DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION

RH-TP-11-30,151

In re: 2300 Good Hope Road, SE, #901

Ward Eight (8)

TONICA WASHINGTON
Tenant/Appellant

v.

A&A MARBURY, LLC/UIP PROPERTY MANAGEMENT
Housing Providers/Appellees

DECISION AND ORDER

September 28, 2018

SPENCER, CHAIRMAN: This case is on appeal to the Rental Housing Commission ("Commission") from a final order issued by the Office of Administrative Hearings ("OAH"),[1] based on a petition filed in the Rental Accommodations Division ("RAD") of the Department of Housing and Community Development ("DHCD"). 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 (2012 Repl.), the District of Columbia Administrative Procedure Act ("DCAPA"), D.C. OFFICIAL CODE §§ 2-501-510 (2010 Repl.), and the District of Columbia Municipal Regulations ("DCMR"), 1 DCMR §§ 2800-2899 (2010), 1 DCMR §§ 2920-2941 (2010), and 14 DCMR §§ 3800-4399 (2004), govern these proceedings.

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[1] OAH assumed jurisdiction over tenant petitions from the Rental Accommodations and Conversion Division ("RACD") of the Department of Consumer and Regulatory Affairs ("DCRA") pursuant to the OAH Establishment Act, D.C. OFFICIAL CODE § 2-1831.01 -1831.03(b-1)(1) (2007 Repl.). The functions and duties of RACD were transferred to DHCD by § 2003 of the Rental Housing Operations Transfer Amendment Act of 2007, D.C. Law 17-20, D.C. OFFICIAL CODE § 42-3502.04B (2010 Repl.).

I. PROCEDURAL HISTORY[2]

On November 10, 2011, tenant/appellant Tonica Washington ("Tenant") filed tenant petition RH-TP-11-30,151 ("Tenant Petition") with RAD in relation to the housing accommodation located at 2300 Good Hope Road, S.E., unit 901 ("Housing Accommodation"), claiming that housing providers/appellees A&A Marbury, LLC/UIP Property Management ("Housing Providers") violated the Act as follows:

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

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

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

Tenant Petition at 2; R. at 85.

On June 7, 2012, Administrative Law Judge Margaret A. Magnan ("ALJ") issued a final order dismissing the Tenant Petition with prejudice ("First Final Order"): Washington v. A&A Marbury, LLC/UIP Prop. Mgmt., RH-TP-11-30,151 (OAH June 7, 2012) at 1, 8; R. at 112, 119. On August 13, 2012, the Tenant, *pro se*,[3] filed a timely notice of appeal with the Commission ("First Notice of Appeal"). First Notice of Appeal at 1-4.

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[2] The complete history and procedural background of this case prior to, and including, the Commission's initial remand of the matter to the OAH is contained in the Commission's decision and order in Washington v. A&A Marbury, LLC/UIP Prop. Mgm't, RH-TP-11-30,151 (RHC Dec. 27, 2012). Therefore, those aspects of the history and procedural background of this case are incorporated by reference and will be cited where statements regarding the procedures of this case are necessary.

[3] The Commission is "mindful of the important role that *pro se* litigants play in the enforcement of the Act," Wassem v. Klingle Corp., RH-TP-08-29,489 (RHC Nov. 17, 2016). Courts have "long recognized that *pro se* litigants can face considerable challenges in prosecuting their claims without legal assistance." Kissi v. Hardesty, 3 A.3d 1125, 1131 (D.C. 2010) (citing Hudson v. Hardy, 412 F.2d 1091, 1094 (D.C. Cir. 1968)). Especially in cases involving remedial statutes like the Act, courts and administrative agencies have been more disposed "to grant leeway to" *pro se* litigants. Macleod v. Georgetown Univ. Med Ctr., 736 A.2d 977, 980 (D.C. 1999). "[A] court must construe pro se pleadings liberally[.]" Flax v. Schertler, 935 A.2d 1091, 1107 n.14 (D.C. 2007).

The Commission issued a decision and order on December 27, 2012: Washington v. A&A Marbury, LLC/UIP Prop. Mgm't, RH-RP-TP-11-30,151 (RHC Dec. 27, 2012) ("First Commission Decision"); R. at Tab 1. In the First Commission Decision, the Commission: (1) reversed the ALJ's dismissal of the Tenant's claim that the rent charge filed with RAD exceeded the legally calculated rent; (2) remanded the case to the OAH for an evidentiary hearing for the admission of the Settlement Agreement into evidence and to allow the parties to present testimony on the bases of the Tenant's requested relief and the Tenant's claim that the rent charge filed with RAD exceeded the legally calculated rent; and (3) remanded the First Final Order for revision by OAH with specific attention to full compliance with the requirements of the DCAPA, as articulated in Perkins v. D.C. Dep't of Emp't Servs., 482 A.2d 401, 402 (D.C. 1984). First Commission Decision at 24-25.

On March 27, 2013, the ALJ held an evidentiary hearing on remand,[4] and subsequently issued a new final order on August 20, 2013, dismissing the Tenant Petition with prejudice: Washington v. A&A Marbury, LLC/UIP Prop. Mgmt., RH-TP-11-30,151 (OAH Mar. 27, 2013) ("Final Order After Remand") at 2; R. at Tab 15. On August 30, 2013, the Tenant filed a motion for reconsideration ("Motion for Reconsideration"), requesting the ALJ to issue a final order that addresses her claims of housing code violations, complies with the Commission's First Decision and explains why the Housing Providers' rent filings are not illegal. Motion for Reconsideration at 1-6; R. at Tab 16. On November 14, 2013, the ALJ partially granted the motion for reconsideration "for the limited purpose of addressing the reasons why Tenant's claims related to

[4] During the hearing on remand, the ALJ granted the Tenant's motion to amend the Tenant Petition to allege that the rent adjustment filed with the RAD for November 2012 exceeded the legally calculated rent for the Housing Accommodation. *See* OAH Final Order dated August 20, 2013 (Post-Remand Final Order) at 2; R. at Tab 15; Final Order After Remand at 2; R. at 21.

alleged housing code violations are dismissed in a manner consistent with" the First Commission Decision. Order Granting in Part and Denying in Part Motion for Reconsideration at 3; R. at Tab 20; s*ee also* Amended Final Order After Remand ("Amended Final Order") at 2; R. at Tab 21.

