DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION

RH-TP-09-29,715

In re: 4941 North Capitol Street, N.E., Unit 21

Ward Five (5)

GELMAN MANAGEMENT COMPANY
Housing Provider/Appellant

v.

DEBRA CAMPBELL
Tenant/Appellee

DECISION AND ORDER

March 11, 2015

SZEGEDY-MASZAK, CHAIRMAN. This case is on appeal to the Rental Housing Commission (Commission) from a decision and order issued by the Office of Administrative Hearings (OAH) based on a petition filed in the Rental Accommodations Division (RAD) of the District of Columbia Department of Housing and Community Development (DHCD).[1] The applicable provisions of the Rental Housing Act of 1985 (Rental Housing Act), D.C. LAW 6-10, D.C. OFFICIAL CODE §§ 42-3501.01-3509.07 (2001), the District of Columbia Administrative Procedure Act (DCAPA), D.C. OFFICIAL CODE §§ 2-501- 2-510 (2001 Supp. 2008), and the District of Columbia Municipal Regulations (DCMR), 1 DCMR §§ 2800-2899 (2004), 1 DCMR §§ 2920-2941 (2004), 14 DCMR §§ 3800-4399 (2004) govern these proceedings.

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[1] The Office of Administrative Hearings (OAH) assumed jurisdiction over the conduct of hearings on tenant petitions from the RACD and the Rent Administrator pursuant to the OAH Establishment Act, D.C. OFFICIAL CODE §2-1831.01, - 1831.03(b-1)(1) (2005 Supp.). The functions and duties of the RACD were transferred to the Rental Accommodations Division (RAD) of the Department of Housing and Community Development (DHCD) by the Fiscal Year Budget Support Act of 2007, D.C. Law 17-20, 54 DCR 7052 (September 18, 2007) (codified at D.C. OFFICIAL CODE § 42-3502.03a (2008 Supp.)).

I. PROCEDURAL HISTORY

On September 16, 2009, Tenant/Appellee Debra Campbell (Tenant), residing at 4941 North Capitol Street, N.E., Unit 21, Washington, D.C. 20011 (Housing Accommodation), filed Tenant Petition RH-TP-09-29,715 (Tenant Petition) against Housing Provider/Appellant Gelman Management Company (Housing Provider) claiming the following violations of the Act:

1. The rent increase was made while my/our units were not in substantial compliance with DC Housing Regulations.

2. Services and/or facilities provided as part of rent and/or tenancy have been substantially reduced.

See Tenant Petition at 1-2; Record for RH-TP-09-29,715 (R.) at 10-11.[2] On December 15, 2010, the ALJ issued a final order, Campbell v. Gelman Management Company, RH-TP-09-29,715 (OAH Dec. 15, 2010) (Final Order). In the Final Order the ALJ made the following determinations: (1) a consent settlement agreement between the parties limited the Tenant's claims to those occurring after the signing of the agreement on December 11, 2008; (2) the Housing Provider increased the Tenant's rent on March 1, 2009, and March 1, 2010, while substantial housing code violations existed in the Tenant's unit; and (3) the Tenant was entitled to damages for substantial reductions in services and/or facilities related to a windows that were not properly weatherproofed, defective window screens, a mice infestation, crumbling rear concrete walkways, crumbling front sidewalks, a defective step railing along the front concrete sidewalk, accumulated trash beside the dumpster, defective smoke alarm in the laundry room,

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[2] On March 31, 2010, the Tenant filed a Motion to Amend Tenant Petition (hereinafter "Motion to Amend") and an Amended Tenant Petition, claiming the following additional violation of the Act: "[t]he 2007 rent increase is invalid because the Housing Provider did not file a 2007 Certificate of Rent Increase with RAD." Amended Tenant Petition at 4-5; R. at 62-63. The Tenant's Motion to Amend was granted by the ALJ on the record at the April 8, 2010 hearing. *See* Hearing CD (OAH Apr. 8, 2010). However, the Tenant subsequently withdrew this claim on May 24, 2010. *See* Petitioner's Amended Post-Hearing Memorandum (OAH May 24, 2010) at 23-24; R. at 102-103.

loose and peeling paint in the laundry room, and an overflowing laundry room tub. *See* Final Order at 8-22; R. at 154-68.

On January 5, 2011, the Housing Provider filed a Notice of Appeal ("First Notice of Appeal") with the Commission, asserting the following: "Gelman Management Co. hereby notes its appeal from the Final Order below, because a settlement agreement filed in the landlord-tenant branch of the Superior Court, as well as the Rental Housing Act's statute of repose bars all of the petitioner's claims." First Notice of Appeal at 1.

