**DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION**

RH-TP-13-30,448

In re: 3661 Winfield Lane, N.W.

Ward Two (2)

**BENHAM POURBABAI**
Housing Provider/Appellant

v.

**CHRIS BELL, *et al.***
Tenants/Appellees

**FINAL DECISION AND ORDER**

February 18, 2016

**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 §§ 2-501-510 (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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[1] 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, D.C. 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 by § 2003 the Fiscal Year 2008 Budget Support Act of 2007, D.C. Law 17-20, D.C. OFFICIAL CODE § 42-3502.04b (2010 Repl.)).

## I. PROCEDURAL HISTORY

On November 13, 2013, Tenant/Appellee Chris Bell, resident of 3661 Winfield Lane, NW, (Housing Accommodation) filed Tenant Petition RH-TP-13-30,448 (Tenant Petition) with RAD, against Benham Pourbabai (Housing Provider). *See* Tenant Petition at 1-2; Record for RH-TP-13-30,448 (R.) at 19-20. The Tenant Petition raised the following claims against the Housing Provider:

1. The Housing Provider, property manager, or other agent of the Housing Provider has improperly withheld my security deposit after the date when I/we moved out.

2. The Housing Provider, property manager, or other agent of the Housing Provider has failed to return the interest on my security deposit after the date when I/we moved out.

Tenant Petition at 3; R. at 18.

On July 19, 2014, Chris Bell filed a motion to amend the Tenant Petition to add seven additional tenants who had lived together at the Housing Accommodation, Semir Hasedzic, Kenny Buhr, Kaitlin Conklin, Catherine Schroeder, Geoffrey Talis, Sydney Dittman, and Caroline Watson (hereinafter, collectively, Tenants). The Housing Provider did not oppose the motion, and Administrative Law Judge Denise Wilson-Taylor (ALJ) granted the motion on the record at the July 31, 2014 evidentiary hearing. Hearing CD (OAH July 31, 2014).

The ALJ issued a final order on April 15, 2015: Bell v. Pourbabai, RH-TP-13-30,448 (OAH Apr. 15, 2015) (Final Order); R. at 130-41. The ALJ made the following findings of fact in the Final Order:[2]

1. Tenants resided in a single family home at 3661 Winfield Lane, NW (Housing Accommodation), from August 1, 2012 to July 31, 2013. The Housing Accommodation is owned by Benham Pourbabai (Housing Provider).

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

2. When the Tenants moved into the Housing Accommodation, they signed a lease agreement to pay monthly rent of $10,000 and paid a security deposit of $10,000. PX 100 and 101. The Tenants signed two leases because the Housing Provider was under the impression that zoning regulations prohibited the rental of a housing accommodation consisting of more than 6 persons who are unrelated. Rent was due on the first of the month and was considered late after the fifth day of the month. Each tenant was to pay 1/8 of $10,000 to the Housing Provider each month individually.

3. The lease contains the following provisions relevant to this case (PX 100 and 101):

> **10. Maintenance:** Tenant shall keep all parts of the premises in a state of good order and condition and shall surrender the same at the expiration of the term hereof in the same good order in which they were received, ***reasonable wear and tear excepted.*** Tenant will be responsible for the cost of maintaining the plumbing system operational [sic], and avoid misusing the sinks, the drains, and the toilets, accordingly. Tenant shall provide for and be responsible for the following as applicable: chimney sweep; plumbing repair, and flooding damages due to toilet overflow, or misuse of the bathrooms and the toilets; elevator's maintenance cost; ***two semi-annual inspection[s] of the A/C units, maintaining the A/C,*** the furnace, the air handler, by certified DC inspectors ***and replacement of the air filters.*** Otherwise, the tenant will be held liable for the consequential damages due to not maintain(ing) the units accordingly. The tenants will be responsible to maintain the front and back gardens, trees, shrubs, and flowers, accordingly. Any damages to the gardens will be the tenants['] responsibility.
>
> Furthermore, the Tenant will be responsible to replace the bulbs and the fuses, proper cleaning of the marble, travertine, and wood floors, the appliances, keeping up, preserving in good condition and keeping trimmed any lawn, trees, vines shrubbery, and gardens, removing leaves and other debris that accumulates on the property, including the rain gutters and drains, promptly removing ice and snow as necessary. Any repairs or replacements of property, equipment, or appliances necessary due to negligent acts of commission or omission of Tenants, the family, guests or employees, shall be paid by Tenants. In the case [sic], the Tenant fails to report the damages, the Tenant will be liable for month rent [sic] that will be paid to the landlord. In the case of condominiums, cooperative apartments or other multi-family dwelling units—replacement of furnace and air conditioning filters, light bulbs and fuses, proper cleaning of floors [sic]. In the case of any damages that is [sic] caused during the Tenant's lease, if the Tenant fails to report or repair it, the landlord is authorized to fix the damages and charge the Tenant accordingly. (emphasis added).

