DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION

RH-TP-13-30,448

In re: 3661 Winfield Lane, N.W.

Ward Two (2)

BEN POURBABAI
Housing Provider/Appellant

v.

CHRIS BELL, *et al.*
Tenants/Appellees

DECISION AND ORDER

September 22, 2017

SZEGEDY-MASZAK, CHAIRMAN. This case is on appeal to the Rental Housing Commission ("Commission") from a final order issued by the Office of Administrative Hearings (OAH) based on a petition filed in the Rental Accommodations Division ("RAD") of the District of Columbia Department of Housing and Community Development ("DHCD").[1] The applicable provisions of the Rental Housing Act of 1985 ("Act"), D.C. Law 6-10, D.C. OFFICIAL CODE §§ 42-3501.01 - 3509.07 (2012 Repl.), the District of Columbia Administrative Procedure Act ("DCAPA"), D.C. OFFICIAL CODE §§ 2-501 - 510 (2012 Repl.), and the District of Columbia Municipal Regulations ("DCMR"), 1 DCMR §§ 2800-2899 (2004), 1 DCMR §§ 2920-2941 (2004), 14 DCMR §§ 3800-4399 (2004) govern these proceedings.

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[1] OAH assumed jurisdiction over tenant petitions from the Department of Consumer and Regulatory Affairs ("DCRA"), Rental Accommodations and Conversion Division ("RACD") pursuant to the Office of Administrative Hearings Establishment Act, D.C. Law 14-76, D.C. OFFICIAL CODE § 2-1831.03(b-l)(l) (2007 Repl.). The functions and duties of RACD in DCRA were transferred to DHCD by § 2003 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

On November 13, 2013, tenant/appellee Chris Bell, a former resident of 3661 Winfield Lane, N.W., ("Housing Accommodation") filed Tenant Petition RH-TP-13-30,448 ("Tenant Petition") with RAD against Ben Pourbabai ("Housing Provider"). *See* Tenant Petition at 1-2; R. at 19-20. The Tenant Petition raised the following claims against the Housing Provider:

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

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

Tenant Petition at 3; R. at 18.

On July 19, 2014, Chris Bell filed a motion to amend the Tenant Petition to add seven additional tenants who had lived together at the Housing Accommodation: Semir Hasedzic, Kenny Buhr, Kaitlin Conklin, Catherine Schroeder, Geoffrey Talis, Sydney Dittman, and Caroline Watson (collectively, "Tenants"). The Housing Provider did not oppose the motion, and Administrative Law Judge Denise Wilson-Taylor ("ALJ") granted the motion on the record at the July 31, 2014, evidentiary hearing. Hearing CD (OAH July 31, 2014) at 10:54-55.

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

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

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

Housing Accommodation is owned by Benham [sic][3] Pourbabai (Housing Provider).

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

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

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

[3] The Commission recognizes that the ALJ stated that the Housing Provider's name was "Benham." The Housing Provider asserts that his name is "Ben." The Commission has corrected this error in the case name.

be paid to the landlord. In the case of condominiums, cooperative apartments or other multi-family dwelling units--replacement of furnace and air conditioning filters, light bulbs and fuses, proper cleaning of floors [sic]. In the case of any damages that is [sic] caused during the Tenant's lease, if the Tenant fails to report or repair it, the landlord is authorized to fix the damages and charge the Tenant accordingly, (emphasis added).

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

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

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

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

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

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

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

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

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

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

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

12. Tenants' lease terminated on July 31, 2013. Tenants requested that Housing Provider walk through the home with them. The walk through occurred on August 1, 2013 with Tenant Semir Hasdeic [sic]. Both Semir and the Housing Provider acknowledged a broken cabinet in the kitchen, the hinge of which was loose when they took possession of the premises in August 2012.

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

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

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

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

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

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

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

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

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

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

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

First Final Order at 2-7; R. at 135-40 (footnotes omitted). The ALJ made the following conclusions of law in the First Final Order:[4]

A. Notice of Intent to Withhold Security Deposit

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

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

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

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

B. Itemized Deductions

1) Air conditioner

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

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

5. The cabinet door hinge came apart because of normal usage and was rather loose when the Tenants moved in. During the course of the tenancy, Tenants never used the chimney. The Tenants were to keep the gutters in good condition and promptly remove ice and snow but there was no requirement in the lease to have the gutters professionally cleaned. The Tenants were never on notice that anything that they failed to do with the gutters caused damage to the neighbor's property. The photo of the

dishwasher fails to exhibit any deep scar or damage. PX 107. Therefore, Housing Provider may not charge Tenants one month's rent for these deductions.