The Commission issued its Decision and Order on December 23, 2013: Gelman Management Company v. Campbell, RH-TP-09-29,715 (RHC Dec. 23, 2013) (Initial Decision and Order). The Commission dismissed the Housing Provider's issues on appeal, determining that the Act's statute of limitations, at D.C. OFFICIAL CODE § 42-3502.06(e), did not divest OAH of subject matter jurisdiction over the Tenant Petition, and that the Housing Provider had waived the issue of *res judicata* by failing to properly raise it before the ALJ. *See* Initial Decision and Order at 16-25. Additionally, the Commission determined that the following conclusions in the Final Order constituted "plain error:" (1) the ALJ's mathematical calculations of the award of a rent refund of $40 for the month of February, 2010, related to rent increases in 2009 and 2010 while the Housing Accommodation was not in substantial compliance with the housing code; (2) the ALJ's conclusion that the Tenant was entitled to damages for reductions in services and/or facilities beginning on December 12, 2008 constitutes plain error, because the ALJ failed to address whether the parties' Settlement Agreement gave the Housing Provider until February 27, 2009 to make repairs in the Tenant's unit; and (3) the ALJ's award of a rent refund for the period of November 1, 2009, through May 12, 2010, related to a reduction in services and/or facilities

due to an improperly installed smoke alarm. *See id.* at 25-30. The Commission remanded the case to OAH for further proceedings. *Id.* at 30-31.

On September 22, 2014, the ALJ issued a Final Order After Remand, Campbell v. Gelman Management Company, RH-TP-09-29,715 (OAH Sept. 22, 2014) (Final Order After Remand). The ALJ stated the following regarding each of the respective issues on remand:

> **a. Tenant receives damages and interest for improper rent increases instituted during substantial housing code violations in 2009 and 2010, resulting in $420.00 total damages.**
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> 1. The RHC directed that I recalculate the damages and interest owed to Tenant for the 2009 and 2010 rent increases when the Housing Accommodation was not in substantial compliance with the housing code. The RHC was "unable to determine that the award of a rent refund of $40 for the month of February, 2010, (sic) is supported by substantial evidence."
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> 2. In the December 15, 2010, Final Order, I found that Housing Provider increased Tenant's rent by an amount that exceeds the maximum allowable rent charged from January 1, 2009 to May 1, 2010. Specifically, I found that Housing Provider increased Tenant's rent to $935 effective March 2009 until February 2010, exceeding the maximum allowable rent charged of $910 by $25 for twelve months. Effective March 2010, Tenant's rent was increased to $950 until the May 12, 2010 hearing. For the period of March 2010 to the date of the May 12, 2010 hearing, Tenant's rent increase exceeded the maximum allowable rent charged of $910 by $40.
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> 3. However, Tenant should have been awarded $25 in damages for February 2010. Below is an amended chart detailing Tenant's award.[3]
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> . . . .
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> **b.** The consent settlement agreement signed December 11, 2008, filed with the Landlord Tenant Branch, provided Housing Provider the opportunity to make repairs to the interior of Tenant's [unit] until February 27, 2009.
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> **c.** Tenant's award and interest are recalculated based on the specified deadline for repairs.
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> 4. The RHC directed the ALJ to address whether the terms of the consent settlement agreement gave Housing Provider until February 27, 2009, to

[3] The Commission omits a recitation of the ALJ's Table A, detailing the Tenant's rent refund related to housing code violations. Final Order After Remand at 3; R. at 378.

repair the following: 1) windows improperly weather-stripped; 2) defective window screens; 3) mice infestation; 4) crumbling rear concrete walkways; 5) crumbling front sidewalks; 6) failure to secure railing along front concrete sidewalk; 7) accumulated trash beside the dumpster; and 8) loose and peeling paint in the laundry room.

5. The consent settlement agreement reads in part, "this agreement is a full and complete settlement of all claims between the parties cognizable in the landlord and tenant court up to and including the date of this agreement" and it is stamped "MutliDoor Filed in Open Court." *See* RX 201. As discussed in the December 15, 2010 Final Order, voluntary settlement of civil controversies is in high judicial favor and that [sic] a party who received such benefit of the settlement agreement will not be permitted to deny his or her obligations unless paramount public interest requires it. Settlement agreements should generally be enforced as written, absent a showing of good cause to set it aside, such as fraud, duress, or mistake. Tenant was represented by counsel at the time she entered into the settlement agreement and has provided no evidence that she signed the agreement under duress, by mistake, or that fraud existed.

6. The settlement agreement states that Tenant would provide Housing Provider access to her unit to make "workmanlike repairs" during the week of February 23 through February 27, 2009, "for the purpose of completing repairs." *See* RX 201. Therefore, in the agreement as written, the parties agreed that Housing Provider had until February 27, 2009, to complete repairs requiring access to Tenant's unit. The settlement agreement also states, "Plaintiff [Housing Provider] agrees to repair the hole in the laundry room by December 22, 2008." Therefore the settlement agreement gives December 22, 2008, as the repair deadline for the laundry room and is silent as to the repair deadline for all other conditions existing outside of Tenant's unit. *See* RX 201[.]