18. **Termination of the Tenancy:** In the event Tenant shall desire to vacate the premises at the end of the term specified in the Lease, the Tenant, at least (60) days prior to the expiration hereof, shall give notice in writing to the landlord, indicating the Tenant's intent to vacate. If the Tenant vacates the premises at the end of the term specified in the lease without having given at least 60 (days) notice of intent to vacate, the Tenant shall pay to the landlord a sum equal to the initial deposit, as stated in paragraph 2. If the landlord shall give notice in writing to the Tenant indicating the landlord's intention to repossess the premises, as required by law, within sixty days (60) days of recovery [sic].

21. **Surrender**: Tenant will upon termination of this lease, surrender the premises and all fixtures and equipment of the landlord in good, clean and operating condition. Tenant shall, at time of vacating, clean said premises including stove and refrigerator and remove trash from premises. Tenant agrees to shampoo any carpeting that is installed in the premises upon vacancy. All keys and the remote keys and the parking passes must be returned to landlord within twenty-four (24) hours of vacancy. Tenant will be responsible for any damages to walls or woodwork. Tenant shall be responsible for full financial reimbursement to landlord for the value of any trim, mantelpiece, crown moldings, wood flooring or plasterwork of an historic nature, which the Tenant, through his negligence, causes to be damaged in any way or destroyed. Personal property left on the premises hall [sic] be considered to be abandoned by Tenant and shall, at landlord's option become the property of landlord and landlord may dispose of it without liability to Tenant. Furthermore, the Tenant will be responsible for any loss of income due to the time period the townhouse will be unavailable for rental due to repairs, accordingly.

**(29) Additional clauses:** The tenant will inform the landlord of any mail and messages that are intended for him, and would forward his mail to P.O. Box 160, Great Falls, Virginia 22066.

4. The air conditioner ceased working in late August of 2012, during the first month of the tenancy. Since it was so close to fall, the tenants did not have it serviced and repaired until June 2013. PX 106.

5. Tenant Henry Buhr did have a minor accident with his vehicle when he struck the frame in the garage. Tenant Buhr's vehicle was damaged but he never had it repaired. There was minor damage caused to the garage.

6. At all times during the course of the tenancy the Tenants maintained the smoke detectors. They replaced one battery in one of the detectors.

7. Three of the Tenants purchased renter's insurance.

8. The Tenants never used the chimney nor were they put on notice of any damage to a neighbor's property because of the gutters not being professionally cleaned.

9. There are no visible scars or damage to the dishwasher in the kitchen. PX 107.

10. The Tenants kept Housing Provider's mail separate but never forwarded the mail to the Housing Provider. The Housing Provider never inquired about his mail, voiced any concern over his mail, or came by the Housing Accommodation to retrieve his mail. The Housing Provider did not file a change of address form with the post office.

11. When the Tenants signed the lease at the end of July 2012, they were interacting with Annie Koontz, a realtor who was the Housing Provider's representative. Whenever they had any issues, questions or concerns they were in touch with Ms. Koontz as whenever they did try to converse with the Housing Provider, he would threaten them with legal actions and fees. When the Tenants decided to move out of the housing accommodation they informed Ms. Koontz in March 2013 that they would vacate by July 31, 2013. The agency relationship Housing Provider had with Ms. Koontz terminated in September 2012. No one ever told the Tenants that Ms. Koontz's agency relationship with the Housing Provider ceased in September 2012.

