DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION

TP 28,530

In re: 755 Hobart Place, N.W.

Ward Four (4)

GEORGE P. WILLIAMS
Housing Provider/Appellant

v.

WALLACIA TRICIA THOMAS
Tenant/Appellee

DECISION AND ORDER

September 27, 2013

YOUNG, COMMISSIONER. This case is on appeal to the Rental Housing Commission (Commission) from a Decision and Order issued by the Department of Housing and Community Development (DHCD), Housing Regulation Administration (HRA), Rental Accommodations Division (RACD), based on a petition filed with the Department of Consumer and Regulatory Affairs (DCRA), Housing Regulation Administration (HRA), Rental Accommodations and Conversion Division (RACD).[1] The applicable provisions of the Rental Housing Act of 1985 (Act), D.C. Law 6-10, D.C. OFFICIAL CODE §§ 42-3501.01-3509.07 (2001), the District of Columbia Administrative Procedure Act (DCAPA), D.C. OFFICIAL CODE §§ 2-501-2-510 (2001 Supp. 2008), and the District of Columbia Municipal Regulations (DCMR), 14 DCMR §§ 3800-4399 (2004) govern these proceedings.

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[1] The Office of Administrative Hearings (OAH) assumed jurisdiction over tenant petitions from the Department of Consumer and Regulatory Affairs pursuant to the OAH Establishment Act, D.C. OFFICIAL CODE §§ 2-1831.01-1831.03(b-1)(1) (2001 Supp. 2005). The functions and duties of the Department of Consumer and Regulatory Affairs, Rental Accommodations and Conversion Division were transferred to the Department of Housing and Community Development, Rental Accommodations Division by the Fiscal Year Budget Support Act of 2007, D.C. Law 1-20, 54 DCR 752 (Sept. 18, 2007) (codified at D.C. OFFICIAL CODE § 42-6502.03(a) (2001 Supp. 2008)).

I. PROCEDURAL HISTORY

On February 8, 2006, Tenant/Appellee, Wallacia Tricia Thomas (Tenant), the tenant of a single-family dwelling located at 755 Hobart Place, N.W. (Housing Accommodation), filed Tenant Petition (TP) 28,530 with the RACD. Record for TP 28,530 (R.) at 22-28. She claimed that the Housing Provider/Appellant, George P. Williams (Housing Provider), violated the Act as follows: (1) the Housing Provider failed to properly register the building with RACD; and (2) services and/or facilities provided in connection with the Housing Accommodation have been substantially reduced. TP at 3; R. at 26.

On May 16, 2006, Hearing Examiner Gerald J. Roper held a hearing on this matter. R. at 35.[2] The Housing Provider did not attend this hearing. Id. On May 27, 2008, Hearing Examiner Keith A. Anderson[3] (Hearing Examiner) issued a Proposed Decision and Order, Wallacia Tricia Thomas v. George P. Williams, RH-TP-08-28,530 (RAD May 27, 2008) (Proposed Decision and Order).[4] See R. at 36-51. The Hearing Examiner made the following findings of fact in the Final Order:[5]

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[2] The Commission notes the following discrepancy in the record: the Final Order states that Gloria Johnson was the Hearing Examiner; however, the attendance sheet, R. at 35, and RAD Hearing Tape indicate that Gerald Roper actually presided over the hearing.

[3] The Final Order indicates the following:

> Hearing Examiner Keith Anderson rendered the Decision and Order. Therefore, because the person who rendered the decision and order is not the same person who heard the evidence in this case, the parties shall have ten (10) days to file exceptions and objections to the Proposed Decision and Order with the Rent Administrator.

R. at 38.

[4] The Act, D.C. OFFICIAL CODE § 2-509(d) (2001), provides the following:

> Whenever in a contested case a majority of those who are to render the final order or decision did not personally hear the evidence, no order or decision adverse to a party to the case (other than the Mayor or an agency) shall be made until a proposed order or decision, including findings of fact

1. The subject property is a single-family dwelling located at 755 Hobart Place, NW Washington, D.C. 20010.

2. Wallacia Tricia Thomas occupied the property at all relevant times and is the Petitioner [Tenant] in this matter. Petitioner vacated the subject property on December 10, 2005.

3. George P. Williams [Housing Provider] currently owns and owned the subject property at all relevant times and is the Respondent [Housing Provider] in this matter.

4. Respondent did not file an RACD Registration/Claim of Exemption Form for the subject property; the subject property is not registered as a rental property in the District.

5. The subject property is described as a single family home with a basement, which Petitioner leased. The first floor of the subject property has one bedroom with a kitchen, which Respondent rented to an additional tenant who is not a Petitioner in this matter. The subject property second floor has one bathroom and two bedrooms, which Respondent rented to 2 additional tenants who are not Petitioners in this matter.

6. Notice of the proceedings regarding TP 28,530 was delivered to and accepted by Respondent Williams. Respondent did not appear at the May 16, 2006 hearing in this matter.

7. Petitioner was responsible for paying the utilities for the subject property.

8. Petitioner Wallacia Tricia Thomas rents the basement room of the subject property. Respondent charged Petitioner a monthly rent of $500.00 for use and occupancy of Petitioner's premises. Petitioner moved into the subject property in October, 2004, and resided at the subject property until December 10, 2005.

9. At the time Petitioner signed the lease, there were certain housing code violations in existence. Respondent made assurances that he would make

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and conclusions of law, has been served upon the parties and an opportunity has been afforded to each party adversely affected to file exceptions and present argument to a majority of those who are to render the order or decision, who, in such case, shall personally consider such portions of the exclusive record, as provided in subsection (c) of this section, as may be designated by any party.

The Commission's review of the record reflects that the Housing Provider did not submit exceptions or objections of the Proposed Decision and Order to RAD; thus, the Proposed Decision and Order became a Final Order on June 16, 2008, thirteen (13) business days after it was issued to both parties. R. at 38-39; Final Order at 16-17.

[5] The findings of fact are stated and numbered in the same language as found in the Final Order.

the necessary repairs and take the following actions: to fix holes in the ceiling and walls of the subject property, to redo the floors and cupboards, to secure the windows, and to address any termite or rodent infestation that were in existence or may arise at the subject property by retaining the services of a professional exterminating service.

