RH-TP-12-30,206 (RHC Oct. 8, 2014); *see* Gaben Mgmt., LLC v. Terry, 2011 CA 5706 C (D.C. Sup. Ct. Mar. 25, 2014). In the March 25, 2014 Superior Court Order, Judge Holeman determined that under the lease agreement between the Tenant and the Housing Provider, the Tenant was merely a guarantor, not a tenant, and was not liable to the Housing Provider for the unpaid rent during the time period between January 1, 2011 and May 31, 2011. Gaben Mgmt., LLC, 2011 CA 5706 C at 7-8. The Order did not address specifically whether the Tenant was a "tenant" as defined by the Act. *See infra* at 12.

Although the Commission regularly applies the doctrine of *res judicata* to its cases, neither party filed a motion or otherwise asserted that Judge Holeman's March 25, 2015 order constituted *res judicata* in relation to this Tenant Petition, and thus the Commission will not address that issue in this Decision and Order. *See, e.g.* Carmel Partners, Inc. v. Levy, RH-TP-06-28,830, RH-TP-06-28,835 (RHC May 16, 2014); Gelman Mgmt. Co. v. Campbell, RH-TP-09-29,715 (RHC Dec. 23, 2013); Dreyfuss Mgmt., LLC v. Beckford, RH-TP-07-28,895 (RHC Sept. 27, 2013).

jurisdictional requirement of "standing"); *see* Young v. Vista Mgmt., TP 28,635 (RHC Sept. 18, 2012); Nelson v. B.F. Saul Prop. Co., RH-TP-10-29,994 (RHC Aug. 16, 2012).

The DCCA has held that "standing" is a threshold jurisdictional requirement before a court may address the merits of a party's claim. Grayson v. AT&T Corp., 13 A.3d 219, 229 (D.C. 2011); *see* Miller, RH-TP-08-29,407 at n.13. Under the Act, only a tenant or a tenant association, as those terms are defined by the Act, has standing to file a tenant petition challenging a rent increase. 14 DCMR § 4214.3;[11] *c.f.* Miller, RH-TP-08-29,407 ("[i]n order for a party to have 'standing,' there must be an allegation of 'an actual or imminently threatened injury;' a mere contingent or speculative interest in a problem is not sufficient") (quoting York Apartments Tenants Ass'n v. D.C. Zoning Comm'n, 856 A.2d 1079, 1084 (D.C. 2004)); Young, TP 28,635 (deciding that tenant lacked standing where evidence reflected that tenant did not experience the reduction in services that formed the basis of her tenant petition).

Under the Act, a tenant is defined as follows: "'[t]enant' includes a tenant, subtenant, lessee, sublessee, or other person entitled to the possession, occupancy, or the benefits of any rental unit owned by another person." D.C. OFFICIAL CODE § 42-3501.03(36); *see, e.g.*, Burkhardt v. B.F. Saul Co., RH-TP-06-28,708 (RHC Sept. 25, 2014) at n.30; Marguerite Corsetti Trust v. Segreti, RH-TP-06-28,207 (RHC Sept. 18, 2012); *c.f.* Eastern Savings Bank, RH-TP-08-29,397 at n.7 (determining that, following a foreclosure, as long as a person is "entitled to 'the possession, occupancy, or the benefits of any rental unit owned by another person' . . . such person retains the legal status of 'tenant' under the Act").

---

[11] 14 DCMR § 4214.3 provides the following, in relevant part: "The tenant of a rental unit or an association of tenants of a housing accommodation may, by petition filed with the Rent Administrator, challenge or contest any rent or rent increase[.]"