12. Tenants' lease terminated on July 13, 2013. Tenants requested that Housing Provider walk through the home with them. The walk through occurred on August 1, 2013 with Tenant Semir Hasdeic [sic]. Both Semir and the Housing Provider acknowledged a broken cabinet in the kitchen, the hinge of which was loose when they took possession of the premises in August 2012.

13. On September 10, 2013, Housing Provider sent Tenants by e-mail and certified mail a notice of his intent to withhold their security deposit. PX 103[.]

14. The notice informed Tenants that Housing Provider was withholding Tenant's full security deposit for the following items: (PX 103):

    a. One month's rent for failing to maintain the air conditioner.

    b. One month's rent for the cabinet door in the kitchen, failing to have the gutter professionally cleaned that resulted in damage to his neighbor's property, and the finding of the HOA finding [sic] the landlord at fault; dishwasher's metallic frame being deeply scarred and damaged[.]

    c. One month's rent for failing to purchase renters insurance.

d. One month's rent for failing to keep the smoke detectors operational.

e. One month's rent for failing to provide a 60 day notice of lease termination.

f. One month's rent for failing to forward landlord's mail.

g. Repair of the garage frame: $ 550; Cost of cleaning the gutters: $250; Cost of cleaning the chimney: $ 300. Replacement of the dishwasher: $ 850. Repair of wine cooler: $ 150.

15. At various times during the course of the tenancy, Housing Provider relied on the advice of Counsel.

16. A group of new tenants moved into the housing accommodation on August 1, 2013. PX 102.

Final Order at 2-7; R. at 135-46 (footnotes omitted). The ALJ made the following conclusions of law in the Final Order:[3]

**A. Notice of Intent to Withhold Security Deposit**

1. The Rental Housing Act of 1985, as amended, grants OAH jurisdiction over the refund of security deposits and provides that security deposits are governed by the Security Deposit Act. D.C. Official Code § 42-3502.17 (2012). The Security Deposit Act is codified at 14 DCMR §§ 308 through 311, and requires that a housing provider return a tenant's security deposit, with interest, within 45 days after the termination of the tenancy. 14 DCMR § 309.1.

2. If a housing provider intends to withhold the security deposit, or a portion thereof, to defray the cost of expenses properly incurred under the lease, it must notify the tenant within those 45 days of its intent to withhold. 14 DCMR § 309.2. If a notice to withhold is not provided in those 45 days, a housing provider forfeits the right to withhold any portion of the security deposit. 14 DCMR § 309.3. In this case, the Housing [P]rovider complied with the law in that he informed the Tenants within 41 days that he would withhold all of their deposit because of the reasons set forth in his September 10, 2013 communication. PX 103.

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

3. If the housing provider provides a tenant with notice of intent to withhold a portion of the security deposit, the housing provider then has 30 days to tender a refund of the balance of the deposit and provide the tenant with an itemized statement of the repairs or other uses to which the monies were applied and the cost of each repair or other use. 14 DCMR 309.2. The regulations provide that failure to comply with this provision of the Security Deposit Act "shall constitute prima facie evidence that the tenant is entitled to a full return including interest." 14 DCMR [§] 309.3. The notice issued to Tenants on September 13, 2013, (sent by e-mail and certified mail) informed Tenant[s] that Housing Provider was withholding the full security deposit and provided an itemized list of the costs being charged. The remaining question then, is whether the specific items deducted are consistent with the terms of Tenant's lease and the facts as presented.

**B. Itemized Deductions**

1. **Air conditioner**

4. Housing Provider deducted one month's rent because the tenants did not repair the air conditioner until June of 2013. The lease required the tenants to have performed two inspections within the course of the year. The tenants moved in the home in August of 2012 and the one and only service performed on the unit was June 2013, about a month before the tenants were to vacate the premises. The cost of the repair and servicing was $180. I will allow a deduction of $180 for failure to have two inspections.