10. Respondent replaced the carpeting in the property, as promised to Petitioner.

11. The following conditions existed in Petitioner's accommodation, and the Housing Provider was notified of these conditions, at the following times:

a. Rodent Infestation

Beginning Date,	Duration	Housing Provider Notified
6/2005-12/10/2005	6 months, 10 days	Immediately

b. Holes in Ceiling and Walls

Beginning Date,	Duration	Housing Provider Notified
10/2004-12/10/2005	1 year, 6 months, 10 days[6]	Immediately

c. Window not Securely Fastened

Beginning Date,	Duration	Housing Provider Notified
10/2004-12/10/2005	1 year, 6 months, 10 days	Immediately

12. The subject property was inspected on November 9, 2005 by DCRA Inspector Kathy Booth, badge number 411, and the following violations Concerning Petitioner's unit were issued:

Notice No.	DCMR14	Description (fine)
81200.7	805.5	Rodents have not been eliminated from Premises ($500.00)
	805.1	Rooms infested with rodents ($500.00)
	805.5	Rooms infested with...termites...causing an unwholesome premises ($500.00)
81199.15	403.1	Uninhabitable space being occupied: Basement ($1000.00)
	402.4(d)	Sleeping facilities located in room containing a gas meter (gas stove): Basement sleeping room ($1000.00)
80939.7	1002.2	Rooming unit not numbered: Basement ($100.00)

[6] The Commission notes a discrepancy in the Final Order between the Hearing Examiner's recitation of the duration of the reductions in services in Finding of Fact 11, and Findings of Fact 18-20. See infra at p. 6; R. at 43. The Commission's review of the substantial record evidence demonstrates that the duration is actually 1 year, 2 months, 10 days, and the Commission is satisfied that the correct duration is reflected in Findings of Fact 18, 19, and 20, as well as the Hearing Examiner's calculation of damages in the Final Order.

80939.1	904.4	Smoke detector not provided: Basement ($1000.00)
80939.30	706.1	Molding loose from wall: Basement ($100.00)
	706.1	Baseboard broken: Basement ($100.00)
	707.1	Loose/peeling paint: Bath Window sill/frame ($50.00)
	707.1	Loose/peeling paint: Wall ($50.00)
	600.4	Cabinet broken: basement bathroom ($500.00)
	706.1	Baseboard broken/missing parts: basement bath ($100.00)
	706.1	Molding loose from wall: basement ($100.00)
	706.2	Caulking around bathing facility missing: bath ($100.00)
	706.2	Wall has holes: Basement cooking room ($100.00)
	706.2	Wall has holes: Basement cooking room ($100.00)
	707.1	Loose/peeling paint: basement cooking room ($100.00)
	706.3	Floor covering missing parts: cooking room ($100.00)
	706.3	Floor covering missing parts: cooking room ($100.00)
	707.1	Loose/peeling paint: Ceiling ($50.00)
	706.1	Molding loose from wall: Basement ($100.00)

Additional violations found by Inspector Booth, concerning units in the subject property other than Petitioner's unit, have been omitted as unrelated to this tenant petition. The complete record of the violations identified by Inspector Booth is included in the tenant petition in the case file.

13. Petitioner provided evidence that Respondent attempted only "one or two" repairs of the holes in Petitioner's unit, and that Respondent attempted to repair these holes with "scotch tape[.]"

14. On November 30, 2005, Petitioner gave Respondent notice of her intent to vacate the subject property on or before December 18, 2005, and gave Respondent copies of the housing code violations referenced above.

15. Petitioner provided testimonial and documentary evidence that the conditions in the subject property referenced above (1) existed without

being restored, (2) that Respondent had notice of the conditions but failed to reduce Petitioner's rent in proportion to the reduction, (3) and that the conditions adversely affected Petitioner's use and occupancy of the premises.

16. Petitioner provided testimonial evidence that (1) the rodent infestation prevented her from being able to sleep in her unit, due to the noise of the rodents running in the ceiling and Petitioner's concerns that rodents would crawl on her bed while she slept, and (2) that the rodent infestation prevented Petitioner from being able to cook or store food in her unit, due to presence of rodent droppings in the kitchen, cupboards, and on/around the stove.

17. Petitioner provided testimonial evidence that, in response to Petitioner's concerns about the rodent infestation at the subject property, Respondent stated that if she 'didn't like it there" she "could move".[sic] Petitioner also provided evidence that Respondent had knowledge of the conditions referenced above, and that Respondent persistently failed to remedy conditions at the subject property in spite of previous promises to do so and the findings of numerous [notices of] violations by Inspector Booth, conditions which had not been abated at the time Petitioner vacated the subject property. Petitioner also provided evidence that Respondent was given timely notice of the conditions by Petitioner, that Respondent acknowledged conditions that were in need of repair at the outset of the lease term, and that Respondent received a copy of Inspector Booth's Inspection Report. Petitioner provided evidence that Respondent failed to remedy conditions, of which he was aware, rendering Petitioner's unit substantially uninhabitable and that Respondent offered remedies so woefully inadequate as to not constitute "remedies" at all. Thus, Petitioner has provided evidence that Respondent knowingly violated the Act, and did so in bad faith.

18. Petitioner is awarded $100.00 per month for reduction of service (holes in ceilings/walls) in her unit from October, 2004 to December, 2005.

19. Petitioner is awarded $75.00 per month for reduction of service (windows) in her unit from October, 2004 to December, 2005.

20. Petitioner is awarded $125.00 per month for reduction of service (rodents) in her unit from June 2005 to December 2005.

21. The judgment interest in effect on the date of this decision, which is the Interest rate currently in use by the D.C. Superior Court, pursuant to D.C. Code Section 28-3302(c) is five percent (5%) per annum.

22. The Tenant/Petitioner is entitled to 50 months of interest from March 2004

to May 2008.[7]

23. Petitioner is awarded treble damages for the reductions in services in her unit from October 2004 to December 2005.

Final Order at 11-14; R. at 41-44.

The Hearing Examiner made the following conclusions of law in the Final Order:[8]

1. The record evidence is sufficient to establish that the subject property was not registered as required by the Act.

2. Although Respondent owns four or fewer rental units in the District of Columbia Respondent does not qualify for the small landlord exemption, pursuant to DC OFFICIAL CODE Sect.[sic] 42-3502.05(a)(3) (2001), for the property located at 755 Hobart Place, NW, because an exemption was never perfected as required by RACD Registration/Claim of Exemption Form.

3. The conditions referenced in Findings of Fact 4, 9, 11, and 12 existed, as noted, in violation of District of Columbia [Municipal] Code Section [14] DCMR 4216.2 [(2004)], and thereby constituted a substantial reduction in Petitioner's related repair and maintenance service, pursuant to Section 103(26), (27) and Section 211 of the Act, DC [OFFICIAL] Code Section 42-3501(26), (27) and 42-3502.11 (2001).

4. Petitioner has proven by a preponderance of evidence the nature, duration, and value of the reduced repair and maintenance services, and whether they had been restored and revealed to Respondent, in compliance with 14 DCMR section [sic] 4003 ... [(2004)].

5. Petitioner proved by a preponderance of evidence that Respondent knowingly violated the Act. The evidence in the record is sufficient to establish that Respondent had knowledge of the numerous reduced and eliminated services referenced above. The record contains considerable evidence establishing Respondent's knowledge of the rodent infestation and other conditions constituting reduced services under the Act, including but not limited to Respondent's own admission, by acknowledging the need for repairs at the time Petitioner signed the lease, that the subject property contained the above-referenced conditions.