7. Because Housing Provider had until February 27, 2009, to make repairs to the conditions inside Tenant's unit, Tenant will receive an award from February 28, 2009, through the date of the May 12, 2010, hearing. I find that the improperly weather-stripped windows; defective window screens; and mice infestation all required access to Tenant's unit to make repairs. For these conditions, Tenant's award is from February 28, 2009, through the date of the May 12, 2010, hearing. Housing Provider did not need access to repair the laundry room and exterior conditions, and therefore, the award for these conditions is different. Housing Provider had until December 22, 2008, to make repairs in the laundry room, per the settlement agreement. *See* RX 201. Tenant is awarded from December 22, 2008, through the date of the May 12, 2010, hearing for this condition. Tenant's award for the exterior conditions of crumbling rear concrete walkways; crumbling front sidewalks; failure to secure railing along front concrete sidewalk; and accumulated trash beside the

dumpster is from December 12, 2008, the day after the settlement agreement, through the date of the May 12, 2010, hearing. Based on the above Tenant is awarded a total of $3,191.51, which includes interest. The attached Appendix C provides an itemized list of Tenant's total award. The Amended Appendix D details Tenant's award for each condition, including interest.[4]

d. Tenant's award for the improperly installed smoke alarm is recalculated to $60.00.

8. In its Decision and Order, the RHC directed me to address the duration and award for Housing Provider's failure to properly install a smoke alarm in the laundry room. For the period of November 2009 to April 2010, the smoke alarm in the laundry room was improperly installed. *See* PX 128. Housing Provider properly installed the smoke detector in April 2010. An improperly installed smoke detector is a safety issue, but did not directly affect the habitability of Tenant's unit. Therefore, because this reduction is not severe, I award Tenant a rent refund of $10 per month for the period of November 2009 to April 2010. Below is Table B detailing Tenant's award.[5]

Final Order After Remand at 2-7; R. at 374-79 (footnotes omitted).

On October 2, 2014, the Housing Provider filed a notice of appeal with the Commission (Second Notice of Appeal) raising the following issues:

1. The doctrine of stare decisis required the Administrative Law Judge to dismiss this petition for lack of subject matter jurisdiction, and the Rental Housing Commission to affirm that dismissal, because the D.C. Court of Appeals has definitively ruled that claims for relief based on alleged violations of the Rental Housing Act occurring or originating more than three years prior to the filing of the petition are barred.

2. The tenant petition should have been dismissed for lack of subject matter jurisdiction because no relief was available after August 5, 2006 for violations originating or occurring before that date.

3. Tenant Petitioner reached a settlement of a landlord-tenant action in the Superior Court which effectively settled and released all claims, according to its terms. Tenant Petitioner's claims herein were merged into that court

[4] The Commission omits a recitation of the ALJ's Appendix C and Amended Appendix D. Final Order After Remand at 9-18; R. at 363-72.

[5] The Commission omits a recitation of the ALJ's Table B. Final Order After Remand at 7; R. at 374.

settlement and she was therefore barred by res judicata/collateral estoppel from seeking further relief herein.

4. The Office of Administrative Hearings erred in awarding interest on the award to Tenant Petitioner, because there is no statutory authority for it to do so, and because Tenant Petitioner's rent charge [sic] was prima facie lawful, i.e. did not exceed the maximum amount the Housing Provider was permitted to charge under the Rental Housing Act, based on the Act's filing requirements and authorized rent and rent ceiling adjustment[s].

5. The Administrative Law Judge's finding that there was a reduction in services and facilities was arbitrary and capricious, there being no evidence that the housing code violations of which the Campbell [sic] complained constituted a reduction in services, or were the result of such a reduction.

Second Notice of Appeal at 1-2. The Housing Provider filed a praecipe on January 15, 2015 providing that "[i]n lieu of rebriefing issues previously briefed herein," the Housing Provider would rely on its brief filed on April 6, 2012 in relation to the First Notice of Appeal (Housing Provider's Brief). The Tenant filed a brief on February 2, 2015 (Tenant's Brief). The Commission held its hearing on February 19, 2015.

IV. ISSUES ON APPEAL

A. The doctrine of *stare decisis* required the Administrative Law Judge to dismiss this petition for lack of subject matter jurisdiction, and the Rental Housing Commission to affirm that dismissal, because the D.C. Court of Appeals has definitively ruled that claims for relief based on alleged violations of the Rental Housing Act occurring or originating more than three years prior to the filing of the petition are barred.

B. The tenant petition should have been dismissed for lack of subject matter jurisdiction because no relief was available after August 5, 2006 for violations originating or occurring before that date.

C. Tenant Petitioner reached a settlement of a landlord-tenant action in the Superior Court which effectively settled and released all claims, according to its terms. Tenant Petitioner's claims herein were merged into that court settlement and she was therefore barred by res judicata/collateral estoppel from seeking further relief herein.

D. The Office of Administrative Hearings erred in awarding interest on the award to Tenant Petitioner, because there is no statutory authority for it to do so, and because Tenant Petitioner's rent charge [sic] was *prima facie* lawful, i.e. did not exceed the maximum amount the Housing Provider was permitted to charge under the Rental Housing Act, based on the Act's filing requirements and authorized rent and rent ceiling adjustment[s].