2. **Kitchen cabinet door, chimney cleaning, gutter cleaning, dishwasher metallic frame damage.**

5. The cabinet door hinge came apart because of normal usage and was rather loose when the Tenants moved in. During the course of the tenancy, Tenants never used the chimney. The Tenants were to keep the gutters in good condition and promptly remove ice and snow but there was no requirement in the lease to have the gutters professionally cleaned. The Tenants were never on notice that anything that they failed to do with the gutters caused damage to the neighbor's property. The photo of the dishwasher fails to exhibit any deep scar or damage. PX 107. Therefore, Housing Provider may not charge Tenants one month's rent for these deductions.

3. **Purchase of Insurance**

6. Three of the tenants purchased renters insurance. Renters insurance is primarily for the protection of the tenants' personal items and belongings. There was no damage to any of the Tenants' property and the tenants never charged the landlord for any damage to their personal belongings. Therefore

the charge of one month's rent for the failure of the remaining five tenants to purchase insurance is disallowed.

**4) Smoke detectors**

7. The Tenants maintained that they kept the smoke detectors operational. They replaced the battery in at least one detector and all others were operational at all times during the tenancy. Because Housing Provider did not produce evidence that the detectors were not operational, one month's rent for this cost is disallowed.

**5) Sixty day notice to quit**

8. The Tenants maintained that they notified Housing Provider's agent, Annie Koontz[,] more than 60 days prior to the termination of the lease that they intended to let the lease come to its natural end on July 31, 2013. At the time that they notified Ms. Koontz, they were not aware that Ms. Koontz' agency relationship with the Housing Provider was no longer in existence. The Housing Provider testified that he never told the Tenants that he was no longer being represented by Ms. Koontz after September 2012. The fact that new Tenants executed a new lease in March 2013, with a move in date of August 1, 2013, makes it more probable than not that the Housing Provider was on notice 60 days prior to the termination of the lease that the Tenants had no intention of renewing the lease for another term. PX 102. As a consequence, Housing Provider is not entitled to one month's rent penalty for this alleged infraction.

**6) Failure to forward the landlord's mail**

9. The lease provided that the Tenants were to inform the Housing Provider of any mail and messages intended for him and forward his mail. The Housing Provider indicated that since the Tenants did not forward his mail, it caused his creditors not to be paid on time and caused his credit reports to be adversely affected. The Housing Provider did not develop these assertions at the hearing, nor did he produce any evidence to show the direct connection between the failure of the Tenants to forward his mail and his credit rating. The Housing Provider testified that he did not file a change of address with the post office. Therefore, a one month's penalty for the failure to forward the Housing Provider's mail is disallowed.

**7) Garage frame repair**

10. Henry Buhr, one of the Tenants, conceded that he hit one side of the garage. He indicated that the garage was a tight fit and his car was damaged but he never obtained any estimates for the repair to his car or the damage to the garage. The Housing Provider obtained an estimate for the repair to the

garage of $375. RX 201. I will allow a deduction of $375 from the security deposit for the repair of the garage.

**8) The wine cooler**

11. The Housing Provider did not develop any testimony about the wine cooler during the course of the hearing. Moreover, he failed to submit a cost estimate from a company for repairing the cooler. As a consequence, this deduction will be disallowed.

**C. Treble Damages**

12. Tenants have requested that they be awarded treble damages because Housing Provider acted in bad faith in not returning their security deposit. The regulations provide:

> (1) Any housing provider violating the provisions of this section by failing to return a security deposit rightfully owed to a tenant in accordance with the requirements of this section shall be liable for the amount of the deposit withheld, or, in the event of bad faith, for treble damages.
>
> (2) For the purposes of this sub-paragraph, the term "bad faith" means any frivolous or unfounded refusal to return a security deposit, as required by law, that is motivated by a fraudulent, deceptive, misleading, dishonest, or unreasonably self-serving purpose and not by simple negligence, bad judgment, or an honest belief in the course of action taken. 14 DCMR [§] 309.5.