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[7] The Commission determines that the calculation of the period of interest stated in Finding of Fact 22 constitutes plain error. See infra IV.B. at pp. 24-25.

[8] The conclusions of law are stated in the same language as, and numbered, as in the Final Order.

6. Petitioner proved by a preponderance of evidence that Respondent's conduct was sufficiently egregious to warrant an additional finding of bad faith on the part of Respondent, supporting an award of treble damages to Petitioner with respect to the reduced services endured, as established and noted in the findings of fact.

7. The record evidence [is] sufficient to establish that Respondent's conduct was sufficiently egregious to warrant an additional finding of bad faith on the part of Respondent includes but is not limited to Respondent's persistent failure to abate the conditions at the subject property, in spite of previous promises to do so and a finding of numerous violations by Inspector Booth; that Respondent allowed dead and decaying rodents to collect and remain in Petitioner's unit, in spite of Petitioner's repeated requests for Respondent to remedy the condition, and that in response to Petitioner's concerns about conditions at the subject property, Respondent told Petitioner that, "she could move" if she wasn't happy there.

8. Petitioner is entitled to a rent refund in the amount of $3200.00 for the substantial reduction in services suffered in her unit.

9. Petitioner is entitled to $263.20 in interest from 10/2004 to 12/2005.

10. Petitioner is entitled to treble damages for Respondent's bad faith, $9975.00 in total rent refund trebled and $821.10 in interest trebled.

11. Petitioner is entitled to a total refund plus interest and trebled of $10,796.10 for the reduction of services from October 2004 to May 2008.

Final Order at 14-16; R. at 9-41. Accordingly, the Hearing Examiner granted TP 28,530. Id. at 16.

II. ISSUES ON APPEAL

On July 3, 2008, the Housing Provider filed a timely notice of appeal for TP 28,530 (Notice of Appeal). In the Notice of Appeal, the Housing Provider stated the following, in relevant part:[9]

1. The proposed order in this case provides, on its face, that it is a "PROPOSED DECISION AND ORDER." Accordingly, Mr. Williams [Housing Provider] requests an appeal so that a Final Decision and Order can be entered after consideration of his evidence.

[9] The issues in the Notice of Appeal are stated and numbered in the same language as found in the Notice of Appeal.

2. Mr. Williams filed the requisite Registration/Claim of Exemption Form on December 14, 2005, two months **prior** to his former tenant's filing of her Petition. According to the Proposed Decision and Order at page record [sic]:

> After a careful examination of the RACD Registration file for 755 Hobart Street [sic], N.W., the case docket for T/P 28,530 and the credible testimony provided at the hearing, the Examiner found no evidence that the Respondent filed any of the proper registration forms with RACD, after becoming a housing provider in the District of Columbia and receiving rental payments in exchange for the Petitioner's tenancy.
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> The record evidence is sufficient to establish that the subject property was not registered as required by the Act.

3. These findings are clearly erroneous. Mr. Williams' RACD Claim of Exemption Number is 543781.

...[10]

4. Your Respondent, George P. Williams, requested a continuance on May 3, 2006 for a May 5, 2006 hearing in the Office of Administrative Hearing[s], wherein the D.C. Department of Consumer and Regulatory Affairs was the petitioner. Mr. Williams erroneously intended for that continuance to apply to two matters which involved 755 Hobart Place, NW then pending before the Office of Administrative Hearing[s]. The continuance was granted and the Order was transmitted on May 10, 2006, 5 days after the scheduled hearing.

5. Upon returning to his home after work on Friday, May 12, 2006, Mr. Williams had received notice by mail of the continuance which had been issued on May 10, 2006. Upon review, he realized that it only applied to Case No. CR-I-06-R101957. On Monday, May 15, 2006, Mr. Williams called Housing Regulation Administration from his office and was instructed by phone by HRA staff to transmit another request for a continuance for the hearing, to address it to Keith Anderson, Esquire, who was the Hearing Examiner scheduled to hear the matter on May 16, 2006 in the Department of Consumer and Regulatory Affairs in this T/P 28, 530 [sic] case. Mr. Williams did so, transmitting his request via telecopier at 1:43 p.m.[11] Mr. Williams did not hear back from RACD, but believed that he would be granted a continuance in the same manner that his previous request was granted.

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[10] The Commission has omitted the section headings that appear in the Notice of Appeal.

[11] See infra at 15.

6. Mr. Williams did not receive an order denying his motion for a continuance. In fact, no order was ever entered in respect of his motion.

7. There is no indication in the Proposed Decision and Order that your Respondent's motion for a continuance was considered during the conduct of the hearing of May 16, 2006.

8. Mr. Williams learned that the hearing had been held on May 16, 2006 upon receipt of the Proposed Decision and Order entered May 27, 2008 via USPS mail, more than two years following the hearing.

9. The record is bare in respect of any evidence supporting the amount of the adjustment of rent based on the conditions of the apartment. Specifically, although the examiner addresses the requirement for assessing a portion of the rent as being for bare shelter, he has not done so. A market rent level of $500.00 in the District of Columbia during 2005 would put anyone on notice that they are not living in standard or average accommodations. The hearing examiner was required to recognize, as a matter of law, that a market rent of $500.00 for a one-bedroom apartment in a reasonably attractive area such as the Howard University environs would indicate that the apartment was far less than perfect. Indeed, reducing rent below that level would impair the "bare shelter" assessment, had one been made. Instead, the Hearing Examiner reduced rent to only 40% of the already-below-market level established by the parties in recognition of the condition of the apartment.

10. The fact is that the Hearing Examiner's calculation of rent reduction fails to provide any basis for these reductions, other than an arbitrary amount. There was no testimony by the Petitioner regarding what would be an appropriate amount; thus, the Hearing Examiner placed himself in the position of advocate for the Petitioner, and did Petitioner's job for her. Specifically, it was Petitioner, not the Hearing Examiner, who should make a demand for specific rent reductions in respect of specific deficiencies. Instead, the Petitioner made a general demand and the Hearing Examiner provided the specificity for her.

11. Treble damages should never have been awarded in this case. There is no showing of willfulness on the part of Mr. Williams. In fact, the premises were inspected by DCRA on December 29, 2005, just ten days after Petitioner moved out, and no physical deficiencies were found to exist. That inspection report was available to the Hearing Examiner from files within the agency, and would severely undercut Petitioner's claims.

12. Furthermore, Mr. Williams has a valid defense to Petitioner's claims regarding the condition of the property. Petitioner has plainly exaggerated

> the nature and extent of the deficiencies of this admittedly less-than-perfect offering on the rental market. Petitioner was also responsible for causing several of the deficiencies herself during her tenancy by maintaining her apartment in a very unsanitary condition.
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> . . .