In the Amended Final Order, as amended, the ALJ made the following findings of fact related to the merit of the Tenant Petition:

A. Tenancy and Settlement

1. Tenant has lived at 2300 Good Hope Road Unit 901 since June 1998 (Washington, 3/7/13, 10:31). In February 2009, Respondent UIP Property Management took over as manager of the Property as part of a global settlement agreement between tenants and the owner concerning the building's upkeep.

2. To settle an action between Tenant and Housing Provider, the parties signed a Settlement Agreement on May 20, 2011, with both parties represented by counsel. (Washington, 3/27/13, 10:33; PX 123). The agreement included these relevant provisions:

    a. The seven page agreement settled a claim for possession Housing Provider had filed against Tenant for nonpayment of rent. *AA Marbury t/a Marbury Plaza Apts. v. Toni Washington*, 2009 LTB 033097. PX 123, at 1. Tenant agreed to settle a tenant petition then pending.

    b. The agreement provided that Tenant's rent beginning June 1, 2011, was $565 per month.

    c. The parties agreed that Housing Provider could take "yearly rental increases in the 'Market Rent,' as permitted by applicable law. Said increases may be in an amount equal to the adjustment of the Consumer Price Index plus two percent (2%) or other amounts approved by the Rent Administrator or by operation of law." § 2.3.1 b. The next increase for Tenant was scheduled for November 2011.

    d. Tenant was granted a 50% reduction in the amount of rent in arrears at the time of the agreement. § 2.3.2 a. The parties also agreed that there was a zero balance on Tenant's account as of the date of the Settlement Agreement.

    e. Housing Provider agreed to make specific repairs in Tenant's rental unit. § 3.

3. The Settlement Agreement did not state that the $565 amount would be the rent filed with the RAD nor did it define "Market Rent."

B. Unlawful Rent Demand and Rent Increases Claim

4. On September 22, 2011, Housing Provider filed a Notice to the Housing Regulation Administration reflecting an annual Consumer Price Increase-based rent increase for Tenant's Unit (#901) from $620 to $646 ($26 increase) effective November 1, 2011. PX 126.

5. On September 24, 2012, Housing Provider sent Tenant a Notice of [R]ent [I]ncrease from $646 to $682 ($36 increase), based on the Consumer Price Index. PX 135.

6. In a letter dated January 26, 2012, Housing Provider's counsel explained to the Tenant that the November 1, 2011, 4.2% increase had mistakenly been calculated using the Market Rent ($620) instead of the Settlement Rent ($565). Housing Provider adjusted the rent increase to $24, making the new rent $589. PX 129. However, in a separate communication, representative of the Housing Provider stated that the rent adjustments were based on the Market Rent, rather than the rent agreed to in the Settlement Agreement. PX 140.

7. An account ledger and email communication between Tenant and Housing Provider show that Tenant received monthly rent concessions from stated rent charged.

8. Rent concessions were permanent concessions granted to tenant for the duration of her tenancy. PX 140. However, the term "concession" does not appear in the agreement.

9. The account ledger documents that the rent concession led to an actual rent charged of $565 after the November 2011 rent increase and an actual rent charged of $601 after the November 2012 rent increase. (PX 137).

10. Tenant understood the May 2011 Settlement Agreement to mean that her current rent would be $565, and not the amount filed with the RAD. (Washington, 3/27/13, 10:34). Tenant also understood that the Settlement Agreement provided that rent increases would be based on the reduced rent amount and not the rent amount on the account ledger. *Id.* Tenant refused to sign a Lease Addendum which would have specified rent concessions as part of the Settlement Agreement and disputes any discussion of rent concessions as part of the Agreement. (Washington, 3/27/13 11:34; 10:42).

11. In February 2012, Housing Provider filed a complaint in D.C. Superior Court Landlord/Tenant Branch demanding $2,292.30 total rent due from 11/01/11 to 2/28/12, a total of $565 for each of those four months, not including a $32.30 late fee. (PX 132). Later, Housing Provider amended

its demand by adding $220 due to a clerical error which mistakenly gave Tenant a rent concession of $55 in addition to the $81 concession already granted. (Washington, 3/27/13 11:34; PX 131).

C. Reductions in Services and Facilities (from the 2012 hearing)

12. Claimant observed "a couple of" cockroaches in her unit. Management provides weekly extermination services and had exterminators on site three days a week. Tenants may ask for additional extermination in their unit if they need it. Tenant did not request additional treatments.

Amended Final Order at 2-4 (footnotes omitted); R. at Tab 21.

The ALJ made the following conclusions of law in the Amended Final Order related to the merits of the Tenant Petition:[5]

1. *The Rental Housing Commission wrote that the original order did not address Tenant's claim that "the rent charge filed with the RAD exceeded the legally-calculated, as well as the Tenant's requested relief for such claim. Washington v. A&A Marbury, LLC at 17. And, the RHC required more support for the conclusion that Tenant did not prove an infestation of cockroaches, Id. at 23, n.13, the issue addressed first in this Order.*[6]

A. Reduction in Services and Facilities

2. *The Rental Housing Act provides that where "related services or related facilities supplied by a housing provider for a housing accommodation . . . are substantially increased or decreased, the [Administrative Law Judge] may increase or decrease the rent charged, as applicable, to reflect proportionally the value of the change in services or facilities." D.C. Official Code § 42.3502.11. In turn, an Administrative Law Judge may award a rent refund to the tenant if the housing provider "substantially reduces or eliminates related services previously provided for a rental unit." D.C. Official Code § 42.3509.01(a).*

3. *In order to prevail on a claim, a tenant must first establish that the reduction in question was a "related service" or "related facility." The Act defines "related services" as:*

   Services provided by a housing provider, required by law or by the terms of a rental agreement, to a tenant in connection with the use and occupancy

[5] The Commission recites the findings of fact using the same language and terms as used by the ALJ in the Amended Final Order except that the Commission has numbered the ALJ's conclusions of law for ease of reference.

[6] The ALJ used italicized font to denote the additions she made to the First Final Order when she attempted to comply with the First Commission Decision. *See* Amended Final Order at 1; R. at Tab 21

of a rent unit, including repairs, decorating and maintenance, the provision of light, heat, hot and cold water, air conditioning, telephone answering or elevator services, and its related facilities.