13. In interpreting "bad faith" for the purposes of treble damages for other violations of the Rental Housing Act, the Rental Housing Commission has held that a finding of bad faith requires inquiry into the "intent or state of mind of the actor." *Third Jones Corp. v. Young*, TP 20,300 (RHC Mar. 22, 1990) at 9. The D.C. Court of Appeals has defined "bad faith" as the "intent to deceive or defraud." *Bernstein Mgmt. Corp.*, 952 A.2d at 198 (*quoting P'ship Placements, Inc. v. Landmark Ins.* Co., 722 A.2d 837, 845 (D.C. 1998)). It requires a finding that Housing Provider acted out of "some interested or sinister motive" involving "the conscious doing of a wrong because of dishonest motive or moral obliquity." *Third Jones Corp. v Young*, TP 20,300 at 9. Although the standard of misconduct required for bad faith has been described as "egregious," [*i*]*d.* at 8, it is sufficient that a housing provider's actions reflect a "deliberate refusal to perform without just or reasonable cause or excuse," *id.* at 10, or "a continuing, heedless disregard of a duty." *Cascade Park Apartments v. Walker*, TP 26,197 (RHC Jan. 14, 2005) at 35.

14. In this case, there was no evidence to allow me to consider Housing Provider's state of mind. The testimony and evidence did indicate that the Housing Provider was at times intimidating and occasionally threatened the [T]enants unnecessarily, however, a totality of the evidence presented indicates that Housing Provider's improper deductions were the result of bad judgment and poor management. Moreover, from some of the testimony, it also appears that at various stages of the tenancy, including the Housing Provider's refusal to return the security deposit, he may have received improper advice from his attorneys. As a consequence, no treble damages are awarded.

15. **In conclusion, Housing Provider may deduct from the security deposit only $555 for the servicing of the air-conditioner and the damage done to the garage. Housing Provider must refund $9,445 plus interest.**

**C. [sic] Interest**

16. The Security Deposit Act also requires that a housing provider maintain security deposits in an interest bearing account that accrues at not less than the statement savings rate. 14 DCMR § 308.3, 311.1. At the end of the tenancy, a housing provider is required to return a tenant's security deposit with the appropriate interest. The evidence presented indicated that the Housing Provider did place the deposit into an interest bearing account and at the end of the tenancy $210 had accrued in interest. PX 103. **Accordingly, Tenant[s are] awarded $210 in interest.**

Final Order at 7-12; R. at 130-35 (emphasis original). On May 4, 2015, the Housing Provider filed a motion for reconsideration. On July 31, 2015, the ALJ issued an order denying reconsideration. Bell v. Pourbabai, RH-TP-13-30,448 (OAH July 31, 2015).[4]

The Housing Provider filed a timely appeal of the Final Order (Notice of Appeal) on May 4, 2015, alleging that the ALJ erred in determining that he was not entitled to retain the entire amount of the Tenants' security deposit.[5]

[4] The Commission notes that although the ALJ issued an order on July 31, 2015, extending the time to rule on the motion for reconsideration, the motion was denied by operation of law on June 23, 2015. 1 DCMR § 2828.15 (2011) ("If an [ALJ] has not [ruled on the motion within forty-five calendar days of its filing], the motion is denied as a matter of law.").

[5] The Commission observes that the Notice of Appeal filed by the Housing Provider contains more than seven pages of almost exclusively narrative statements, presented as "facts" and "evidence" overlooked by the ALJ. Nonetheless, despite the narrative presentation of the Notice of Appeal, the Commission, in its discretion, is satisfied

## II. ISSUE ON APPEAL

A. Whether the ALJ erred in determining that the Housing Provider was not entitled to retain the entire amount of the Tenants' security deposit.

## III. DISCUSSION

### A. Whether the ALJ erred in determining that the Housing Provider was not entitled to retain the entire amount of the Tenants' security deposit.

The Tenants filed the Tenant Petition asserting that the Housing Provider improperly withheld their entire $10,000 security deposit. *See* Tenant Petition at 3; R. at 18. They asserted at the hearing that any damage that occurred to the property was the result of ordinary wear and tear, and thus was not a proper reason for the Housing Provider to retain their security deposit. *See* Hearing CD (OAH July 31, 2014).