Notice of Appeal at 1-3 (emphasis in original). No briefs were filed by the Housing Provider or the Tenant in anticipation of the Commission hearing. The Commission held a hearing on September 25, 2008.

III. PRELIMINARY ISSUES ON APPEAL

The Commission addresses two (2) preliminary issues on appeal:

A. Whether the Housing Provider Lacks Standing to Appeal the Final Order

B. Whether the Rent Administrator Committed Plain Error in His Calculations of Damages, Interest, and Treble Damages[12]

IV. DISCUSSION OF PRELIMINARY ISSUE

A. Whether the Housing Provider Lacks Standing to Appeal the Final Order

The Record contains undisputed evidence, and the Housing Provider does not contest, that the Housing Provider failed to appear at the RACD hearing on TP 28,530 on May 16, 2006. Notice of Appeal at 2. The Housing Provider's failure to appear at the RACD hearing is the subject of the first preliminary issue.

A party who fails to appear at the hearing below generally lacks standing to bring forward an appeal to the Commission. See Prosper v. Pinnacle Mgmt., TP 27,783 (RHC Sept. 18, 2012) at 9 (quoting Greene v. Eva Realty, LLC, TP 29,118 (RHC Sept. 4, 2009) at 4-5)); see also DeLevay v. D.C. Rental Accommodations Comm'n, 411 A.2d 354, 360 (D.C. 1980) (tenant who failed to appear at hearing did not have standing to bring an appeal). "The Commission will

[12] The Commission's discussion of the "plain error" standard of review is contained infra at p. 22.

dismiss an appeal when the appellant lacks standing." Prosper, TP 27,783 at 9 (quoting Greene, TP 29,118 at 5).

An exception to the standing issue arises when a party who failed to appear below claims on appeal that it did not receive notice of the hearing below. See Prosper, TP 27,783 at 9 (quoting Wofford v. Willoughby Real Estate, HP 10,687 (RHC Apr. 1, 1987) at 2); see also DeLevay, 411 A.2d at 359. In assessing whether to set aside a default judgment based on one party's failure to appear, the Commission must balance the four factors set forth in Radwan v. D.C. Rental Hous. Comm'n, 683 A.2d 478, 481 (D.C. 1996) which consider: "(1) whether the movant had actual notice of the proceeding; (2) whether he acted in good faith; (3) whether the moving party acted promptly; and (4) whether a *prima facie* adequate defense was presented." Prosper, TP 27,783 at 9. An additional factor the Commission weighs when assessing whether to vacate a default judgment is the potential prejudice to the non-moving party against the Commission's desire to try a case on the merits. See Radwan, 683 A.2d at 481 (quoting Dunn v. Profitt, 408 A.2d 991, 992-993 (D.C. 1979)). Accordingly, the Commission will consider each of the factors enumerated in Radwan, 683 A.2d at 481, as they apply to this case.

1. Whether the Housing Provider received actual notice of the May 16, 2006 RACD hearing

With regard to the first factor under the test in Radwan, whether the Housing Provider received actual notice of the RACD hearing, the Commission first observes that the Housing Provider does not dispute in his Notice of Appeal that he received notice of the RACD hearing. See Notice of Appeal at 1. Furthermore, the Commission customarily makes "a presumption of receipt of notice if the agency has properly mailed it." See Prosper, TP 27,783 at 10 (quoting Foster v. District of Columbia, 497 A.2d 100, 102 n.10 (D.C. 1985)); see also Allied Am. Mut. Fire Ins. Co. v. Paige, 143 A.2d 508, 510 (D.C. 1958); Belmont Crossing/KSI Mgmt./Edgewood

Mgmt. Corp. v. Jackson, TP 28,292 (RHC Mar. 6, 2009) at 6; William C. Smith Co. v. Miller, TP 24,663 (RHC June 28, 2000) at 5; John's Props. v. Hilliard, TPs 22,269 and 22,116 (RHC June 24, 1993) at 5-6; Tenants of 3140 Wisconsin Ave., N.W. v. Kent, CI 20,013 (RHC May 26, 1986) at 3. In order to rebut the presumption of receipt of notice, the party claiming non-delivery must demonstrate a "preponderance of the evidence to the contrary." See Prosper, TP 27,783 at 10 (quoting Wofford, HP 10,687 at 2); see also Williams v. Poretsky Mgmt., Inc., TP 23,156 (RHC Sept. 13, 1994) at 3.

It is well-established that "proper notice of an adjudicatory proceeding is mandated by the Act, case law, and traditional principles of due process of law." Prosper, TP 27,783 at 10 (quoting Reckord v. Peay, TP 24,896 (RHC Aug. 9, 2002) at 6) (determining that the housing provider had not received proper notice of a hearing because there was no evidence that notice was sent by certified mail); see D.C. OFFICIAL CODE § 42-3502.16(c) (2001);[13] see also Lenkin Co. Mgmt. v. Miller, TPs 27,191; 27,192; 27,193 (RHC June 4, 2004) at 6. The Act, D.C. OFFICIAL CODE § 42-3502.16 (2001), requires that notice be served by "certified mail or other form of service which 'assures delivery.'" The Commission has consistently held that priority mail is method of service which assures delivery in accordance with D.C. OFFICIAL CODE § 42-3502.16(c) (2001). See Sellers v. Lawson, TP 29,437 (RHC Nov. 16, 2012) (determining that priority mail was a method of service which assured notice in accordance with D.C. OFFICIAL CODE § 42-3502.16(c) (2001)) at 15; Reckord v. Peay, TP 24,896 at 7 - 8 (observing that the

[13] D.C. OFFICIAL CODE § 42-3502.16 (c) (2001) states as follows:

> If a hearing is requested timely by either party, notice of the time and place of the hearing shall be furnished the parties by certified mail or other form of service which assures delivery at least 15 days before the commencement of the hearing. The notice shall inform each of the parties of the party's right to retain legal counsel to represent the party at the hearing.

Commission has determined that priority mail can also satisfy the notice requirements of the Act, provided that the delivery is confirmed, and the confirmation is placed in the record).