D.C. Official Code § 42-3401.03(27). Tenant's complaint of cockroaches in her unit is a claim for reduction in extermination services.

4. *The Rental Housing Commission has held that the reduction in services provision of the Act "was drafted to ensure that housing providers provide services required by [the] D.C. Housing Code." Cascade Park Apts. Walker, TP-26, 197 (RHC Jan. 14, 2005) at 22 (citing Shapiro v. Comer, TP-21,742 (RHC August 19, 1993) at 20). The D.C. Housing Code identifies an infestation of insects and rodents as a housing code violation. 14 DCMR 4216.2(i). An infestation would also be a substantial reduction in related extermination services. To infest means "to inhabit or overrun in numbers large enough to be harmful, threatening, or obnoxious." The American Heritage College Dictionary, Third Edition (2000). For a rental unit to be infested with cockroaches, therefore, the number would need to be more than the "couple" Tenant described. Hence, she did not prove an infestation of cockroaches. Further, as addressed in the 2012 Final Order, Tenant failed to avail herself of extermination services Housing Provider made available to all tenants.*

B. Did Housing Provider unlawfully demand a higher rent than the Act and the Settlement Agreement allowed?

5. *Tenant claims that the rent charge exceeded the legal rent. She seeks a rent rollback to $565 and a refund of $1,810. Feb. 2, 2012 hearing at 10:11. After the second hearing, it became clear* that the real issue in this case is whether a housing provider may preserve rent increases for a particular rental unit by filing rent increases with the RAD while adhering to a contract with an individual tenant for a lower rent.

6. Under the Act, rent means "the entire amount of money, money's worth, benefit, bonus, or gratuity demanded, received, or charged by a housing provider as a condition of occupancy or use of a rental unit, its related services, and its related facilities." D.C. Official Code § 42-3501.03. A Housing Provider's demand for rent triggers an award of damages. *See 1773 Lanier Pl. NW Tenants' Assoc. v. Drell,* TP 27,344 (RHC, Sept. 9, 2009). A rent refund is based on the amount of rent demanded, not the amount of rent actually paid. *See Kapusta v. D.C. Rental Hous. Comm'n,* 704 A.2d 286 (D.C. 1997); *Schauer v. Assalaam,* TP 27,084 (RHC Dec. 31, 2002). Although a demand for rent increase can trigger damages, there may be situations in which the mere demand does not rise to the level of seriousness or harm to justify a refund, e.g., where impact is minimal or demand is properly rescinded. *See Young v. Rybeck,* TP 21, 976 and 21,984

(RHC Jan. 28, 1992) (quoting *Ponte v. Flaser*, TP 11,609 (RHC Jan. 29, 1986)).

7. Tenant argues that Housing Provider had been demanding an unlawful higher rent because it filed a higher rent with the RAD than the one Tenant and Housing Provider agreed was Tenant's rent. Housing Provider responds by arguing that the actual rent charged to Tenant was indeed the rent outlined in the Settlement Agreement, but this rent resulted from an application of a rent concession by the Housing Provider, which brought down the rent filed with the RAD to the agreed upon rent. The discrepancy between the agreed-to rent and the rent amount filed with the RAD resulted from an application of a rent concession by the Housing Provider. Hence, the rent amount specified in filings with the RAD was higher than the agreed upon rent. However, Housing Provider never demanded that Tenant pay that amount. The District of Columbia Court of Appeals and Rental Housing Commission have not dealt with the issue of rent concessions directly; however, courts in New York, which is a similar rent controlled district, have addressed the issue with reasoning I find persuasive.

1. Rent Concession in New York

8. In New York, courts have held that a landlord's agreement to accept an amount lower than the legally permissible rent for a fixed period of time does not waive a landlord's right to demand the full rent when the concession expires. *See Missionary Sisters of the Sacred Heart v. N.Y. State. Div. of Hous. And Community Renewal*, 724 N.Y.S. 2d 742, 746 (N.Y. App. Div. 2001). If an agreement states that a rent concession will persist for the duration of the tenancy, a landlord cannot demand the full market rent later on in the tenancy. *See Rosenhein v. Heyman*, 854 N.Y.S. 2d 835 (N.Y. App. Term 2007) (holding that a lease which contained a clause which provided that a preferential rent would be charged for the duration of the tenancy could not be changed at a later lease renewal); *448 W. 54th St. Corp. v. Doig-Marx*, 784 N.Y.S. 2d 292 (N.Y. Civ. Ct. 2004) (holding that a one-year lease's term which provided that a preferential rent would be charged for the duration of the tenancy could not be changed in a lease renewal).

9. Here, Housing Provider used a method similar to the preferential rent and rent concession in New York. Housing Provider charged Tenant a preferential rent of $565 while maintaining a higher rent with the RAD. (FF No. 6). Like the tenants in *Rosenhein* and *Doig-Marx*, Tenant's agreement lasts for the duration of her tenancy. *See Rosenshein*, 854 N.Y.S.2d at 837, *Doig-Marx*, 784 N.Y.S. 2d at 295; (FF No. 6). Unlike the cases in New York, Housing Provider is not attempting to collect a higher rent or attempting to rescind the preferential rent, but it has attempted to collect the agreed upon rent in D.C. Superior Court. (FF No. 11). The Settlement Agreement never expressly outlined rent concessions as a means to get to the preferential rent, which caused Tenant's misunderstanding of the terms

outlined. (FF. No. 2, 3, 9). But it noted a difference between the rent charged to Tenant and another forms [sic] of rent where it provides "The Parties Agree that the Housing Provider may take yearly rental increases in the Market Rent." (FF No. 3). Additionally, an email communication between Tenant and Housing Provider's counsel emphasized this difference in rents by apologizing for a rent increase that was based on the Market Rent and not the Settlement Rent. (FF. No 4).

10. Hence, I interpret this method used by Housing Provider as a rescission of the rent demanded in order to meet its contractual obligation in the Settlement Agreement.