In contrast, the Housing Provider contends that he is entitled to retain the entire $10,000 security deposit. *See* Petitioner's Exhibit (PX) 103 at 1-3 (Letter from Housing Provider to Tenants dated Sept. 10, 2013); R. at 217-19; Hearing CD (OAH July 31, 2014). The Housing Provider's claim is based on several violations of the Tenants' legal obligations under the parties' July 27, 2012 lease agreement (Lease Agreement), including failing to maintain the air conditioning, failing to obtain renter's insurance, failing to provide sixty-days written notice of intent to terminate the Lease Agreement, failing to forward the landlord's mail, failing to clean the chimney, failing to clean the gutters, and failing to keep the smoke detectors operational. PX 103 at 1-2; R. at 217-18. Additionally, the Housing Provider claimed that damages had occurred resulting from the Tenants' general failure to maintain the Housing Accommodation, including: damage to a cabinet door in the kitchen, a scratch in the metallic finish of the dishwasher,

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that the Housing Provider has identified the following cognizable claim of error: whether the ALJ erred in determining that the Housing Provider was not entitled to retain the entire amount of the Tenants' security deposit.

damage to the frame of the garage, and damage to a wine cooler. *Id.* at 1-3; R. at 217-19.

In the Final Order, the ALJ evaluated each of the Housing Provider's claims for reimbursement from the security deposit. Final Order at 8-10; R. at 132-34. The ALJ determined that only the following deductions would be allowed from the security deposit: $180 for the failure to have two inspections of the air conditioning, as required by the lease, and $375 for repairs to the damaged garage frame. *Id.* The ALJ denied all of the Housing Provider's remaining requests for deductions from the security deposit on the grounds that the Housing Provider failed to prove that he had suffered damages resulting from the Tenants' failure to perform obligations under the Lease Agreement. *Id.*

Under the Security Deposit Act, 14 DCMR §§ 308-311 (2012),[6] a housing provider may charge a tenant up to the equivalent of one month's rent as "security for performance of the tenant's obligations in a lease or rental of a dwelling unit[.]" 14 DCMR § 308.25; *see* D.C. OFFICIAL CODE § 42-3502.17. If, at the termination of the tenancy, the housing provider withholds any portion of the security deposit, he must "notify the tenant . . . of the owner's intention to withhold and apply the monies toward defraying the cost of expenses properly incurred under the terms and conditions of the security deposit agreement." 14 DCMR § 309.2 (emphasis added).

The Commission's review of the record reveals the following language from the Lease Agreement pertaining to the security deposit: "THE SECURITY DEPOSIT BEING HELD IS **$10,000**[;] Landlord shall not be obligated to apply the same on rent or other charges and arrears or on damages for Tenant's failure to perform said covenants, conditions and terms, although

[6] D.C. OFFICIAL CODE § 42-3502.17 (2012 Repl.) grants OAH and the Commission jurisdiction over cases arising out of the non-return of tenant security deposits.

Landlord may so apply the security deposit at Landlord's option." PX 100 at 3; R. at 182 (emphasis original). The Lease Agreement also provides that "[i]f this lease or any of its conditions are violated, the tenants agree to pay a fee equal to one month['s] rent to the landlord to compensate the landlord."[7] *Id.* at 11; R. at 190 (emphasis added).[8]

The Commission's standard of review of an ALJ's decision is governed by 14 DCMR § 3807.1 (2004), which provides the following:

> The Commission shall reverse final decisions of the Rent Administrator [or ALJ] 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 [or ALJ].

The DCAPA governs administrative decisions in contested cases arising under the Act, and requires the following:

> Every decision and order adverse to a party to the case, rendered by the Mayor or an agency in a contested case, shall be in writing and shall be accompanied by findings of fact and conclusions of law. The findings of fact shall consist of a concise statement of the conclusions upon each contested issue of fact. Findings of fact and conclusions of law shall be supported by and in accordance with the reliable, probative, and substantial evidence.

D.C. OFFICIAL CODE § 2-509(e).

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[7] The Commission notes that the Lease Agreement also contains a provision requiring that the Tenants give the Housing Provider sixty-days written notice prior to termination of the Lease Agreement, and stating that "[i]f the Tenant vacates the premises at the end of the term specified in this Lease without having given at least sixty (60) days written notice of intent to vacate, the Tenant shall pay to the Landlord a sum equal to the initial deposit[.] PX 100 at 8; R. at 187 (emphasis added).