The Commission must first determine whether there is substantial evidence in the record which indicates that the Housing Provider was given proper notice of the May 16, 2006 RACD hearing. 14 DCMR § 3807.1 (2004).[15] The Tenant provided the following address in the Tenant Petition for the Housing Provider: "George P. Williams, 218 12th Street, S.E., Washington, DC 20003." R. at 27. The RACD Official Notice of Hearing states that a copy of the notice was sent to the Housing Provider by priority mail to the same address contained in the Tenant Petition: "George P. Williams, 218-12th Street, S.E., Washington, DC 20003." R. at 32. The record also contains a U.S. Postal Service (USPS) Delivery Confirmation Receipt with a Delivery Confirmation Number of 0304 1070 0000 0666 9767 addressed to the Housing Provider at the same address contained in the Tenant Petition: "George Williams, 218 12th Street, S.E., Washington, DC 20003." R. at 30. The Delivery Confirmation Receipt is stamped with the date March 30, 2006, is affixed to a "Track and Confirm" printout from the USPS website and identifies the Confirmation Receipt Number as 0304 1070 0000 0666 9767. Id. It also confirms that the hearing notice was "delivered at 12:33 p.m., on March 31, 2006 in Washington, DC 20003." Id. The record indicates that a "Track and Confirm" printout from the USPS website confirms that the agency not only sent notice to the proper address, but also that notice was actually delivered and received at that address. Id. Thus, the Commission determines that the undisputed documentary evidence in the record indicates that the Housing Provider had

[15] The applicable regulation, 14 DCMR § 3807.1 (2004) states as follows:

> The Commission shall reverse final decisions of the Rent Administrator which the Commission finds to be based upon arbitrary 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.

notice of his hearing date over a month and a half prior to the hearing. R. at 53. Based on the Commission's review of the record, the Commission determines that there is substantial evidence that the Housing Provider received actual notice of the RACD hearing on May 16, 2006, in full compliance with the requirements of D.C. OFFICIAL CODE § 42-3502.16(c) (2001).

2. Whether the Housing Provider's failure to attend the May 16, 2006 hearing was done in good faith

The second Radwan factor assesses whether the movant's failure to attend the hearing was done in good faith. See Radwan, 682 A.2d at 481. The Commission's review of the record does not provide substantial, undisputed evidence that the Housing Provider acted in "good faith" when he failed to attend the May 16, 2006 RAD hearing.

While the Housing Provider acknowledges that did have actual notice of the RACD hearing date, see supra at IV.A.1., p. 12, he asserts that he requested a continuance from RACD and assumed in good faith that it would be granted, based on his prior experience requesting a continuance with OAH regarding a different case.[16] Notice of Appeal at 2. However, the Commission's review of the record does not reveal a motion for a continuance filed by the Housing Provider with RACD. As such, the motion for continuance referenced by the Housing Provider in the Notice of Appeal is new evidence that the Commission is prohibited from considering for the first time on appeal. 14 DCMR § 3807.5 (2004).[17]

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[16] The Housing Provider states in his appeal that he filed a motion for continuance related to a different case with OAH on May 3, 2006, for an OAH hearing to be held on May 5, 2006. He states that he mistakenly thought that he requested a continuance for both the May 5 hearing before OAH and the May 16 hearing before RACD regarding TP 28,530. See Notice of Appeal at 2. Upon realizing, on May 12, 2006, that he only received a continuance for the May 5 OAH hearing, the Housing Provider phoned RACD on May 15, 2006 and alleges that an RACD employee instructed him to send his motion for continuance via telecopier on that same day, which he asserts he did. Id. The Housing Provider argues that he should be granted an opportunity for a new hearing because he reasonably assumed that his motion for a continuance in TP 28,530 would be granted by RACD, as OAH had granted a continuance for the May 5, 2006 hearing in his other case related to this case. Id.

[17] The applicable regulation, 14 DCMR § 3807.5 (2004) provides the following: "The Commission shall not hear new evidence on appeal."

Thus, the Commission notes that any contention of a good faith effort on behalf of the Housing Provider is undermined by the following: (1) the lack of substantial record evidence to support the Housing Provider's contention that he filed a motion for continuance,[18] and (2) the Housing Provider's assertion that he inadvertently filed such a motion for continuance originally with OAH instead of RACD, which the Commission observes are two separate agencies.[19] Thus, the Housing Provider's failure to attend the hearing does not meet the good faith standard required under the second Radwan factor.

3. Whether the Housing Provider acted promptly when learning about the default with respect to filing an appeal from the Final Order

The third Radwan factor considers whether the Housing Provider acted promptly with respect to the filing of an appeal after receiving a Final Order from RACD. Radwan, 683 A.2d at 481. An aggrieved party may file an appeal from a final decision or order within thirteen (13) days after receipt of such an order. 14 DCMR § 3802.2 (2004).[20] See Smith v. Ventura, TP 30,070 (RHC Sept. 18, 2012) (Order Dismissing Appeal) at 6-7 (determining that the Housing Provider's filing of his notice of appeal one day after the thirteen day filing period resulted in the dismissal of his appeal under 14 DCMR § 3802.2 (2004)); Hubley v. Negley, TP 27,175 (RHC

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[18] See supra n.15 at p. 16.

[19] The Commission has long recognized the challenges that pro se litigants face in navigating the legal system. Kissi v. Hardesty, 3 A.3d 1125, 1131 (D.C. 2010) (citing Hudson v. Hardy, 412 F.2d 1091, 1094 (D.C. Cir. 1968)). Nevertheless, the Commission observes that "a landlord is imputed to have knowledge of a reasonably prudent man involved in the business of renting properties in the District of Columbia." See Tames Williams T/A Urban Props. v. Ellis, TP 23,313 (RHC June 19, 1997) (citing Reid v. Quality Mgmt. Co., TP 11,307 (RHC Feb. 7, 1985)). The Commission observes that the Housing Provider has been a landlord in the District of Columbia since at least 2004, when the Tenant's lease commenced in this case. The Commission is not persuaded that it was reasonable for the Housing Provider to have erroneously submitted a motion for continuance to OAH, rather than RACD, which are two separate and distinct agencies in the District of Columbia.

[20] The applicable regulation, 14 DCMR § 3802.2 (2004) states: "A notice of appeal shall be filed by the aggrieved party within ten (10) days after a final decision of the Rent Administrator is issued; and, if the decision is served on the parties by mail, an additional three (3) days shall be allowed."

July 18, 2003) at 4-5 (Housing Provider failed to file an appeal within the allotted time, removing the Commission's jurisdiction from the matter).

In this case, the Commission determines that the Housing Provider acted promptly when filing his notice of appeal. Notice of Appeal at 1; Hearing CD (RHC Sept. 27, 2008). The Commission's review of the record indicates that the Hearing Examiner issued a Proposed Decision and Order on May 27, 2008, which became a Final Order on June 16, 2008, in accordance with D.C. OFFICIAL CODE § 2-509(d) (2001). See supra at p. 2 n.4; R. at 38. The Commission determines that under 14 DCMR § 3802.2 (2004), the last day for the Housing Provider to file a Notice of Appeal from the Final Order was July 3, 2008; the Housing Provider's submitted to the Commission a Notice of Appeal filed-stamped by the Commission with the date July 3, 2008.[21] Notice of Appeal at 1; see 14 DCMR § 3802.2 (2004); Sellers, TP 29,437 at 17. Thus, based on the foregoing, the Commission is satisfied that the Housing Provider filed his appeal promptly and within the time period required by 14 DCMR § 3802.2 (2004).