E. The Administrative Law Judge's finding that there was a reduction in services and facilities was arbitrary and capricious, there being no evidence that the housing code violations of which the Campbell [sic] complained constituted a reduction in services, or were the result of such a reduction.

V. DISCUSSION OF ISSUES ON APPEAL

A. The doctrine of *stare decisis* required the Administrative Law Judge to dismiss this petition for lack of subject matter jurisdiction, and the Rental Housing Commission to affirm that dismissal, because the D.C. Court of Appeals has definitively ruled that claims for relief based on alleged violations of the Rental Housing Act occurring or originating more than three years prior to the filing of the petition are barred.

The Commission observes that the Housing Provider's issue A, recited above, relates to whether the ALJ lacked subject matter jurisdiction over this case, because the claims contained in the Tenant Petition were barred by the Act's statute of limitations, at D.C. OFFICIAL CODE § 42-3502.06(e) (2001). Second Notice of Appeal at 1. The Commission previously resolved this issue in its Initial Decision and Order, affirming the ALJ's subject matter jurisdiction on the following two grounds: first, because the two claims made in the Tenant Petition fell within the ALJ's statutory grant of subject matter jurisdiction under D.C. OFFICIAL CODE § 42-3502.04(c), and second, because the Act's statute of limitations is not a *per se* determinant of the ALJ's subject matter jurisdiction. *See* Initial Decision and Order at 16-20. The Commission also noted that, as the Housing Provider had failed to raise the statute of limitations issue at any time during the OAH proceedings, it could not do so for the first time on appeal. *Id.* at 19-20.

The Commission determines that the "law of the case" doctrine, prohibiting the Commission from reopening and reconsidering an issue that was resolved in a previous appeal, applies to this issue. *E.g.*, Smith Prop. Holdings Five (D.C.) L.P. v. Morris, RH-TP-06-28,794 (RHC July 2, 2014); Carmel Partners, Inc. v. Levy, RH-TP-06-28,830 & RH-TP-06-28,835 (RHC May 16, 2014); *see also* King v. McKinney, TP 27,264 (RHC June 17, 2005) (citing Lynn v. Lynn, 617 A.2d 963 (D.C. 1992)) ("The law of the case doctrine prohibits the Commission from reopening issues that the Commission resolved in an earlier appeal"); Dias v. Perry, TP 24,349 (RHC July 30, 2004) (refusing to reconsider Ms. Perry's status as a tenant, when the Commission had previously made a definitive ruling on the issue); Goff v. Edward Tiffey Co., TP 24,855 (RHC Dec. 29, 2000) (stating that where the housing provider did not appeal the hearing examiner's finding of housing code violations, the finding became the law of the case).

Under the law of the case doctrine, a court is precluded from reexamining issues raised in a prior appeal, except under "extraordinary circumstances," including that "'the evidence on a subsequent trial was substantially different, controlling authority has since made a contrary decision of the law applicable to such issues, or the decision was clearly erroneous and would work a manifest injustice.'" Lynn, 617 A.2d at 970 (quoting United States v. Turtle Mountain Band of Chippewa Indians, 612 F.2d 517, 521 (Ct. Cl. 1979)); *see, e.g.*, Thoubboron v. Ford Motor Co., 809 A.2d 1204, 1215 (D.C. 2002) (refusing to reconsider issue of attorney's fees, where the issue was determined in a previous decision); Lenkin Co. Mgmt., Inc. v. D.C. Rental Hous. Comm'n, 677 A.2d 46, 48 (D.C. 1996) (explaining that the law of the case doctrine may be "disregarded 'in a clear case showing that the earlier adjudication was plainly wrong and that its application would work a manifest injustice'" (quoting Morse v. Morse, 213 A.2d 581, 583 (D.C. 1988))). The Commission is satisfied that (1) extraordinary circumstances are not present

in this case; (2) no new evidence was either proffered or admitted on remand; (3) the Housing Provider has not cited or otherwise provided controlling authority from the Act or applicable case law that contradicts the Commission's Initial Decision and Order; and (4) the Housing Provider has not directly asserted or even opined that the Commission's prior decision on this issue was "clearly erroneous" or would "work a manifest injustice." Second Notice of Appeal at 1; *see* Thoubboron, 809 A.2d at 1215; Lenkin Co. Mgmt., 677 A.2d at 48; Lynn, 617 A.2d at 970.

Therefore, the Commission dismisses this issue on appeal.

B. The tenant petition should have been dismissed for lack of subject matter jurisdiction because no relief was available after August 5, 2006 for violations originating or occurring before that date.