2. Tenant's Rent Increases

11. Housing Provider recorded a higher rent with RAD than it charged Tenant. At no time after the agreement did Housing Provider charge Tenant more than they had agreed. (FF No. 6). Although it is understandable that Tenant might be confused on the method Housing Provider used in meeting its obligations, especially when this method was never expressly stated in the Settlement Agreement. Housing Provider opened this possibility by differentiating the rents charged by referencing the Market Rent in the Settlement Agreement. (FF No. 3). The reference to a Market Rent means that more than one type of rent was always involved in the creation of the Settlement Agreement. *Id.* While Housing Provider never expressly stated the method of charging Tenant's preferential rent, this does not mean that Housing Provider caused harm to Tenant by wrongfully demanding a higher rent than agreed upon.

12. Following the agreement, Housing Provider charged Tenant a preferential rent of $565, a lower rent than the official "rent charged" as filed with the RAD. (FF No. 6). The Notice of rent increases and the filings with the RAD represent a higher rent than allowed in the Settlement Agreement, but Housing Provider did not charge Tenant the higher rent.

13. Generally, a housing provider has the right to increase rent annually in a rental unit by "2% plus the adjustment of general applicability," but no greater than 10% (and no more than the lower of 5% or adjustment of general applicability for an elderly or disabled tenant.) D.C. Official Code § 42-3502.08. To preserve that right, however, a housing provider must send the tenant a timely notice of the rent increase with a copy to the Rent Administrator. 14 DCMR 4205.4. In a case such as this when Housing Provider has agreed to charge Tenant a lower rent, a rent concession allows Housing Provider to meet that obligation, while preserving adjustments of general applicability for future tenants.

14. Furthermore, using the Settlement Agreement rent to adjust a rent increase would have led to a rent charge of $589 after November 2011 and $622 after

November 2012, more than the rent demanded as reflected in the account ledger. PX 137. The ledger reveals that the rent concession took the rent charged to $565 instead of the allowable $589 in 2011, and $601 instead of $622 in 2012. (FF No. 7, 8). This means that Housing Provider charged Tenant a lower rent than the Settlement Agreement provided.

15. The account ledger demonstrates an ongoing effort by Housing Provider to abide by the Agreement with Tenant. Although the rent concessions were never expressly stated in the agreement, the monthly rent concessions were immediate and Tenant never paid and was never expected to pay the higher amount filed with the RAD. Hence, Tenant was under no obligation to pay more than what was specified in the parties' agreement and there was no "demand" from Housing Provider for the higher rent.

16. Because Tenant has not proven illegal rent increases, it is not necessary to address the issue of treble damages.

17. At most, the circumstances seen here amount to miscommunication between the parties. While the Settlement Agreement, on its face, deals with two rents, it does not expressly state the rent concession method or provide a definition of "Market Rent." (FF No. 3). This meant that the Tenant understood the agreement to mean that her rent was $565, rather than $620 with a monthly rescission. (FF No. 9). This miscommunication also existed with the matter of rent increases where a representative of the company stated one interpretation and counsel for Housing Provider stated another. (FF No. 4). However, Housing Provider promptly rescinded its higher amounts to meet its contractual obligations.

Amended Final Order at 5-9; R. at Tab 21.

The Tenant filed a timely notice of appeal with the Commission on August 18, 2015 ("Second Notice of Appeal"), which states:

1. No Findings of Fact or Conclusions of Law Regarding Reductions in Services/Facilities; No Citations to Evidence. The ALJ, in her amended order, addressed only an alleged roach infestation. She did not address numerous other reductions in services/facilities alleged by Tenant. Accordingly, she has not resolved the Commission's concerns, in its Order in this matter, dated December 27, 2012, regarding findings of fact and conclusions of law.

2. False Rent-Control Filings. The ALJ erred in concluding, on the one hand that "Housing Provider recorded a higher rent with RAD than it charged Tenant" but on the other hand failing to address Tenant's contention that such recording/filing was in violation of the Rental Housing Act of 1985, and failing to grant any relief.

3. Rent Charged. The ALJ erred in concluding that the "rent charged" was $565, $601, and $622.

4. Addition of New Owner. The ALJ erred in denying Tenant's motion to add Marbury Real Estate, LLC, as a party to the [T]enant [P]etition.[7]

Second Notice of Appeal at 1-2.

On April 18, 2017, the Tenant, through counsel, filed a brief on appeal ("Tenant's Brief"). On May 17, 2017, the Housing Providers, through counsel, filed their brief in opposition to the Tenant's Brief ("Housing Providers' Brief"). On May 9, 2017, the Commission held a hearing at which both parties appeared. Hearing CD (RHC May 9, 2017) at 11:00.

II. ISSUES ON APPEAL[8]

A. Whether the ALJ erred in concluding that the Housing Provider did not unlawfully demand rent greater than allowed by the Act.

B. Whether the ALJ erred by failing to make findings of fact and conclusions of law on each claim of reductions in related services or facilities.

III. DISCUSSION

A. Whether the ALJ erred in concluding that the Housing Provider did not unlawfully demand rent greater than allowed by the Act.

In the Amended Final Order, the ALJ determined the Act permitted the Housing Providers to charge the Tenant one amount for rent while also reporting the Tenant's rent was a different (and higher) amount in relevant RAD forms. Amended Final Order at 6-9; R. at Tab 21. The Tenant contends the ALJ's determination violates the Act because it permits the Housing Provider to "create[] two rent levels:" (1) the actual rent the Tenant is required to pay

[7] The Tenant informed the Commission that she was "not pursuing" this issue on appeal. Hearing CD (RHC May 19, 2017) at 11:06-11:07.

[8] The Commission has summarized the issues stated by the Tenant in the Post-Remand Notice of Appeal.

and (2) an inflated rent amount the Housing Provider records in Act-related notices. Tenant's Brief at 4. The Housing Providers contend the Act permits it to preserve a "higher, legal rent for a unit" by recording the "higher, legal rent" in Act-related notices even though the Tenant is "not responsible for paying the full amount[s] identified in" those notices. Housing Providers' Brief at 5-7.