The term "holdover tenant" or "tenant at sufferance" is used to describe a tenant who remains in a rental unit after the expiration of a lease term. BLACK'S LAW DICTIONARY 749, 1505 (8th ed. 2004);[12] Drell, TP 27,344 (citing Young v. District of Columbia, 752 A.2d 138, 142 (D.C. 2000)); *see also* D.C. OFFICIAL CODE § 42-520;[13] Cavalier Apartments Corp. v. McMullen, 153 A.2d 642, 642-43 (D.C. 1959) (definition of tenancy by sufferance is governed by D.C. OFFICIAL CODE § 42-520); Williams v. Tencher-Walker, Inc., 125 A.2d 58, 59 (D.C. 1956) ("when, after expiration of a lease term, a tenant continues in possession and pays rent, a tenancy by sufferance is created"). A holdover tenant may maintain his or her status as a "tenant" under the Act (i.e., a person entitled to possession, occupancy or the benefits of any rental unit) by continuing to pay rent. D.C. OFFICIAL CODE §§ 42-3501.03(36), -3505.01(a);[14] *see* Double H Hous. Corp. v. David, 947 A.2d 38, 42 (D.C. 2008) (holding that D.C. OFFICIAL CODE § 42-3505.01(a) "guarantees a holdover tenant the opportunity to continue his tenancy on a month-to-month basis as long as he pays the rent."); Eastern Savings Bank, RH-TP-08-29,397 at n.7 (determining that the essential requirement to establish "tenancy" under the Act, is that a

---

[12] "Tenancy at sufferance" is defined as "[a] tenancy arising when a person who has been in lawful possession of property wrongfully remains as a holdover after the interest has expired;" "holding over" is defined as "[a] tenant's action in continuing to occupy the leased premises after the lease term has expired." BLACK'S LAW DICTIONARY 749, 1505 (8th ed. 2004).

[13] D.C. OFFICIAL CODE § 42-520 provides the following:

> All estates which by construction of the courts were estates from year to year at common law, as where a tenant goes into possession and pays rent without an agreement for a term, or where a tenant for years, after the expiration of his term, continues in possession and pays rent and the like, and all verbal hirings by the month or at any specified rate per month, shall be deemed estates by sufferance.

[14] D.C. OFFICIAL CODE § 42-3505.01(a) provides, in relevant part, the following: "Except as provided in this section, no tenant shall be evicted from a rental unit, notwithstanding the expiration of the tenant's lease or rental agreement, so long as the tenant continues to pay the rent to which the housing provider is entitled for the rental unit."

person "'continues to pay rent' for the housing accommodation at issue") (quoting Adm'r of Veterans Affairs v. Valentine, 490 A.2d 1165, 1169-70 (D.C. 1985)).

In this case, the ALJ made a finding that a written lease agreement for the Housing Accommodation was entered into by the Housing Provider, the Tenant, and a second tenant, Jack Taylor ("Mr. Taylor") commencing April 1, 2010, to continue through July 31, 2010. Final Order at 3; R. at 123; *see* Rent Agreement at 1; R. at 47. The Commission's review of the record confirms, as neither party contests, that both the Tenant and Mr. Taylor had the legal status of "tenants" as defined by the Act during the term of the lease agreement, namely, April 1, 2010 through July 31, 2010. D.C. OFFICIAL CODE § 42-3501.03(36).

After the expiration of the written lease agreement on July 31, 2010, the ALJ found that Mr. Taylor continued to reside at the Housing Accommodation. *Id.* The Commission's review of the record indicates that it was undisputed that after the expiration of the written lease term on July 31, 2010, the tenancy was extended on a month-to-month basis, while the Tenant and Mr. Taylor continued to pay rent to the Housing Provider. Double H Hous. Corp., 947 A.2d at 44; *see* D.C. OFFICIAL CODE § 42-3505.01(a); Rent Agreement at 3; R. at 45.[15] The Commission's review of the record also reveals that it was undisputed that both the Tenant and Mr. Taylor had the legal status of "tenants" as defined by the Act during the period of time after the written lease

---

[15] The Rent Agreement contains the following clause regarding holding over the tenancy after the expiration of the written agreement:

> **HOLDING OVER TENANCY BY THE MONTH:** 37. It is further agreed that should Lessee continue in possession after the end of the term herein with permission of Lessor, the tenancy thus created can be terminated by either party giving to the other party not less than thirty (30) days' written notice to expire on the day of the month from which the tenancy commenced to run. In so continuing, Lessee agrees to pay the same monthly rental and to keep and fulfill all the other conditions and agreements herein, and in case of default in the payment of rent or breach of any conditions and agreements, hereby waives his right to any Notice to Quit.