3) Purchase of Insurance

6. Three of the tenants purchased renters insurance. Renters insurance is primarily for the protection of the tenants' personal items and belongings. There was no damage to any of the Tenants' property and the [T]enants never charged the landlord for any damage to their personal belongings. Therefore the charge of one month's rent for the failure of the remaining five tenants to purchase insurance is disallowed.

4) Smoke detectors

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

5) Sixty day notice to quit

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

6) Failure to forward the landlord's mail

9. The lease provided that the Tenants were to inform the Housing Provider of any mail and messages intended for him and forward his mail. The Housing Provider indicated that since the Tenants did not forward his mail, it caused his creditors not to be paid on time and caused his credit reports to be adversely affected. The Housing Provider did not develop these assertions at the hearing, nor did he produce any evidence to show the direct connection between the failure of the Tenants to forward his mail and his credit rating. The Housing Provider testified that he did not

file a change of address with the post office. Therefore, a one month's penalty for the failure to forward the Housing Provider's mail is disallowed.

7) Garage frame repair

10. Henry Buhr, one of the Tenants, conceded that he hit one side of the garage. He indicated that the garage was a tight fit and his car was damaged but he never obtained any estimates for the repair to his car or the damage to the garage. The Housing Provider obtained an estimate for the repair to the garage of $375. RX 201. I will allow a deduction of $375 from the security deposit for the repair of the garage.

8) The wine cooler

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

C. Treble Damages

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

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

13. In interpreting "bad faith" for the purposes of treble damages for other violations of the Rental Housing Act, the Rental Housing Commission has held that a finding of bad faith requires inquiry into the "intent or state of mind of the actor." *Third Jones Corp. v. Young*, TP 20,300 (RHC Mar. 22, 1990) at 9. The D.C. Court of Appeals has defined "bad faith" as the "intent to deceive or defraud." *Bernstein Mgmt. Corp.* [*v. D.C. Rental Hous. Comm'n*], 952 A.2d [190,] 198 (*quoting P'ship Placements, Inc. v. Landmark Ins. Co.*, 722 A.2d 837, 845 (D.C. 1998)). It requires a finding that Housing Provider acted out of "some interested or sinister motive"

involving "the conscious doing of a wrong because of dishonest motive or moral obliquity." *Third Jones Corp. v Young*, TP 20,300 at 9. Although the standard of misconduct required for bad faith has been described as "egregious," [*i*]*d.* at 8, it is sufficient that a housing provider's actions reflect a "deliberate refusal to perform without just or reasonable cause or excuse," *id.* at 10, or "a continuing, heedless disregard of a duty." *Cascade Park Apartments v. Walker*, TP 26,197 (RHC Jan. 14, 2005) at 35.

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

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

C. [sic] Interest

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

First Final Order at 7-12; R. at 130-35 (emphasis original). On May 4, 2015, the Housing Provider filed a motion for reconsideration. R. at 160-69. On July 31, 2015, the ALJ issued an order denying reconsideration. Bell v. Pourbabai, RH-TP-13-30,448 (OAH July 31, 2015); R. at 174-78.[5]

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

The Housing Provider filed a timely appeal of the First Final Order ("First Notice of Appeal") on May 4, 2015, alleging that the ALJ erred in determining that he was not entitled to retain the entire amount of the Tenants' security deposit. After a hearing, the Commission issued its decision and order: Pourbabai v. Bell, RH-TP-13-30,448 (RHC Feb. 18, 2016) ("First Commission Decision"), which remanded the case to OAH with instructions for the ALJ to make specific findings of fact and conclusions of law with respect to her determination, under the Security Deposit Act, as codified at 14 DCMR §§ 309-11, to solely award itemized deductions from the Tenants' security deposit for specific violations of the Tenants' lease for the Housing Accommodation, PX 101 ("Lease Agreement"), rather than an award of the entire security deposit (or one month's rent) for such other specific violations as reflected in certain specific provision of the Lease Agreement. First Commission Decision at 15-16 (Tab 34).

On June 29, 2016 the ALJ issued a Final Order after Remand. In the Final Order after Remand, the ALJ made the following Findings of Fact:[6]

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

> **#10**: "The Tenant must not use the elevator as it is an old elevator that is designed for an elderly, and does have strict weight limit. If the elevator is used or misused the tenant is liable for one month rent as a penalty, and the repair cost."
>
> **#13: ALTERATIONS/DECORATIONS.** ". . . In the case the tenant alters the townhouse without explicit permission of the landlord[,] the tenant agrees to pay for the cost of undoing the alterations and painting plus one month rent. In the case, the tenant will be responsible for paying the full cost of repairs and painting the house, and the corresponding expenses plus one month's rent."

[6] The findings of fact are recited herein using the language of the ALJ in the Final Order after Remand, except that the Commission has numbered the ALJ's paragraphs for ease of reference.