[8] The Commission observes that the provisions in the Lease Agreement stating that failure to perform will result in the forfeiture of the entire security deposit are in the nature of liquidated damages clauses. BLACK'S LAW DICTIONARY 418 (8th ed. 2004) (defining "liquidated damages" as "[a]n amount contractually stipulated to as a reasonable estimation of actual damages to be recovered by one party if the other party breaches"); *see, e.g.*, S. Brooke Purll, Inc. v. Vailes, 850 A.2d 113, 1138 (D.C. 2004) ("parties to a contract may agree in advance to a sum certain to be forfeited as liquidated damages for breach of contract"); Burns v. Hanover Ins. Co., 454 A.2d 325 (D.C. 1982) ("a liquidated damages clause stipulates damages which, at the time of contracting, can reasonably be expected to result from a breach").

If an ALJ's decision does not contain findings of fact and conclusions of law on each contested issue, the Commission is required to remand the issue for further consideration. Butler-Truesdale v. Aimco Props., LLC, 945 A.2d 1170, 1170-71 (D.C. 2008) ("[The ALJ] failed to consider all of the evidence and testimony presented at the hearing. Because the ALJ did not make findings on all contested issues of material fact, we remand for further proceedings." (internal quotations omitted)); Branson v. D.C. Dep't of Emp't Servs., 801 A.2d 975, 979 (D.C. 2002) ("Since the issue [raised by the petitioner was] presented to the agency, and the agency failed to address it, we must remand the case . . . for a determination of [the claim]"); Palmer v. Clay, RH-TP-13-30,431 (RHC Oct. 5, 2015) (remanding for findings of fact and conclusions of law on issue raised in tenant petition but not addressed by the ALJ).

In interpreting the terms of a contract (including a lease agreement), the District of Columbia Court of Appeals has held that a court must "honor the intentions of the parties as reflected in the settled usage of the terms they accepted in the contract[.] Unfoldment, Inc. v. D.C. Contract Appeals Bd., 909 A.2d 204, 209 (D.C. 2006); *see* Independence Mgmt. Co. v. Anderson & Summers, LLC, 874 A.2d 862, 867 (D.C. 2005) (explaining that the contract must be construed as a whole "'giving a reasonable, lawful, and effective meaning to all its terms.'" (quoting 1010 Potomac Assocs. v. Grocery Mfrs. of Am., Inc., 485 A.2d 199, 205 (D.C. 1984)); *see also* Saul Subsidiary II Ltd. P'ship v. Venator Grp. Specialty, Inc., 830 A.2d 854, 861 (D.C. 2003) ("'Leases of real property are to be construed as contracts.'" (quoting Capital City Mortg. Corp. v. Habana Vill. Art & Forklore, Inc., 747 A.2d 564, 567 (D.C. 2000)).

Despite the specific language in the Lease Agreement, cited *supra*, that the failure to comply with certain provisions of the Lease Agreement would result in damages payable to the Housing Provider in the amount of one month's rent, or forfeiture of the entire security deposit,

the Commission observes that the ALJ solely awarded itemized deductions from the security deposit for the actual costs of repair or servicing of items (such as the air conditioner and the garage frame), without addressing or explaining why the ALJ failed to award the entire amount of the security deposit (or one month's rent) as permitted by certain terms of the Lease Agreement as cited *supra.*[9] Final Order at 8-10; R. at 132-34. In short, the Commission's review of the record reveals that the ALJ failed to make any findings of fact or conclusions of law with respect to her decision not to enforce the specific provisions of the Lease Agreement permitting the award of the entire security deposit (or one month's rent) for violation of certain terms of the Lease Agreement, but rather to solely permit mere deductions from the security deposit for actual repair or servicing costs for specific items. *See, e.g.,* Unfoldment, Inc., 909 A.2d at 209; Independence Mgmt., 874 A.2d at 867; *see also supra* at 12-13. Consequently the Commission is unable to satisfactorily perform its review of all the legal issues raised in this appeal with respect to the parties' claims under the Security Deposit Act, and thus remands this case to the ALJ for further findings of fact and conclusions of law. D.C. OFFICIAL CODE § 2-509(e); 14 DCMR § 3807.1; Butler-Truesdale, 945 A.2d at 1170-71; Branson, 801 A.2d at 979; Palmer, RH-TP-13-30,431.