The Commission's standard of review is contained in 14 DCMR § 3807.1 and provides the following:

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

The Commission will sustain an ALJ's finding of fact so long as it is supported by substantial evidence. *See* D.C. OFFICIAL CODE § 42-3502.16(h); Majerle Mgmt. v. D.C. Rental Hous. Comm'n, 866 A.2d 41, 46 (D.C. 2004); Dep't. of Hous. & Cmty. Dev. v. 1433 T St. Assocs. LLC, RH-SC-06-002 (RHC May 21, 2015); Bower v. Chaselton Assocs., TP 27,838 (RHC March 27, 2014); *see also* Munchison v. D.C. Dep't. of Pub. Works, 813 A.2d 203, 205 (D.C. 2002). The Commission has consistently defined substantial evidence as "such relevant evidence as a reasonable mind might accept as able to support a conclusion." *See* Fort Chaplin Park Assocs. v. D.C. Rental Hous. Comm'n, 649 A.2d 1076, 1079 n.10; Eastern Savings Bank v. Mitchell, RH-TP-08-29,397 (RHC Oct. 31, 2012); Marguerite Corsetti Trust v. Segreti, RH-TP-06-28,207 (RHC Sept. 18, 2012); Jackson v. Peters, RH-TP-12-28,898 (RHC Feb. 3, 2012). The Commission will review legal questions raised by an ALJ's interpretation of the Act *de novo* (anew) to determine if they are unreasonable or embody a material misconception of the law. *See* United Dominion Mgmt. Co. v. D.C. Rental Hous. Comm'n, 101 A.3d 426, 430-31 (D.C. 2014); Dorchester House Assocs. Ltd. P'ship v. D.C. Rental Hous. Comm'n, 938 A.2d 696, 702

(D.C. 2007) (citing Sawyer Prop. Mgmt. of Md. v. D.C. Rental Hous. Comm'n, 877 A.2d 96, 102-03 (D.C. 2005)); Gelman Mgmt. Co. v. Campbell, RH-TP-09-29,715 (RHC Dec. 23, 2013); Carpenter v. Markswright, RH-TP-10-29,840 (RHC June 5, 2013).

1. Statutory Meaning of Rent Charged

Under the Act, "rent" is defined as "the entire amount of money, money's worth, benefit, bonus, or gratuity demanded, received, or charged by a housing provider as a condition of occupancy or use of a rental unit, its related services, and its related facilities." D.C. OFFICIAL CODE § 42-3501.03(28); Wilson v. D.C. Rental Hous. Comm'n, 159 A.2d 1211, 1216 (D.C. 2017); *see also* Akassy v. William Penn Apartments, LP, 891 A.2d 291, 300 (D.C. 2006) (contractual meaning of "rent" interpreted in accordance with governing law in effect). As the Commission explained in Fineman v. Smith Property Holdings Van Ness LP, RH-TP-16-30,842 (RHC Jan. 18, 2018) at 19-26, the Act is in many places ambiguous in the use of the phrase "rent charged," which was used to replace the "rent ceiling" system in effect prior to 2006.[9] The Commission determined that the legislative history and purposes of the Act demonstrate that "rent charged" is used in the same manner and with the same meaning as "rent," that is, the amount of money a tenant is actually demanded to or does pay to a housing provider. *Id.* at 26-31.

[9] Prior to the Rent Control Reform Amendment Act of 2006 (D.C. Law 16-145; 53 DCR 4889) ("2006 Amendments"), § 206(a) of the Act established "rent ceilings" for each rental unit covered by rent stabilization. D.C. OFFICIAL CODE § 42-3502.06(a) (2001). Rent ceilings "operate[d] as an upper bound on the amount of rent that a housing provider [was] allowed to charge a tenant." *See* Sawyer Prop. Mgmt., 877 A.2d at 110 (citing Winchester Van Buren Tenants Ass'n v. D.C. Rental Hous. Comm'n, 550 A.2d 51, 55 (D.C. 1988)). They were considered "the chief mechanism for rent stabilization in the District of Columbia" and designed to protect tenants against unconscionable rent increases. Winchester Van Buren, 550 A.2d at 55; *see* Redmond v. Majerle Mgmt. Inc., TP 23,146 (RHC Mar. 26, 2002). On August 5, 2006, the 2006 Amendments took effect, which abolished rent ceilings and rent ceiling adjustments by generally "striking out the phrase 'rent ceiling' wherever it appear[ed] and inserting the phrase 'rent charged' in its place." *See* D.C. Law 16-145 § 2.

In this case, the ALJ erred in her interpretation of the Act's requirements for a housing provider to report and serve notice of rent adjustments using RAD forms on which the prior and adjusted "rent charged" must be reported. Final Order at 6-8; R. at Tab 21. The ALJ, applying New York case law, determined that the "rent concession" embodied in the Settlement Agreement should be treated like a "preferential rent" under that jurisdiction's related but distinct rent stabilization program. *Id.* For the reasons the Commission explained in Fineman, this interpretation, and analogy to New York's "preferential rent" system, misconstrues the Act, which does not contain any specific provision for a "legally regulated rent" greater than that actually paid by a Tenant. RH-TP-16-30,842 at 26-31 & n.20; *cf.* 9 NYCRR § 2501.2.[10]

The record shows the parties entered into a Settlement Agreement, *see* Settlement Agreement at 1-7; R. at Tab 25, which set the "rent" at $565, effective June 1, 2011. Settlement Agreement at 3.

The parties do not dispute that, pursuant to the Settlement Agreement, effective June 1, 2011, the Tenant was only required to pay the Housing Providers $565 per month to occupy or use the Housing Accommodation. *Compare* Tenant's Brief at 2 ("A key provision in the Settlement Agreement is that Tenant's monthly rent going forward would be $565, effective June 1, 2011) *with* Housing Providers' Brief at 5 ("the rent for Unit 901 was decreased to $565 effective June 1, 2011").

The parties disagree about whether the Act permits the Housing Providers to charge the Tenant a certain amount for "rent" while reporting the Tenant's rent as a different (and higher)

[10] The Commission also observes that, under the New York regulations applied in the cases cited by the ALJ, 9 NYCRR § 2501.2(b), a "preferential rent" lease must contain both the lower amount to be paid by the tenant and the higher, "legal regulated rent." The Settlement Agreement in this case sets forth only one rent level, the $565 to be paid by the Tenant, and does not explicitly state that a higher amount would be on file with RAD or what that amount would be. *See* Settlement Agreement at 1-7; R. at Tab 25.

amount in Act-related notices. The Tenant asserts the Act prohibits this behavior, Tenant's Brief at 1-16; while the Housing Providers contend the Act does not prohibit them from using a "higher, legal rent" on these notices even if they provide the Tenant a perpetual "rent concession." Housing Providers' Brief at 5-7; *see also* Email from Housing Providers to Tenant at 2:52 p.m. on June 30, 2011 at 3; R. at Tab 41 (stating "the [rent] concession is in place to stay through the duration of your tenancy here at Marbury").