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

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

The Housing Provider asserts in the Second Notice of Appeal that any claims "originating or occurring" before the Act was amended on August 5, 2006,[6] expired on that date. Second Notice of Appeal at 1. The Commission notes that the Housing Provider elected not to brief this issue on appeal, and thus has neither provided legal authority to support its contention,

[6] The Commission notes that the Act was amended effective August 5, 2006, by the Rent Control Reform Amendment Act of 2006, D.C. Law 16-145, 53 DCR 4889, which abolished rent ceilings.

nor identified the specific claims in the Tenant Petition that "originated or occurred" before August 5, 2006.[7] *Id.*

The Commission is not persuaded by the Housing Provider's contention on this issue for a number and variety of reasons. First, the 2006 amendments did not constitute a complete reenactment of the Act, and thus unlike the enactments of the Rental Housing Act of 1980 and the Act itself in 1985, the 2006 amendments contain no language specifically indicating that the 2006 amendments are meant to supersede, and thus replace, the previous version of the Act. *Compare* D.C. OFFICIAL CODE § 42-3509.03 (2012 Repl.), *with* D.C. OFFICIAL CODE § 42-3509.03 (2001), *and* D.C. CODE § 45-1694 (1981).[8] Therefore, where the 2006 amendments did not supersede the prior version of the Act, claims arising prior to 2006 were not expressly extinguished by the amendments, and thus there was no need for a savings clause. *Compare*

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[7] The Commission notes that the Housing Provider raises this issue for the first time in its Second Notice of Appeal; however, challenges to a court's subject matter jurisdiction may be raised at any time. *See* Hardy v. Sigalas, RH-TP-09-29,503 (RHC July 21, 2014); Vista Edgewood Terrace v. Rascoe, TP 24,858 (RHC Oct. 13, 2000); *see also, e.g.,* Abulqasim v. Mahmoud, 49 A.3d 828, 834 (D.C. 2012); District of Columbia v. Am. Fed'n of Gov't Emps., Local 1403, 19 A.3d 764, 771 (D.C. 2011).

[8] D.C. OFFICIAL CODE § 42-3509.03 (2012 Repl.) provides the following:

> This chapter shall be considered to supersede the Rental Accommodations Act of 1975, the Rental Housing Act of 1977, and the Rental Housing Act of 1980, except that a petition filed with the Rent Administrator under the Rental Housing Act of 1980 shall be determined under the provisions of the Rental Housing Act of 1980.

D.C. OFFICIAL CODE § 42-3509.03 (2001) provides the following:

> This chapter shall be considered to supersede the Rental Accommodations Act of 1975, the Rental Housing Act of 1977, and the Rental Housing Act of 1980, except that a petition filed with the Rent Administrator under the Rental Housing Act of 1980 shall be determined under the provisions of the Rental Housing Act of 1980.

D.C. CODE § 45-1694 (1981) provides the following:

> This act shall be deemed to supersede the Rental Accommodations Act of 1975, and the Rental Housing Act of 1977; except, that a petition filed with the Rent Administrator under the Rental Housing Act of 1977 shall be determined under the provisions of the Rental Housing Act of 1977.

D.C. OFFICIAL CODE § 42-3509.03 (2012 Repl.), *with* D.C. OFFICIAL CODE § 42-3509.03 (2001), *and* D.C. CODE § 45-1694 (1981).

Second, insofar as the 2006 amendments to the Act did not contain an express savings clause, the Commission has determined that the D.C. OFFICIAL CODE contains a general savings provision which applies to any claims arising prior to the 2006 amendments to the Act. D.C. OFFICIAL CODE § 45-404(a) (2012 Repl.).[9] The general savings provision provides, in relevant part, as follows:

> (a) The repeal of <u>any act</u> of the Council shall not release or extinguish any penalty, forfeiture, or liability incurred pursuant to the act, and the act shall be treated as remaining in force for the purpose of sustaining any proper action or prosecution for the enforcement of any penalty, forfeiture, or liability, unless the repealing act expressly provides for the release or extinguishment of any penalty, forfeiture, or liability.

D.C. OFFICIAL CODE § 45-404(a).[10] As the Commission interprets the text of the general savings clause, claims arising prior to the effective date of the 2006 amendments survive because the 2006 amendments did not expressly provide "for the release or extinguishment" of such claims. *Id.*

Finally and most notably, the Commission observes that it was undisputed by the parties to this appeal that the time period relevant to the Tenant Petition occurred from December 11,

[9] The purpose of the general savings provision was to "provide a savings provision for repealed or expired acts of the Council of the District of Columbia." D.C. Law 8-165 (Sept. 26, 1990).

[10] The Commission notes that, at its hearing, counsel for the Housing Provider asserted that the District's general savings clause, recited *supra*, only applies to criminal cases. Hearing CD (RHC Feb. 19, 2015). Counsel for the Housing Provider did not provide any statutory, regulatory, or case law support for this assertion. *Id.* The Commission is satisfied, based on the plain language of D.C. OFFICIAL CODE § 45-404(a), that the general savings provision was meant to apply to "any act" of the Council, not just those governing criminal conduct. D.C. OFFICIAL CODE § 45-404(a); *see also* <u>Parreco v. D.C. Rental Hous. Comm'n</u>, 567 A.2d 43, 46 (D.C. 1989) ("[t]he primary rule of statutory construction is that the intent of the legislature is to be found in the language which it has used").