Rent Agreement at 3; R. at 45 (emphasis original).

agreement expired, through the end of the calendar year, namely August 1, 2010 through December 31, 2010. D.C. OFFICIAL CODE § 42-3501.03(36).

On November 18, 2010, the Tenant and Mr. Taylor notified the Housing Provider in writing of their intent to terminate the lease agreement effective December 31, 2010, and stated that "[f]ollowing December 31, 2010, we will take no further joint responsibility for the rent payment on this apartment unit." *Id.* at 3-4; R. at 122-23; Nov. 18, 2010 Letter; R. at 48. The ALJ determined that during the entire time period between April 1, 2010, and December 31, 2010, Mr. Taylor was the only person who resided at the Housing Accommodation; the Tenant never resided there. Final Order at 3; R. at 123.

The Commission's review of the record indicates that Mr. Taylor did not vacate the premises by December 31, 2010, as indicated by the November 18, 2010 letter to the Housing Provider, and that no rent was paid to the Housing Provider by either the Tenant or Mr. Taylor after December 31, 2010. *Id.* at 4; R. at 122. The ALJ found, and the Commission's review of the record confirms, that on April 27, 2011, a judge in the Landlord and Tenant Branch of D.C. Superior Court ("Landlord and Tenant Branch") granted the Housing Provider judgment for possession of the Housing Accommodation, and Mr. Taylor vacated the Housing Accommodation on May 11, 2011. *Id.*

The Tenant Petition arose in response to a May 26, 2011 letter from the Housing Provider to both the Tenant and Mr. Taylor stating that (1) they owed unpaid rent for the time period between January 1, 2011 and May 11, 2011,[16] and (2) the Housing Provider was doubling the

[16] The Commission notes that the Tenant Petition specifically indicated that the only purported rent increase that was being challenged was the Housing Provider's request for double rent pursuant to D.C. Code § 42-3211. Tenant Petition at 3; R. at 11.

amount of unpaid rent due in accordance with D.C. OFFICIAL CODE § 42-3211[17] because Mr. Taylor had failed to vacate the unit by December 31, 2010 after giving notice that he would do so. *Id.*

Based on its review of the record, the Commission is unable to find substantial record evidence to support the ALJ's requisite determination that the Tenant in this case qualified as a "tenant" under the Act during the time period relevant to the claim in the Tenant Petition, namely January 1, 2011 through May 11, 2011. *See* Final Order at 1-12; R. at 114-25. The Commission's review of the record indicates that the ALJ determined that the Tenant gave the Housing Provider proper notice in a letter dated November 18, 2010 that the lease agreement between herself, the Housing Provider and Mr. Taylor would be terminated effective December 31, 2010, and that the Tenant and Mr. Taylor would "take no further joint responsibility for the rent payment on this apartment unit." Final Order at 3-4; R. at 122-23; *see* Nov. 18, 2010 Letter; R. at 48. The Commission also observes that the ALJ determined, and the parties did not dispute, that the Tenant did not reside in the apartment after December 31, 2010 (if not at any time before that date), nor, more importantly, did she contribute to any rent payments for the Housing Accommodation after December 31, 2010. Final Order at 3-4; R. at 122-23.

As the Commission explained *supra* at 13, the essential requirement for any putative petitioner to establish "tenancy" under the Act, in the absence of a written lease, is that he/she continues to pay rent. Eastern Savings Bank, RH-TP-08-29,397 at n.7; *see* Valentine, 490 A.2d at 1169-70. Since the Commission's review of the record reveals that the Tenant did not pay rent after December 31, 2010, the Commission is satisfied that the Tenant was not entitled to the "possession, occupancy, or the benefits" of the Housing Accommodation during the time period

[17] The text of D.C. OFFICIAL CODE § 42-3211 is recited *supra* at p. 11 n.9.

relevant to the claim in the Tenant Petition, namely, January 1, 2011 through May 11, 2011. Eastern Savings Bank, RH-TP-08-29,397 at n.7; Drell, TP 27,344; *see also* D.C. OFFICIAL CODE § 42-520; Cavalier Apartments Corp., 153 A.2d at 642-43; Williams, 125 A.2d at 59.