4. Whether the Housing Provider presented an adequate prima facie defenses to the Tenant's claims

The final Radwan factor considers whether an aggrieved party, in his or her notice of appeal to the default judgment, presents an adequate *prima facie* defense to the opposing party's claims. Radwan, 683 A.2d at 481. To demonstrate an adequate *prima facie* defense, a moving party must "provide the court with reason to believe that vacating the judgment will not be an

[21] In the Notice of Appeal and during the Commission Hearing, counsel for the Housing Provider asserted that he filed on behalf of the Housing Provider a motion for reconsideration and states that it was never ruled upon by RACD. See Hearing CD (RHC Sept. 25, 2008). Upon review, the Commission notes that there was no evidence of a motion for reconsideration within the record. The Commission is satisfied, however, that the Housing Provider's failure to submit a Motion for Reconsideration does not affect the Housing Provider's right to file an appeal so long as the appeal was filed within the allocated time period, in this case, by July 3, 2008. See 14 DCMR § 3802.2 (2004).

empty exercise or a futile gesture." Nuyen v. Luna, 884 A.2d 650, 657 (D.C. 2005) (quoting Murray v. District of Columbia, 52 F.3d 353, 355 (D.C. 1995) (observing that the Housing Provider's detailed answer to the Tenant's complaint along with his motion to vacate the default judgment provided the trial court with enough information to conclude that the Housing Provider had an adequate *prima facie* defense); Sellers, TP 29,437 at 19 (determining that the Housing Provider's denial of the Tenant's claim "in a simple declarative sentence, without any legal or factual support" did not provide an adequate *prima facie* defense to the judgment in favor of the Tenant).

In this case, the Tenant made the following two claims: (1) the Housing Provider failed to properly register the building with RACD; and (2) services and/or facilities provided in connection with the Housing Accommodation have been substantially reduced. TP at 3; R. at 26. In defense against the Tenant's first claim, that the Housing Accommodation was not properly registered with RACD, the Housing Provider asserts that he did file a Registration/Claim of Exemption Form. Notice of Appeal at 1. He also provides an RACD Exemption Number of 543781. Id.

The applicable regulations, 14 DCMR §§ 4101.6 and 4106.8 (2004), require that:

> Each housing provider who files a Registration/Claim of Exemption Form under the Act shall, prior to or simultaneously with the filing, post a true copy of the Registration/Claim of Exemption Form in a conspicuous place at the rental unit or housing accommodation to which it applies, or shall mail a true copy to each tenant of the rental unit or housing accommodation.

14 DCMR § 4101.6 (2004),

> Prior to the execution of a lease or other rental agreement, a prospective tenant of any unit exempted under § 205(a) of the Act shall receive from the housing provider a written notice advising the prospective tenant that rent increases for the housing accommodation are not regulated by the rent stabilization program.

14 DCMR § 4106.8 (2004).

"The Commission has determined that a housing provider's failure to provide a tenant written notice of the exempt status of a housing accommodation renders the exemption void *ab initio*, because it violates the provision of the Act, D.C. OFFICIAL CODE § 42-3502.05 (2001), and the applicable regulation, 14 DCMR § 4101.6 (1991),[22] which require written notice to tenants that their units are exempt from the Act." Kornblum v. Zegeye, TP 24,338 (RHC Aug. 19, 1999) at 8 (citing Stets v. Featherstone, TP 24,480 (RHC Aug. 11, 1999)); Young v. Rybeck, TP 21,984 (RHC Jan. 28, 1992) (citing Chaney v. H.J. Turner Realty Co., TP 20,347 (RHC Mar. 24, 1989)). The Commission's review of the record reveals that the Housing Provider does not address in his Notice of Appeal any evidence of whether the Tenant was given proper notice of his claim of exemption in accordance with D.C. OFFICIAL CODE § 42-3502.05 (a)(3) (2001) and 14 DCMR §§ 4101.6, 4106.8 (2004). See, e.g., Notice of Appeal. Consequently, the Commission determines that the Housing Provider failed to assert an adequate *prima facie* defense against the Tenant's claim that the Housing Accommodation was not properly registered with RACD.

With regard to the Tenant's second claim, that services and/or facilities provided in connection with the Housing Accommodation had been substantially reduced, the Housing Provider asserts as defenses in the Notice of Appeal the following: that an inspection by DCRA on December 29, 2005 would contradict the Tenant's allegations of code violations, that the Tenant exaggerated her claims in the Tenant Petition, and that the Tenant was responsible for causing many of the deficiencies. Notice of Appeal at 3. The Commission observes that the Housing Provider's statements in the Notice of Appeal do not present an adequate *prima facie* defense to the Tenant's claim of a reduction in services and/or facilities. First, the Commission's

[22] The Commission notes that the text of 14 DCMR § 4101.6 (1991), cited in Kornblum, TP 24,338 at 8, is identical to the current version of the regulation, 14 DCMR § 4101.6 (2004).

review of the record indicates that the December 29, 2005 DCRA inspection to which the Housing Provider refers in the Notice of Appeal took place after the Tenant had already vacated the Housing Accommodation on December 10, 2005. R. at 24. Consequently, any evidence in the record of the December 29, 2005 inspection report is moot with respect to the Tenant's lease of the unit. The undisputed evidence in the record reflects that the Housing Provider was notified, during the Tenant's occupancy, that several housing code violations existed in Tenant's unit. R. at 41.

Next, the Commission's review of the record reveals that the Hearing Examiner found 22 violations in existence, including but not limited to the following: rooms infested with termites, uninhabitable space being occupied, molding loose from wall, and loose and peeling paint. See supra at pp. 4-5; Final Order at 12-13. The Commission is not satisfied that the Housing Provider's statements in the Notice of Appeal, stating that the Tenant exaggerated her claims and was responsible for deficiencies within the Housing Accommodation, constitute a *prima facie* defense to the housing code violations found by the Hearing Examiner. The Commission is unable to determine, based on its review of the record, that vacating the judgment would not be "an empty or futile gesture," because the Housing Provider's claims made in the Notice of Appeal were not based upon substantial evidence from within the record. See Nuyen, 884 A.2d at 657. Thus, the Commission finds that the Housing Provider does not meet the final Radwan factor because he failed to provide adequate *prima facie* defenses to either of the Tenant's claims.

Based upon a review of the substantial evidence in the record, the Commission determines the following in relation to the four factors enumerated in Radwan, as applied to this case: (1) the Housing Provider had actual notice of the RACD hearing; (2) the Housing Provider

failed to provide substantial evidence that he acted in good faith; (3) the Housing Provider acted promptly in filing his appeal from the Final Order in accordance with 14 DCMR § 3802.2 (2004); and (4) the Housing Provider failed to provide substantial evidence to support a prima facie adequate defense to claims in the Tenant Petition. See supra at pp. 12-20. The Commission determines that three of the four factors above do not support vacating the default judgment when applied to the record in this case according to Radwan, 683 A.2d at 481.