2008[11] through May 12, 2010 (the date of the final evidentiary hearing), and thus the Tenant's claims in this appeal by definition were not claims occurring prior to the amendment of the Act on August 5, 2006, nor involved the award of any damages prior to the amendment of the Act on August 5, 2006. Final Order at 10, 12-13, 20-22; R. at 154-56, 163-64, 166. Accordingly, the Commission determines that there were no claims at issue in the Tenant Petition that even arguably required the application of a savings clause. *Id.*

For all of the foregoing reasons, the Commission is satisfied that the ALJ did not err by failing to dismiss the Tenant Petition for lack of subject matter jurisdiction, and thus affirms on this issue. 14 DCMR § 3807.1.

C. Tenant Petitioner reached a settlement of a landlord-tenant action in the Superior Court which effectively settled and released all claims, according to its terms. Tenant Petitioner's claims herein were merged into that court settlement and she was therefore barred by res judicata/collateral estoppel from seeking further relief herein.

The Commission observes that the Housing Provider's issue C, recited above, relates to whether the claims in the Tenant petition were barred by either *res judicata* or collateral estoppel. Second Notice of Appeal at 1. The Commission previously resolved this issue in its Initial Decision and Order, determining that the Housing Provider had waived this issue by failing to raise it before the ALJ, and dismissing the issue on appeal. *See* Initial Decision and Order at 20-25.

[11] The ALJ determined, and neither party has contested, that the Tenant's claims were limited to those occurring after December 11, 2008, the date through which the Tenant received the benefit of a settlement agreement. Final Order at 10; R. at 166.

The Commission determines that the "law of the case" doctrine applies, and thus dismisses this issue on appeal.[12] *See, e.g.*, Morris, RH-TP-06-28,794; Carmel Partners, Inc., RH-TP-06-28,830 & RH-TP-06-28,835; *see also* Thoubboron, 809 A.2d at 1215; Lenkin Co. Mgmt., 677 A.2d at 48; Lynn, 617 A.2d at 970.

D. The Office of Administrative Hearings erred in awarding interest on the award to Tenant Petitioner, because there is no statutory authority for it to do so, and because Tenant Petitioner's rent charge [sic] was *prima facie* lawful, i.e. did not exceed the maximum amount the Housing Provider was permitted to charge under the Rental Housing Act, based on the Act's filing requirements and authorized rent and rent ceiling adjustment[s].

The Commission observes that the Housing Provider's issue D, recited above, raises the following two (2) separate and distinct issues: (1) whether the ALJ erred in awarding interest "because there is no statutory authority for it to do so;" and (2) whether the ALJ erred in awarding interest because the Tenant's "rent charged was prima facie lawful." Notice of Appeal at 2. The Commission notes that the Housing Provider elected not to brief these issues on appeal, and thus has provided neither statutory authority from the Act nor cited applicable case law to support its contentions.

1. Whether the ALJ erred in awarding interest "because there is no statutory authority for it to do so."

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[12] The Commission is satisfied that (1) extraordinary circumstances are not present in this case; (2) no new evidence was either proffered or admitted on remand; (3) the Housing Provider has not cited or otherwise provided controlling authority from the Act or applicable case law that contradicts the Commission's Initial Decision and Order; and (4) the Housing Provider has not directly asserted or even opined that the Commission's prior decision on this issue was "clearly erroneous" or would "work a manifest injustice." Second Notice of Appeal at 1; *see* Thoubboron, 809 A.2d at 1215; Lenkin Co. Mgmt., 677 A.2d at 48; Lynn, 617 A.2d at 970.

The Commission has consistently upheld an ALJ's authority to award interest in cases arising under the Act, based on 14 DCMR § 3826.1.[13] Morris, RH-TP-06-28,794 (RHC Dec. 23, 2013) (affirming ALJ's award of interest based on 14 DCMR § 3826.1); *see, e.g.*, Gelman Mgmt. Co. v. Grant, TP 27,995, TP 27,997, TP 27,998, TP 28,002, & TP 28,004 (RHC Aug. 19, 2014) (stating that the Commission "has long recognized the [Rent Administrator's] authority to award interest under 14 DCMR § 3826.1"); Schauer v. Assalaam, TP 27,084 (RHC Dec. 31, 2002) (affirming hearing examiner's award of simple interest on a rent refund); H.G. Smithy Co. v. Arieno, TP 23,329 (RHC Aug. 7, 1998) (holding that the hearing examiner had the authority to award interest); Handy v. Littleford, TP 11,930 (RHC Nov. 26, 1986) (rejecting landlord's contention that the Rent Administrator lacks the authority to award interest). Where the Housing Provider has not offered any statutory, regulatory, or case law authority to support its contentions on this issue, the Commission is guided by, and relies upon, its extensive precedent cited above, and thus affirms the ALJ on this issue. 14 DCMR §§ 3807.1, 3826.1; Grant, TP 27,995, TP 27,997, TP 27,998, TP 28,002, & TP 28,004; Morris, RH-TP-06-28,794; Schauer, TP 27,084; H.G. Smithy Co., TP 23,329; Handy, TP 11,930.