The Commission observes the ALJ made the following finding of fact about the "rent": "The agreement provided that Tenant's rent beginning June 1, 2011, was $565 per month." Amended Final Order at 3; R. at Tab 21. The ALJ also suggested the Act permits the Housing Provider to use a different (and higher) "rent" amount on RAD forms to preserve a maximum legal rent that was different (and higher) than the $565 the Tenant was expected to pay as rent, effective June 1, 2011. *Id.* at 6 – 9; R. at Tab 21.

The Commission reverses the ALJ's determination and remands the Tenant Petition to OAH for such further proceedings as are necessary to adjudicate the Tenants' claims, consistent with the legal standards enunciated in Fineman, RH-TP-16-30,842.

2. Lawfulness of Rent Charged to the Tenant

The penalty provision of the Act provides, in relevant part that:

> (a) Any person who knowingly (1) demands or receives any rent for a rental unit in excess of the maximum allowable rent applicable to that rental unit under the provisions of subchapter II of this chapter...shall be held liable by the Rent Administrator or the Rental Housing Commission, as applicable, for the amount by which the rent exceeds the applicable rent charged **or** for treble that amount (in the event of bad faith) **and/or** for a roll back of the rent to the amount the Rent Administrator or Rental Housing Commission determines.

D.C. OFFICIAL CODE § 42-3509.01(a) (emphasis added). The Act defines the term "rent" as follows: "the entire amount of money, money's worth, benefit, bonus, or gratuity demanded,

received, or charged by a housing provider as a condition of occupancy or use of a rental unit, its related services, and its related facilities." D.C. OFFICIAL CODE § 42-3501.03(28).

Both the District of Columbia Court of Appeals ("DCCA") and the Commission have stated that a housing provider's mere demand for rent more than the maximum allowable rent under the Act, without the requirement or proof of receipt or collection of payment, triggers the award of damages to tenants, including treble damages and/or a rent rollback.[11] *See* Kapusta v. D.C. Rental Hous. Comm'n, 704 A.2d 286, 287 (D.C. 1997) (upholding order for "rent refund" of money demanded but never received). *See e.g.,* 1773 Lanier Pl., N.W. Tenant's Ass'n v. Drell, TP 27,344 (Aug. 31, 2009); Laprade v. Klinberg, TP 27,920 (RHC June 22, 2005); Hamlin v. Daniel, TP 27,626 (RHC June 10, 2005).

To conduct its appellate review under 14 DCMR § 3807.1, the Commission will consider whether the ALJ made findings of fact on each material, contested factual issue, based her findings on substantial evidence, and made conclusions of law that flow rationally from those findings of fact. *See* Ahmed, Inc. v. Avala, RH-TP-28,799 (RHC Oct. 9, 2012); Falconi, RH-TP-07-28,879; Shipe v. Carter, RH-TP-08-29,411 (RHC Sept. 18, 2012). The ALJ made several findings of fact that the Housing Providers provided the Tenant rent ledgers, notices of rent increases, rent balance due notices, email communications, a signed letter from their counsel,

[11] In determining whether a housing provider is liable for treble damages, the Commission has established the following two-prong test: first, there must be a determination that the housing provider acted knowingly; and second, the housing provider's conduct must be "sufficiently egregious" to warrant a finding of bad faith. Caesar Arms, LLC v. Lizama, RH-TP-07-29,063 (RHC Sept. 27, 2013) (quoting Cascade Park Apartments v. Walker, TP 26,197 (RHC Jan. 14, 2005)). In finding that a housing provider has acted in bad faith, the evidence must demonstrate that the conduct was "'egregious, display[ed] a deliberate refusal to perform without a reasonable excuse and/or manifest[ed] dishonest intent, sinister motive, or heedless disregard of duty.'" 1773 Lanier Place, N.W. Tenants' Ass'n v. Drell, TP 27,344 (RHC Aug. 31, 2009) (quoting Vicente v. Jackson, TP 27,614 (RHC Sept. 19, 2005)); Aker v. Peterson, TP 27,987 (RHC July 1, 2005). Furthermore, as a matter of law, the Commission has held that a finding of bad faith for purposes of treble damages must be based upon specific findings of fact that demonstrate a" "higher level of culpability." Drell, TP 27,233 (quoting Velrey Props. v. Wallace, TP 20,431 (RHC Sept. 11, 1989)); Walker, TP 26,197.

and a verified complaint for possession that indicted the rent or rent charged amounts.[12] *See* Amend Final Order at 3-4; R. at Tab 21.

Section 2.3.1(b) of the Settlement Agreement reads:

> The Parties agree that the Housing Provider may take yearly rental increases in the Market Rent, as permitted by applicable law. Said increases may be in an amount equal to the adjustment of the Consumer Price Index plus two percent (2%) or other amounts approved by the Rent Administrator or by operation of law. The next increase is scheduled for November 2011.

Settlement Agreement at 3; R. at Tab 25.

The Act does not define Market Rent. *See* D.C. OFFICIAL CODE § 42-3501.03. The Settlement Agreement also fails to offer a definition of the term. *See* Settlement Agreement at 3; R. at Tab 25. In the Amended Final Order, the ALJ said "[w]hile the Settlement Agreement, on its face, deals with two rents [*i.e.*, rent and Market Rent], it does not expressly . . . provide a definition of 'Market Rent.' This meant that the Tenant understood the agreement to mean that her rent was $565, rather than $620[.]" Amended Final Order at 9; R. at 21. The ALJ determined the Act permits the Housing Providers to charge the Tenant a "lower rent" and increase the Tenant's rent based on the "Market Rent" so the Housing Providers can preserve the higher "adjustments . . . for future tenants." *Id.* at 8.