5. Whether vacating the default judgment would cause the Tenant prejudice.

The Commission has always recognized a judicial policy favoring a trial on the merits; however, the Commission also weighs the possibility for prejudice to the non-moving party when a judgment is vacated. Prosper, TP 27,783 at 14 (citing Lenkin Co. Mgmt. v. Miller, TPs 27,191, 27,192, 27,193 (RHC Jun. 4, 2004) at 7)).

Furthermore, the Commission determines that vacating the default judgment would cause the tenant prejudice. For example, in further proceedings before OAH, the Tenant would be exposed to "attendant expenses of litigation, the risk of an adverse judgment, and the possibility of further appeals." See, e.g., Sellers, TP 29,437 at 19; see also Tillman v. Reed, TP 29,136 (RHC Sept. 18, 2012) at 16. The Tenant would also risk the loss of damages which were awarded to the Tenant after a full hearing on the merits of the Tenant Petition. Finally, the near five-year gap between the previous hearing to any current or future hearing would impair the Tenant's ability to prosecute the Tenant Petition by placing a significant evidentiary burden on the Tenant with respect to her ability to access and retrieve relevant evidence to support the claims underlying the Tenant Petition, fading memories of witnesses regarding the facts supporting the Tenant's claims, the risk of lost documents and inability to secure requisite public records, and an unreasonable impairment of her ability to defend the events and actions by the

Housing Provider which led to her claims and which occurred nearly eight years ago. R. at 44, 51. See Union Storage Co. v. Knight, 400 A.2d 316, 319 (D.C. 1979) (events at issue occurred ten years prior and since then "memories have faded and documents have been lost."); John's Props., TPs 22,269 and 22,116 at 12 (a one-year gap between hearings would not prevent tenant from presenting an adequate defense).

In short, the potential prejudice to the Tenant would be significant because the Tenant prevailed in her claims below; as a result, re-opening and re-litigating the case would require her to invest additional time and effort. See Sellers, TP 29,437 at 19. In light of these considerations and its review of the record, the Commission determines that vacating the default would cause the Tenant prejudice. The Commission therefore affirms the decision below in accordance with the factors enumerated in Radwan. See 683 A.2d at 481.

B. Whether the Rent Administrator Committed Plain Error in His Calculations of Damages, Interest, and Treble Damages.

The Commission's review of the record indicates that the Hearing Examiner committed plain error in his calculations of the damages owed to the Tenant. The applicable regulation, 14 DCMR § 3807.4 (2004), states as follows: "Review by the Commission shall be limited to the issues raised in the notice of appeal; provided, that the Commission may correct plain error." The Commission has determined that the "plain error" may be applied to correct both procedural and technical errors of hearing examiners or ALJs arising from proceedings of the tenant petition. See Munonye v. Hercules Real Estate Servs., TP 29,164 (RHC July 7, 2011) at 8 (finding that it was "plain error" for the ALJ to dismiss a tenant petition based on evidence of registration and exemption alone without conducting a hearing on the merits); Ford v. Dudley, TP 23,973 (RHC June 3, 1999) at 9 (Commission found "plain error" in the Hearing Examiner's use of the "clear and convincing" standard as opposed to the correct "preponderance of the

evidence" standard); Reaves v. Byrd, TP 26,195 (RHC July 24, 2002) at 4 (Commission found "plain error" in the Hearing Examiner's erroneous information regarding the jurisdictional issue under the Act). With regard to technical errors, the Commission has corrected mistakes in calculations, dates and numbers, as well as administrative errors. See Munonye, TP 29,164 at 8; see also Shapiro & Co. v. Poorazar, TP 22,427 (RHC June 10, 1996) at 1 (the Commission found "plain error" in the case caption transposing the Tenant as Housing Provider and vice versa); Morris v. Cole, TP 22,542 (RHC Aug. 19, 1993) at 3-4 (the Commission found and corrected "plain error" in the Hearing Examiner's calculation of damages for unrepaired services); The Rittenhouse, LLC v. Campbell, TP 25,093 (RHC Dec. 17, 2002) at 14-15 (Commission found "plain error" in the Hearing Examiner's calculation of interest owed on rent overcharges, and re-calculated interest total).

The Commission has held that a hearing examiner is not required to assess the value of a reduction in services and facilities with "scientific precision," but may instead rely on his or her "knowledge, expertise, and discretion as long as there is substantial evidence in the record regarding the nature of the violation, duration, and substantiality." Kemp v. Marshall Heights Cmty. Dev., TP 24,786 (RHC Aug. 1, 2000); see 14 DCMR § 4216.7 (2004).[25]

The Commission's review of the evidence in the record reflects that the Hearing Examiner committed plain error with regard to the following calculations: (1) the duration of the Tenant's claimed substantial reduction in services and facilities by the Housing Provider, (2) the time period during which the interest accrued on the damages awarded to the Tenant as a result of the substantial reduction of services and facilities, and (3) the amount of trebled damages

[25] The regulation, 14 DCMR § 4216.7 (2004), provides in part: "Testimony shall be as detailed as necessary so that the hearing examiner can make findings of fact that will identify the specific violation(s), their location and duration, and whether they have been abated."

arising out of the damages awarded to the Tenant based on the substantial reduction of services and facilities.

1. Plain error in the Hearing Examiner's calculation of the duration of the Tenant's claimed substantial reduction in services and facilities by the Housing Provider

The Commission observes three errors in the calculations of the duration of the reductions in services and facilities. First, the Commission notes that the Hearing Examiner's calculation for damages due to a reduction in services based on rodent infestation (see finding of fact 20, supra at p. 6) is based on a starting date of June 1, 2005. R. at 41. However, based on its review of the record, the Commission is unable to find substantial evidence in the record to support the Hearing Examiner's finding of fact numbered eleven (11) supra at p. 4, that a rodent infestation started on June 1, 2005. The Commission's review of the record, pursuant to D.C. OFFICIAL CODE § 42-3502.16(h) (2001), fails to reveal substantial evidence to support the Hearing Examiner's finding that the rodent infestation began on June 1, 2005.[26] See King v. D. C. Dep't of Empl't Servs., 742 A.2d 460 (1999); Perkins v. D. C. Dep't of Empl't Servs., 482 A.2d 402 (D.C. 1981).

Accordingly, the issue of the date of the beginning of the rodent infestation is remanded to the Rent Administrator for further findings of fact and conclusions of law, on the present record, of the date for the start of a rodent infestation at the Housing Accommodation.