2. Whether the ALJ erred in awarding interest because the Tenant's "rent charged was prima facie lawful."

The Commission observes that the Housing Provider's statement of issue D(2) in the Second Notice of Appeal, recited *supra*, is the first instance that the Housing Provider alleged error in the ALJ's determination that the Tenant's rent charged was unlawful. *See* Second Notice of Appeal; *cf.* First Notice of Appeal; Housing Provider's Brief. This allegation of error was not

[13] 14 DCMR § 3826.1 provides as follows: "The Rent Administrator or the Rental Housing Commission may impose simple interest on rent refunds, or treble that amount under § 901(a) or § 901(f) of the Act." As noted *supra* at n.1, OAH assumed jurisdiction over tenant petitions from the Rent Administrator pursuant to the OAH Establishment Act, D.C. OFFICIAL CODE § 2-1831.03(b-1)(1) (2005 Supp.), including jurisdiction to hold hearings and issue decisions.

raised in the First Notice of Appeal, or at any other time before the Commission or the ALJ. First Notice of Appeal; *see* Final Order After Remand at 1-7; R. at 374-80; Final Order at 1-22; R. at 154-75.

Under the Act and its regulations, the time limits for filing an appeal with the Commission are mandatory and jurisdictional. *E.g.,* Allen v. L.C. City Vista LP, RH-TP-12-30,181 (RHC Apr. 29, 2014); Kuratu v. Ahmed, Inc., RH-TP-07-28,985 (RHC Feb. 28, 2014); Shipe v. Carter, RH-TP-08-29,411 (RHC Sept. 18, 2012). In accordance with 14 DCMR § 3802.2, a party has ten (10) days from the issuance of a final decision, plus three (3) days if the decision was mailed, to file an appeal with the Commission. 14 DCMR §§ 3802.2, 3816.3.[14]

The Commission's review of the record reveals that the ALJ's findings of fact and conclusions of law regarding the legality of the Tenant's rent charged were contained exclusively in the Final Order; the Final Order After Remand addressed only those specific issues remanded to OAH by the Commission's Initial Decision and Order.[15] *Compare* Final Order at 10-22; R. at 154-66, *with* Final Order After Remand at 2-7; R. at 374-79. Therefore, the Commission determines that the Housing Provider had ten (10) days (plus three (3) days if the decision was mailed) from the issuance of the Final Order to appeal issues that were contained exclusively therein. 14 DCMR § 3802.2; *compare* Final Order at 10-22; R. at 154-66, *with* Final Order After

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

14 DCMR § 3816.3 provides the following: "When the time period prescribed or allowed is ten (10) days or less, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation."

[15] The issues addressed in the Final Order After Remand are described *supra* at 3-4.

Remand at 2-7; R. at 374-79. Since the Final Order was issued on December 15, 2010, the Housing Provider had until January 5, 2011 to file an appeal related to the legality of the Tenant's rent charged.[16] 14 DCMR §§ 3802.2, 3816.3. The Commission observes that the Second Notice of Appeal, filed on October 2, 2014, and alleging error for the first time regarding the ALJ's determination of the illegality of the rent charged to the Tenant, was filed more than three (3) years after the expiration of the time period in which to file an appeal from the Final Order. 14 DCMR § 3802.2; Second Notice of Appeal.

Accordingly, the Commission determines that the Housing Provider's challenge to the ALJ's determination of the illegality of the rent charged to the Tenant did not comply with the Act's applicable filing regulations for appeals at 14 DCMR §§ 3802.2, 3816.3, and was thus untimely. *See* Second Notice of Appeal. The Commission dismisses this issue on appeal for untimely filing and subsequent lack of jurisdiction.[17] *See* 14 DCMR §§ 3802.2, 3816.3; *see also* Allen, RH-TP-12-30,181; Kuratu, RH-TP-07-28,985; Shipe, RH-TP-08-29,411.

E. The Administrative Law Judge's finding that there was a reduction in services and facilities was arbitrary and capricious, there being no evidence that the housing code violations of which the Campbell [sic] complained constituted a reduction in services, or were the result of such a reduction.

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[16] The Commission notes that the Christmas Day and New Year's Day holidays, as well as two (2) weekends, occurred within the prescribed ten (10) day period. *See* 14 DCMR §§ 3802.2, 3816.3. The Commission also notes that its calculations included an additional three (3) day period for mailing. *See* 14 DCMR § 3802.2.