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[12] The record includes but is not limited to the following: Resident Ledger, dated August 29, 2011 (R. at Tab 27); Notice of Increase in Rent Charged, dated Sept. 22, 2011 (R. at Tab 28); Email Communication with Nakia L. Long, Asst. Community Manager, dated Aug. 29, 2011 (R. at Tab 27); Letter from Debra F. Legee, Counsel for Housing Providers, dated Jan. 26, 201[2] (R. at Tab 31); Balance Due Notice, dated Feb. 9, 2012 (R. at Tab 32); Verified Complaint for Possession of Real Property, dated Feb. 16, 2012 (R. at Tab 34); Balance Due Notice, dated Feb. 17, 2012 (R. at Tab 35); Resident Ledger, dated Aug. 29, 2011 (R. at Tab 27); Resident Ledger, dated June 15, 2012 (R. at Tab 36); Notice of Increase in Rent Charged, dated Sept. 24, 2012 (R. at Tab 37); and Resident Ledger, dated March 2, 2013 (R. at Tab 40).

See also Certificates of Notice to RAD of Adjustments in Rent Charged, dated September 22, 2011 (R. at Tab 29) and September 24, 2012 (R. at Tab 38). The Commission notes the Certificates of Notice to RAD of Adjustments in Rent Charged are not served on the Tenant.

The interpretation of the Act, as is the determination of the legality of rent increases under the rent stabilization provisions of the Act, is a question of law. *See* Wilson, 159 A.3d at 1215-16; United Dominion Mgmt., 101 A.3d at 430; Worthington v. Sipper, TP 21,118 (RHC March 23, 1990). As the Commission stated previously, it will uphold an ALJ's determinations where they are in accordance with the provisions of the Act and supported by substantial record evidence. 14 DCMR § 3807.1.

The Act provides, in relevant part, that:

> [A]n increase in the amount of rent charged while the unit is occupied shall not exceed the **current** allowable amount of rent charged for the unit, plus the adjustment of general applicability plus 2%[.]

D.C. OFFICIAL CODE § 42-3502.08(h)(2) (emphasis added); *see also* 14 DCMR § 4205.4 (requiring notice to tenant of "amount of the rent adjustment" and "amount of the adjusted rent"). Rent adjustments must be based on "the current . . . rent charged." D.C. OFFICIAL CODE § 42-3502.08(h)(2). The Act will supersede any contract or other agreement's contradictory language on the regulation of rent increases. Goodman v. D.C. Rental Hous. Comm'n, 573 A.2d 1293, 1297 (D.C. 1990) ("The Act forecloses sophisticated as well as simple-minded modes of nullification or evasion."); Fineman, RH-TP-15-30,841 at 35. As such, the Commission rejects any interpretation of the Settlement Agreement that would circumvent the regulation of rent increases by establishing a separate "Market Rent." *See* Settlement Agreement at 3, § 2.3.1(b); R. at Tab 25. The Commission remands the Tenant Petition to OAH for such further proceedings as are necessary to adjudicate the issue of rent increases and appropriate penalties consistent with this Decision and Order, the Act, the DCAPA, and applicable precedent.

The Commission also observes that the ALJ noted that the rent amounts identified in some of the rent demands exceeded the amount of money the parties expected the Tenant to pay as a condition of occupancy. Amended Final Order at 8; R. at Tab 21. Nonetheless, the ALJ

concluded "there was no 'demand' from the Housing Provider[s] for the higher rent" because the "Tenant was under no obligation to pay more than what was specified in the" Settlement Agreement. Amended Final Order at 9; R. at Tab 21; *compare id.* at 8 ("While Housing Provider[s] never expressly stated the method for charging Tenant[] preferential rent, this does not mean that Housing Provider[s] caused harm to Tenant by wrongfully demanding a higher rent than agreed upon.").

The Commission is satisfied these notices provide substantial evidence of rent demands, albeit demanding illegally preserved rent amounts. *See* Holbrook St. LLC, v. Seegers, RH-TP-14-30,571 (RHC July 15, 2016) ("Substantial evidence of a rent demand generally includes, but is not limited to, evidence of a letter notifying a tenant of a forthcoming increase in rent owed."); *see also* Fineman, RH-TP-16-30,842 ("The Commission is not persuaded that preservation of a maximum legal rent level is consistent with the language, structure, or remedial purposes the Act generally and the purposes of the abolition of rent ceilings specifically.").

Further, the Commission observes that the Housing Providers made the rent demands at issue over the course of fifteen (15) months between August 29, 2011[13] and March 2, 2013.[14] On February 12, 2012, the Housing Providers sued the Tenant for possession of the Rental Unit, and listed the Tenant's rent as $646, which represents an illegal increase of approximately fourteen percent (14%)[15] from the $565 the parties agreed the Tenant would pay beginning June 1, 2011. *See* Verified Complaint for Possession of Real Property at 1; R. at Tab 34; Settlement Agreement

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[13] Resident Ledger, dated August 29, 2011 (R. at Tab 27); Notice of Increase in Rent Charged, dated Sept. 22, 2011 (R. at Tab 28).

[14] Resident Ledger, dated March 2, 2013 (R. at Tab 40).

[15] *See* D.C. OFFICIAL CODE § 42-3502.08(h)(2) (stating a rent increase "[s]hall not exceed the current allowable amount of rent charged for the unit, plus the adjustment of general applicability plus 2%, taken as a percentage of the current allowable amount of rent charged; provided, that the total adjustment shall not exceed 10%.").

at 3; R. at 25. Nonetheless, the ALJ suggests that the demands had a minimal impact on the Tenant. *See* Amended Final Order at 6; R. at 21. She also concluded that the Housing Provider[s] "promptly rescinded" these demands despite them making the demands over the course fifteen (15) months. *See id.* at 9.