Secondly, the Commission notes similar discrepancies with respect to the Hearing Examiner's findings of fact 18 and 19. See supra I. at p. 6. While the beginning date of the reduction in services due to holes in the walls and ceilings (finding of fact 18) and unsecured windows (finding of fact 19, see, supra at p. 6) is listed as 10/2004, the Commission's review of

[26] The record reflects that DCRA's, HRA inspected the Housing Accommodation on November 9, 2005 and issued Housing Violation Notice 81200 7, to the Housing Provider. The notice stated, "[r]odents have not been eliminated from premises by trapping or baiting or both." R. at 20.

the record reflects that October 1, 2004, was the actual date on which the services were reduced, as well as when the Housing Provider was notified of the relevant housing code violations (see infra, n.25). However, the accurate dates, October 1, 2004 through December 10, 2005, are not reflected in the calculation of the duration of the Tenant's reduction in services and facilities pertaining to holes in walls and ceiling and unsecured windows. See Findings of Fact 18-19 supra at p. 6. Based on the unrebutted evidence of the Tenant, the Hearing Examiner made finding of fact numbered nine (9), which states the following:

> At the time Petitioner signed the lease, there were certain housing code violations in existence. Respondent made assurances that he would make the necessary repairs and take the following actions: To fix holes in the ceiling and walls of the subject property, to redo the floors and cupboards, to secure the windows, and to address any termite or rodent infestation that were in existence or may arise at the subject property by retaining the services of a professional exterminating service.

Proposed Decision and Order at 12; R. at 43.

Therefore, the unrebutted evidence of record, see TP at 1; R. at 28, reflects that the Tenant began her tenancy on October 1, 2004 and ended her tenancy on December 10, 2005. See Finding of fact numbered two (2).[27] Contrary to this finding, the Hearing Examiner failed to calculate damages for the reduction in services and facilities relating to the holes in the ceiling and walls and to secure the windows through December 10, 2005, the date, found by the Hearing Examiner to be the date the Tenant's tenancy ended. See Id. n.27, p.25.

[27] The Proposed Decision and Order states: "Wallacia Tricia Thomas occupied the property at all relevant times and is the Petitioner in this matter. Petitioner vacated the subject property on December 10, 2005."

Accordingly, the Commission remands the Final Order to RAD for a recalculation of the time period for the award of damages due the Tenant, based on the substantial evidence found in the record of the duration of her tenancy.

2. Plain error in calculation of the time period during which interest accrued on the damages awarded to the Tenant as a result of the substantial reduction of services and facilities

In finding of fact numbered 22 the Hearing Examiner found that the Tenant was entitled to 50 months of interest upon the damages awarded to her for the substantial reduction of services and facilities within her unit from March 2004 to May 2008. R. at 41. However, conclusion of law numbered nine (9) states that the Tenant is entitled to $263.20 in interest from 10/2004 to 12/2005 (i.e., 14 months). R. at 39. The Commission observes that both the finding of fact and conclusion of law constitute plain error. See supra at IV.B. The applicable regulation, 14 DCMR § 3826.2 (2004) states as follows: "Interest is calculated from the date of the violation (or when service was interrupted) to the date of the issuance of the decision." In this case, the Commission's review of the record reflects that two of the three violations—the unsecured windows and holes in the Housing Accommodation— began on October 1, 2004, the first day of the Tenant's lease agreement. R. at 28. Thus, interest on the total damages for the reduction in services and facilities based on holes in the ceiling and walls, as well as the unsecured windows, should have been calculated from October 1, 2004 until the date the decision was issued, May 27, 2008. See 14 DCMR § 3826.2 (2004). Similarly, interest on the reduction in services due to rodent infestation should have been calculated from the exact date on

which services were reduced, rather than "6/2005," the date referenced in the Hearing Examiner finding of fact 11 (see supra at p. 4), until May 27, 2008, the date of the hearing.

The Commission, upon a review of the record, finds that it was plain error for the Hearing Examiner to calculate interest from October 2004 until December 2005. See Munonye, TP 29,164 at 8; Shapiro & Co., TP 22,427 at 1; Morris, TP 22,542 at 3-4; The Rittenhouse, LLC, TP 25,093 at 14-15. On remand, the Commission instructs RAD to calculate the interest due on the re-calculated damages awarded to Tenant for the reduction of services and facilities supra at pp. 25-26, in accordance with 14 DMCR § 3826.2 (2004), and this Decision and Order. Further, on remand RAD is instructed to recalculate the interest due on the Tenant's award of damages. See findings of fact 18 and 19; R. at 41.

3. Plain error in the amount of trebled damages arising out of the damages awarded to the Tenant based on the substantial reduction of services and facilities

Conclusion of law numbered eight (8) in the Proposed Decision and Order states that the Tenant is entitled to damages totaling $3,200 for the reduction of services and facilities in her unit; however, conclusion of law 10 states that the Tenant is due treble damages equaling $9,975.00. R. at 39-40. It is unclear how the Hearing Examiner reached the trebled amount of $9,975.00, since at minimum, $3,200.00 trebled only totals $9,600.00. On remand, the Commission instructs the Hearing Examiner to recalculate the trebled damages based on the recalculation of the adjustment of damages awarded, or in the alternative, provide an explanation of its derivation of the components of the $9,975.00 amount.[31]

V. CONCLUSION

[31] The Commission cautions the RAD on remand to ensure that the Remand Decision and Order clearly provides a basis for all calculations.

For all of the reasons stated herein, the Rent Administrator's Decision and Order is remanded to the Rent Administrator for a recalculation of damages due and owing to the Tenant for holes in the walls and ceilings and unsecured windows in her unit based on the substantial evidence in the record of the duration of her tenancy. The Hearing Examiner's decision and order is further remanded for additional findings of fact and conclusions of law, in accordance with the record evidence, regarding the determination of the appropriate date of the beginning of the rodent infestation in Tenant's unit. The Rent Administrator is further ordered to recalculate the interest due the Tenant on the damages awarded based on the duration of the Tenant's tenancy and the commencement of a rodent infestation in the Tenant's unit, and a recalculation of the trebled damages awarded based on the foregoing recalculations.

The Rent Administrator shall issue a remand decision and order that contains findings of fact and conclusions of law on the existing record. The Rent Administrator shall not conduct a hearing or receive additional evidence. See Wire Props. v. D. C. Rental Hous. Comm'n, 476 A.2d 679 (D.C. 1984) (cited in Jolly v. Akamune, TP 27,529 (RHC Sept. 30, 2004).

SO ORDERED

PETER B. SZEGEDY-MASZAK, CHAIRMAN
CONCURRING ONLY IN THE RESULT

RONALD A. YOUNG, COMMISSIONER

MARTA W. BERKLEY, 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 **DECISION AND ORDER** in TP 28,530 was served by first-class mail, postage prepaid, this **27th** day of **September, 2013**, to:

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