[17] Additionally, the Commission notes that courts of appeals have routinely refused to consider issues that could have been, but were not raised in a prior appeal in the same litigation. *See, e.g.* Williamsburg Wax Museum, Inc. v. Historic Figures, Inc., 810 F.2d 243, 250 (D.C. Cir. 1987) ("Under the law of the case doctrine, a legal decision made at one stage of the litigation, unchallenged in a subsequent appeal when the opportunity to do so existed, becomes the law of the case for future stages of the same litigation, and the parties are deemed to have waived the right to challenge that decision at a later date"); Jung v. Jung, 844 A.2d 1099, 1106 n.7 (D.C. 2004) ("the scope of the trial court's authority on remand is necessarily limited by [the court of appeals'] jurisdiction and instructions"); *cf., e.g.,* Jones v. Brooks, 97 A.3d 97, 100 n.1 (D.C. 2014) (issue preclusion "precludes the relitigation of specific facts or issues that have actually been decided in a previous case when those issues are essential to the case.").

The Commission observes that the Housing Provider's statement of issue E in the Second Notice of Appeal, recited *supra*, is the first instance that the Housing Provider alleged error in the ALJ's determination that services and/or facilities had been reduced. *See* Second Notice of Appeal; *cf.* First Notice of Appeal; Housing Provider's Brief. This allegation of error was not raised in the First Notice of Appeal, or at any other time before the Commission or the ALJ. First Notice of Appeal; *see* Final Order After Remand at 1-7; R. at 374-80; Final Order at 1-22; R. at 154-75.

The Commission's review of the record reveals that the ALJ's findings of fact and conclusions of law regarding reductions in services and/or facilities were contained exclusively in the Final Order. *Compare* Final Order at 10-22; R. at 154-66, *with* Final Order After Remand at 2-7; R. at 374-79. As the Commission described in its discussion of issue D(2), *supra* at 15-16, the Housing Provider had (10) days from the issuance of the Final Order to appeal issues that were contained exclusively therein, plus three (3) days if the decision were mailed. 14 DCMR § 3802.2; *compare* Final Order at 10-22; R. at 154-66, *with* Final Order After Remand at 2-7; R. at 374-79. The Second Notice of Appeal, filed on October 2, 2014 and alleging error for the first time in the ALJ's determination that services and/or facilities had been reduced, was filed more than three (3) years after the expiration of the time period in which to file an appeal from the Final Order, and was thus untimely. 14 DCMR § 3802.2; Second Notice of Appeal. The Commission dismisses this issue for untimely filing and subsequent lack of jurisdiction.[18] Allen, RH-TP-12-30,181; Kuratu, RH-TP-07-28,985; Shipe, RH-TP-08-29,411.

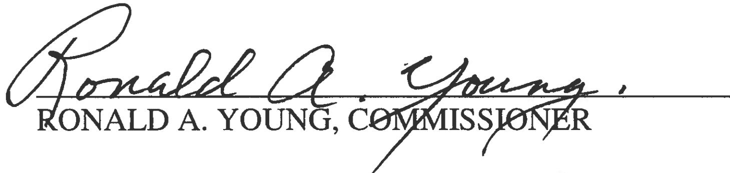
[18] *See supra* at n.17.

VII. CONCLUSION

Based on the foregoing, the Commission dismisses the Housing Provider's issues A, C, D(2) and E. The Commission affirms the ALJ on issues B and D(1).

SO ORDERED

PETER B. SZEGEDY-MASZAK, CHAIRMAN



RONALD A. YOUNG, COMMISSIONER

MOTIONS FOR RECONSIDERATION

Pursuant to 14 DCMR § 3823 (2004), final decisions of the Commission are subject to reconsideration or modification. The Commission's rule, 14 DCMR §3823.1 (2004), provides, "[a]ny party adversely affected by a decision of the Commission issued to dispose of the appeal may file a motion for reconsideration or modification with the Commission within ten (10) days of receipt of the decision."

JUDICIAL REVIEW

Pursuant to D.C. OFFICIAL CODE § 42-3502.19 (2001), "[a]ny person aggrieved by a decision of the Rental Housing Commission ... may seek judicial review of the decision ... by filing a petition for review in the District of Columbia Court of Appeals." Petitions for review of the Commission's decisions are filed in the District of Columbia Court of Appeals and are governed by Title III of the Rules of the District of Columbia Court of Appeals. The court may be contacted at the following address and telephone number:

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

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing **DECISION AND ORDER** in **RH-TP-09-29,715** was mailed, postage prepaid, by first class U.S. mail on this **11th day** of **March, 2015** to:

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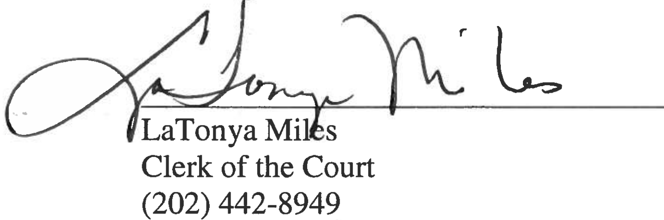

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