Since the Commission determines that the Tenant was not entitled to the "possession, occupancy, or the benefits" of the Housing Accommodation insofar as she did not pay rent for it during the time period relevant to the claim in the Tenant Petition (namely, January 1, 2011 through May 11, 2011), the Commission is satisfied that the Tenant in this case was not a "tenant" within the meaning of the Act's definition of that term during the above time period relevant to the Tenant Petition, and thus the Commission determines that the Tenant did not have standing to file the Tenant Petition. 14 DCMR § 4214.3; Grayson, 13 A.3d at 229; Miller, RH-TP-08-29,407; Young, TP 28,635. Because the Tenant did not have standing at the time she filed the Tenant Petition, the Commission determines that it was plain error for the ALJ to assume jurisdiction over the Tenant Petition under the Act, and that the Commission consequently does not have jurisdiction over the Notice of Appeal. Miller, RH-TP-08-29,407; Young, TP 28,635; Nelson, RH-TP-10-29,994. The Commission therefore dismisses the Notice of Appeal for lack of jurisdiction, vacates the Final Order and dismisses the Tenant Petition.[18]

[18] The Commission notes that although the Final Order also resulted in a dismissal of the Tenant Petition, the ALJ's dismissal was based on her determination that she lacked subject matter jurisdiction over this case. Final Order at 11-12; R. at 114-15; *see* Neill v. D.C. Pub. Emp. Relations Bd., 93 A.3d 229, (D.C. 2014) (providing that subject matter jurisdiction is the court's ability to consider the subject matter of the case); Gelman Mgmt. Co., RH-TP-09-29,715 (stating that subject matter jurisdiction defines a court's authority to hear a specific type of case) (citing Carlsbad Tech., Inc. v. HIF Bio, Inc., 556 U.S. 635, 639 (2009)). However, the crux of the Commission's decision herein is that the ALJ lacked jurisdiction over a party to the Tenant Petition, which is more akin to personal jurisdiction, and thus lacked the jurisdiction from the outset to even address or otherwise consider the merits of the Tenant's case. Tenants of 4021 9th St., N.W. v. E&J Props., LLC, HP 20,812 (RHC June 11, 2014) at n.22 (explaining that questions of standing are directly related to questions of personal jurisdiction); *see also, e.g.*, D.C. Metro. Police Dep't v. Fraternal Order of Police/Metro. Police Dep't Labor Comm., 997 A.2d 65, 72 (D.C. 2010) (explaining that personal jurisdiction goes to whether a court may exercise judicial power over a particular party).

14 DCMR § 3807.4; Allen, RH-TP-12-30181; *see* Vista Edgewood Terrace, TP 24,858; King, TP 20,962.[19]

IV. CONCLUSION

For the foregoing reasons, the Commission vacates the ALJ's Final Order, and dismisses the Tenant Petition and this appeal for lack of jurisdiction.

SO ORDERED

PETER B. SZEGEDY-MASZAK, CHAIRMAN

RONALD A. YOUNG, 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."

[19] Because of its determination of this appeal on purely jurisdictional grounds, the Commission will not address in its Decision and Order the merits of the major substantive issue on appeal: namely, the legal viability of the Tenant's claims regarding double rent as constituting a rent increase under the Act.

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:

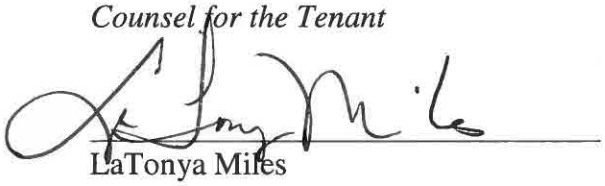
D.C. Court of Appeals
Office of the Clerk
Historic Courthouse
430 E Street, N.W.
Washington, D.C. 20001
(202) 879-2700

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing **DECISION AND ORDER** in **RH-TP-11-30,206** was mailed, postage prepaid, by first class U.S. mail on this **8th day** of **December, 2014** to:

Brian D. Riger
Gildar & Riger
6001 Montrose Road, #701
Rockville, MD 20852
Counsel for the Housing Provider

Morris R. Battino
Aaron Sokolow
1200 Perry Street, NE, #100
Washington, DC 20017
Counsel for the Tenant



LaTonya Miles
Clerk of Court
(202) 442-8949