The ALJ relied on the Commission's decisions in Young v. Rybeck, TP 21,976 and 21,984 (RHC Jan. 28, 1992) and Ponte v. Flasar, TP 11,609 (RHC Jan. 30, 1986) when she determined the various rent demands do "not rise to the level or seriousness or harm to justify a refund [and/or a rent rollback]." Amended Final Order at 6-9; R. at Tab 21. In Young and Ponte, the Commission determined that certain circumstances may not justify ordering a housing provider to refund rent to a tenant that was demanded but never collected. Young, TP 21,976 and 21,984 and Ponte, TP 11,609. The Commission explained:

> [A refund] might be justified if the increase were particularly large or its illegality known to the landlord. Or where the increase was vigorously pressed at great cost to the tenant or in a harassing, intimidating or retaliatory manner. On the other hand, there are undoubtedly situations in which the mere demand for a rent increase, where there is no collection, does not rise to the level of seriousness or harm sufficient to warrant the imposition of a monetary penalty either singularly or trebled. Such circumstances might be found, for example, where the violation is essentially technical, where the impact on tenants is minimal, or where the landlord takes timely action to rescind the demand or otherwise neutralizes its effectiveness.

See id.

As the Commission later explained in Hamlin, TP 27,626, the Ponte and Young decisions were issued before the DCCA decided the issue in Kapusta, 704 A.2d at 287. *See* Hamlin, TP 27,626 ("[T]he Commission stated the absence of any express criticism, disapproval or reversal by the [c]ourt may be interpreted as tacit acceptance[.] However, the court resolved the conflict in Kapusta[.]"). The Commission remains satisfied that Kapusta and its progeny make clear that a mere demand for rent that exceeds the legal rent violates the Act and triggers penalties. D.C.

OFFICIAL CODE § 42-3509.01; *see also* Drell, TP 27,344 at 33; McDonald v. Nuyen, TP 26,124 (RHC Aug. 9, 2003); Hamlin, TP 27,626.

Accordingly, it was misinterpretation of the Act for the ALJ to conclude that the Housing Providers did not make illegal rent demands. *See id.* The Commission remands the Tenant Petition to OAH for such further proceedings as are necessary to adjudicate the issue of illegal rent demands and appropriate penalties consistent with this Decision and Order, the Act, the DCAPA, and applicable precedent.

B. Whether the ALJ erred in concluding that the Tenant did not prove any substantial reductions in services and facilities.

In the Tenant Petition, the Tenant alleged that the Housing Provider substantially reduced related services in the rental unit by failing to resolve her concerns regarding the air conditioner, a convector, building safety and security, and a bug infestation problem. Tenant Petition Complaint Details at 2-3; R. at 84-85. In the First Final Order, the ALJ denied the Tenant's request for a rent refund for her failure to "provide evidence of a *substantial* reduction or elimination of services." First Final Order at 7 (emphasis in original); R. at 113. On appeal, the Tenant argued that the ALJ erred in that determination. First Notice of Appeal at 1-4.

In the First Commission Decision, the Commission reminded the ALJ that the "DCAPA requires a more detailed application of the applicable legal standards and tests to the facts of a case in order to allow the Commission to make a determination whether the conclusions of law flow or follow rationally from the findings of fact." First Commission Decision at 24. The Commission did not "reach the merits of issues raised" in the First Notice of Appeal. First Commission Decision at 12, n. 5.

Following the First Commission Decision, the ALJ held an evidentiary hearing on remand, and subsequently issued a new final order on August 20, 2013, dismissing the Tenant

Petition with prejudice. *See* Final Order After Remand at 2; R. at Tab 15. The ALJ did not address the Tenant's claims regarding a substantial reduction in services and facilities. *See id.* at 1-8. The Amended Final Order only includes a cursory discussion of a cockroach infestation and does not discuss the other claims with the inclusion of citations to the relevant evidence in the record. Amended Final Order at 5-6; R. at Tab 21. The Commission is convinced that the ALJ's failure to give adequate attention to the Tenant's claims regarding a substantial reduction in services and facilities also constitutes a failure to "meet the standards for the presentation of administrative decisions and orders enumerated in the DCAPA." First Commission Decision at 18-25.

Additionally, the Tenant requests in his brief that on remand the Commission order the case to be assigned to a different ALJ. The Tenant maintains that the ALJ delayed in and failed to comply with the Commission's instructions on remand in the First Commission Decision to make findings of fact and conclusions of law that clearly meet the requirements of the DCAPA. See Tenant's Brief at 17. The DCCA has identified "three principal factors to consider in determining whether further proceedings should be conducted before a different judge:"

> (1) [W]hether the original judge would reasonably be expected upon remand to have substantial difficulty in putting out of his or her mind previously-expressed views or findings determined to be erroneous or based on evidence that must be rejected, (2) whether reassignment is advisable to preserve the appearance of justice, and (3) whether reassignment would entail waste and duplication out of proportion to any gain in preserving the appearance of fairness.

In re: D.E., 991 A.2d 1205, 1214 (D.C. 2010) (quoting United States v. Robin, 553 F.2d 8, 10 (2nd Cir. 1977)).

The Commission is satisfied that it does not need to order reassignment a different ALJ on remand under the circumstances. The Commission's remand in this appeal is based on the ALJ's failure to adequately express *any* view on the evidence related to specific claims, rather

than making erroneous views or considering inadmissible evidence.[16] The Commission does not observe any appearance of injustice in the ALJ continuing to preside over the Tenant Petition, and given the length of time this matter has been pending, further delay in an new ALJ coming up to speed and issuing a proposed final order[17] would be unwarranted.

Accordingly, the Commission remands this case to the ALJ to make findings of fact and conclusions of law on each contested reduction in related services or facilities in accordance with the instructions provided in the First Commission Decision, and this Decision and Order.

IV. CONCLUSION

For the foregoing reasons, the Amended Final Order is reversed and remanded.

SO ORDERED.

MICHAEL T. SPENCER, CHAIRMAN

LISA M. GREGORY, 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 (2012 Repl.), "[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

[16] The Tenant does not assert that, and the Commission therefore does not consider whether, the ALJ's previously-expressed views on the statutory meaning of "rent charged" or conclusions as to the amounts of rent demanded from the Tenant would require reassignment of the case. *See* Tenant's Brief at 16-17.

[17] *See* D.C. OFFICIAL CODE § 2-509(d) (requiring proposed findings of fact and conclusions of law when a decision is to be rendered by a trier of fact who did not personally hear the evidence).

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
430 E Street, N.W.
Washington, D.C. 20001
(202) 879-2700

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing **DECISION AND ORDER** in RH-TP-11-30,151 was mailed, postage prepaid, by first class U.S. mail on this **28th day** of **September 2018,** to:

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