On remand, the Commission instructs the ALJ to make specific findings of fact and conclusions of law with respect to her determination, under the Security Deposit Act, to solely award itemized deductions from the Tenants' security deposit for specific violations of the Lease Agreement rather than an award of the entire security deposit (or one month's rent) for such

[9] For example, the ALJ denied the award of certain itemized deductions from the security deposit for certain violations of the Lease Agreement when such violations may have otherwise allowed the forfeiture of the entire security deposit or one month's rent.

other specific violations as reflected in certain specific provisions of the Lease Agreement. *See supra* at 12-13 & n.7; *see also* D.C. OFFICIAL CODE § 2-509(e); 14 DCMR § 3807.1; Butler-Truesdale, 945 A.2d at 1170-71; Branson, 801 A.2d at 979; Palmer, RH-TP-13-30,431. If, in her discretion, the ALJ determines that further proceedings are required to address the aforementioned issue, the ALJ is instructed to conduct such proceedings, strictly limited to the resolution of this issue.[10]

## III. CONCLUSION

Based on the foregoing, the Commission remands this case to the ALJ for specific findings of fact and conclusions of law with respect to her determination, under the Security Deposit Act, to solely award itemized deductions from the Tenants' security deposit for specific violations of the Lease Agreement rather than an award of the entire security deposit (or one month's rent) for such specific violations as reflected in certain specific provisions of the Lease Agreement. *See supra* at 12-13 & n.7; *see also,* D.C. OFFICIAL CODE§ 2-509(e); 14 DCMR § 3807.1; Butler-Truesdale, 945 A.2d at 1170-71; Branson, 801 A.2d at 979; Palmer, RH-TP-13-30,431. If, in her discretion, the ALJ determines that further proceedings are required to address

[10] The Commission notes that it may be possible that certain provisions of the Lease Agreement may be unenforceable under District law and, accordingly, may not serve as the legal basis for supporting (or denying) the deduction of certain expenses from a security deposit. *See, e.g.,* 14 DCMR § 400.4 ("The owner or licensee of each residential building shall provide and maintain the facilities, utilities and services required by this subtitle."); Javins v. First Nat'l Realty Corp., 428 F.2d 1071, 1081-82 (D.C. Cir. 1970) ("The duties imposed by the Housing Regulations may not be waived or shifted by agreement if the Regulations specifically place the duty upon the lessor."); *see also* Dist. Cablevision Ltd. P'ship v. Bassin, 828 A.2d 714, 724 (D.C. 2003) ("[f]or a liquidated damages clause to be valid and enforceable . . . the common law insists that 'the liquidated damages must not be disproportionate to the level of damages reasonably foreseeable'" (quoting Council v. Hogan, 566 A.2d 1070, 1072 (D.C. 1989)). However, the Commission's review of the record does not reveal any conclusions of law regarding this issue, thereby depriving it of the opportunity to review this issue at this time. *See* 14 DCMR § 3807.1; Butler-Truesdale, 945 A.2d at 1170-71. The Commission further observes that conclusions of law on this issue would address the legal merits of a number of the provisions in the Lease Agreement related to forfeiture of the security deposit (or one month's rent) for violation of such provisions.

the aforementioned issue, the ALJ is instructed to conduct such proceedings, strictly limited to the resolution of this issue.

**SO ORDERED.**

PETER B. SZEGEDY-MASZAK, CHAIRMAN

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, DC 20001
(202) 879-2700

## CERTIFICATE OF SERVICE

I certify that a copy of the **FINAL DECISION AND ORDER** in RH-TP-13-30,448 was served this 18th day of February, 2016:

Benham Pourbabai
1390 Chain Bridge Rd., #321
McLean, VA 22101

Torrance J. Colvin, Esq.
The Colvin Law Firm, PPLC
7600 Georgia Ave., NW, Suite 100N
Washington, DC 20012

Amir Sadeghy, Esq.
D.C. Office of the Tenant Advocate
2000 14th St., NW, Suite 300N
Washington, DC 20009

Semir Hasedzic
211 Morgan St., NW, #B
Washington, DC 20001

LaTonya Miles
Clerk of Court
(202) 442-8949