

DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION

RH-TP-13-30,431

In re: 3114 Wisconsin Ave., NW, Unit 203

Ward Three (3)

KAHLILL PALMER

Tenant/Appellant

v.

JOAN CLAY

Housing Provider /Appellee

DECISION AND ORDER

October 5, 2015

McKOIN, COMMISSIONER. This case is on appeal to the Rental Housing Commission (Commission) from the Office of Administrative Hearings (OAH), based on a petition filed in the Rental Accommodations Division (RAD) of the 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, 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.

I. PROCEDURAL HISTORY

Kahlill Palmer (Tenant), residing in Unit 203 of 3114 Wisconsin Ave., N.W. (Housing Accommodation), filed Tenant Petition 2013-DHCD-TP 30,431 (Tenant Petition) on October 1,

¹ OAH assumed jurisdiction over tenant petitions from the Rental Accommodations and Conversion Division (RACD) on October 1, 2006, pursuant to § 6(b-1)(1) of the OAH Establishment Act, D.C. Law 16-83, D.C. OFFICIAL CODE § 2-1831.03(b-1)(1) (2012 Repl.). The functions and duties of RACD were transferred to DHCD by § 2003 of the Rental Housing Operations Transfer Amendment Act of 2007, D.C. Law 17-20, D.C. OFFICIAL CODE § 42-3502.04b (2012 Repl.).

2013, against Joan Clay (Housing Provider). The Tenant Petition raised the following claims against the Housing Provider:

1. The building where my/our Rental Unit(s) is/are located is not properly registered with the RAD.
2. The rent increase was larger than the increase allowed by any applicable provision of the Act.
3. The Housing Provider did not file the correct rent increase forms with the RAD.
4. The rent was increased while my/our Rental Unit(s) was/were not in substantial compliance with the D.C. Housing Regulations.
5. The rent ceiling exceeds the legally-calculated rent for my/our units.
6. The rent charged is in excess of the rent ceiling for my Rental Unit.
7. Services and/or facilities provided as part of my/our rent have been substantially reduced.

Tenant Petition at 2-3; Record (R.) at 37-38.

An evidentiary hearing was held on May 6, 2014. On November 7, 2014, Administrative Law Judge Erika Pierson (ALJ) issued a final order in this case: Palmer v. Clay, 2013-DHCD-TP 30,431 (OAH Nov. 7, 2014) (Final Order); R. at 80-100. In the Final Order, the ALJ awarded the Tenant \$8,950.00 for rent overcharges between October 1, 2010, and October 1, 2013 (the date on which the Tenant Petition was filed), plus \$481.47 in interest (computed through the date of the Final Order), and rolled back the Tenant's rent to \$1,225.00 per month, the amount of the Tenant's rent prior to a December 1, 2010, rent increase. Final Order at 13-15; R. at 86-88.

In the Final Order, the ALJ made the following findings of fact:²

² The findings of fact are recited here using the same numbering, language, and terms as used by the Hearing Examiner in the Final Order.

1. The Tenant resided in Unit 203 at 3114 Wisconsin Avenue, NW, (Housing Accommodation) since April 5, 2006. The Housing Accommodation is a cooperative unit owned by Joan Clay.
2. When Tenant moved into the apartment he signed a standard lease agreement created by the Greater Capital Area Association of Realtors. The lease agreement which is specifically for single family homes, condominiums, and cooperatives, states that the Housing Accommodation is exempt from the rent stabilization provisions of the Rental Housing Act of 1985 because Housing Provider owns four or fewer rental units. The lease states:

You must attach to the Lease a copy of the Claim of Exemption Form and Certificate of Registration/Exemption, both of which must bear the date stamp of the Rental Accommodations and Conversion Division showing that they have been filed with that office. **IF YOU DO NOT HAVE THESE DOCUMENTS OR THE LANDLORD IS NOT ABLE TO PROVIDE YOU WITH THESE DOCUMENTS, DO NOT USE THIS LEASE FORM.** (emphasis in original)

3. When Tenant signed the lease, he asked Housing Provider for proof of the exemption and Housing Provider said she would send it to him later.
4. Housing Provider is currently retired. She worked for some time as a nurse and then as a Sales Associate for Long and Foster Real Estate and has been a licensed Real Estate professional for 40 years. As a Sales Associate, Housing Provider sold residential properties in the District of Columbia, but did not handle any rental properties, other than her own.
5. Housing Provider owns two rental properties in the District of Columbia, both are apartments. When Housing Provider decided to rent out the Housing Accommodation, she asked the cooperative manager about rent control and she was told that because the building was a cooperative, it was not subject to rent control. Based on this information, Housing Provider checked the box on the lease that the Housing Accommodation was exempt.
6. When Tenant moved into the apartment he identified several items that needed repair: holes in walls, painting, and carpet cleaning. PXs 104, 107, 108. Tenant also sent Housing Provider photos of the needed repairs. Housing Provider told Tenant to go ahead and move in and that she would make the repairs. No repairs were ever made.
7. When Tenant moved in the Housing Accommodation, he was charged a monthly rent of \$1,225. On October 21, 2010, Housing Provider emailed Tenant that his rent was increasing to \$1,375, effective December 1, 2010.

PX 111. At some point, Housing Provider had sent an email that referred to Tenant's rent as \$1,385, and therefore, since December 2010, Tenant paid \$1,385 per month.

8. When Tenant received the email about the rent increase, Tenant asked Housing Provider to withdraw the increase due to the conditions of the apartment and repairs never having been made in the four years he lived there. PX 112. Housing Provider emailed a response stating that the carpet was cleaned and the apartment was painted before Tenant moved in, but that she would do them both again. PX 113. However, Housing Provider neither painted nor cleaned the carpet at that time.
9. In July 2011, Tenant emailed Housing Provider that in reviewing previous emails, his correct rent should have been \$1,375, but that he had been paying \$1,385 because of one email that noted his rent at that amount. PX 172. Housing Provider responded saying she would correct the error. PX 117. Subsequently, Housing Provider requested that Tenant continue paying \$1,385 so that she could use the money to make repairs to the apartment.
10. On August 8, 2011, Housing Provider replaced the carpet in Tenant's apartment. Housing Provider said she would paint the apartment at a later time because she was caring for her son. No repairs were made in the following two years.
11. On July 1, 2013, Housing Provider informed Tenant by telephone that she was considering again increasing the rent. In an email sent on July 5, 2013, Housing Provider proposed to increase Tenant's rent by \$100 per month, reasoning that his rent was substantially lower than other units in the cooperative which were renting for \$1,600. PX 118.
12. Tenant was upset about the rent increase because no repairs had been done in his apartment and the apartments renting for \$1,600 were renovated units. *Testimony of Tenant*. Tenant then began researching the law and learned that Housing Provider had been a licensed real estate professional for 40 years. PXs 162-164.
13. On July 30, 2013, the Interim Rent Administrator certified that there was no current registration on file for the Housing Accommodation. PX 121. On August 2, 2013, The Department of Consumer and Regulatory Affairs (DCRA) Business License Division certified that no basic business license for residential rental had been issued for Housing Provider or her husband Don Clay. PXs 1234 [sic], 124.
14. On September 27, 2013, DCRA inspected the Housing Accommodation and issued a notice of violation (NOV). PX 126. The NOV was served on the cooperative manager, who sent it to Housing