#29: Additional Clauses: . . . "If the lease or any conditions are violated, the tenants agree to pay a fee equal to one month's rent to the landlord to compensate the landlord."

Final Order after Remand at 2 (Tab 36). The ALJ made the following conclusions of law in the Final Order after Remand:[7]

1. Liquidated damages refer to the amount of damages agreed to in advance by the parties in a contract to be paid by the breaching party in the event of a breach of the contract, without reference to the actual damages found at the time of the breach. *Davy v. Crawford*, 147 F.2d 574, 575 (D.C. Cir. 1945). But, not all damages are enforceable.

2. Although the Security Deposit Act of 1976, 14 DCMR 308, *et. seq.*, is silent, the courts in the District of Columbia will invalidate a liquidated damage clause if the fixed sum is not a reasonable reflection of actual damages and operates as a penalty. *Dist. Cablevision Ltd. P'ship v. Bassin*, 828 A.2d 714, 724 (D.C. 2003) (holding that a liquidated damages clause specifying a single sum for all contractual breaches that bore no "reasonable" relationship to actual damages was unenforceable as a penalty); *See also Davy*, 147 F.2d at 575 (holding that although "parties to a contract may agree in advance to a sum certain which shall be forfeited as liquidated damages for a beach of a contract," if that "agreement is for a penalty it is void"); *Order of AEDPA v. Travel Consultants, Inc.*, 367 A.2d 119, 126 (D.C. 1976) (*quoting* [sic] "agreements to pay fixed sums plainly without reasonable relation to any probable damage which may follow a breach will not be enforced.") A liquidated damages provision mandating a fixed sum that exceeds the actual damages likely to be inflicted for a minor breach "become unmistakable" in "its character as a penalty." *Dist. Cablevision*, 828 A.2d at 724 (citations omitted).

3. To determine whether a liquidated damage clause operates as a penalty, courts will look beyond the express language of the contract to the underlying circumstances at the time of the execution of the contract. *Davy*, 147 F.2d at 575; *See e.g., 172 Van Duzer Realty Corp. v. Globe Alumni Student Assistance Assoc., Inc.*, 25 N.E.3d 952. 957 (N.Y. Ct. App. 2014). Any doubts as to whether the parties intended for liquidated damages or a penalty will be resolved in favor of construing the provision as a penalty. *Red Sage Ltd. P'ship v. Despa Deutsche Sparkassen Immobeien Anlage-Gesellschaft MBH*, 254 F.3d 1120, 1125-26 (D.C. Cir. 2000); *See e.g., Pyramid Centres & Co. v. Kinney Shoe Corp.*, 244 A.D.

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

2d 625 (N.Y. 3 Dept. 1997). Courts will also construe a liquidated damages clause as a penalty where it is "designed to make the default of the party against whom it runs more profitable to the other party than performance would be. . ." *Dist. Cablevision*, 828 A.2d at 724 (citations omitted).

4. In *Davy* the contract at issue was "a lease of a dwelling house with an option to purchase at a set price" with a monthly rent of $54 a month, which was credited against the purchase price if the option was exercised. 147 F.2d at 515. The down payment of $640 was retained by the landlord as liquidated damages because of the tenant's failure to make the monthly payments under the contract which required forfeiture of the deposit upon breach of the contract. *Id.* The court interpreted the liquidated damages provision to be "so strictly drawn that the slightest slip on the part of the tenant [would] cause him to lose his entire equity." *Id.* For example, if the tenant was ever late with the rent "for any reason whatsoever," or failed to pay the gas, electric or water bills promptly, or did not keep the property in a good condition, then the landlord could retake the property without notice, retain the entire down payment and cancel the purchase option depriving the tenant of the equity built over time. *Id.* These circumstances amounted to a "minor and insubstantial default on the part of the tenant" but resulted in a significant windfall of profit to the landlord. *Id.* The court affirmed the lower court's ruling that the contractual term allowing for the landlord to retain the deposit was void as a penalty. *Id.* at 574-75.

5. In a similar vein, the lease in this case has a catchall provision stating "[i]f the lease or any conditions are violated, the tenants agree to pay a fee equal to one month rent to the landlord to compensate the landlord." PX 100. In addition, there are multiple provisions in the Lease susceptible to a "minor and insubstantial default" that provide for a fixed sum of one month's rent for a violation. *Cf. Vernitron Corp. v. CF 48 Associates.*, 104 A.D.2d 409 (N.Y. App. Div. 1984) (where the lease calls for the same supposed liquidated damages for any of a variety of breaches by the tenant, the courts uniformly find it to be an unenforceable penalty). These include the following: the failure to report damages to the property in paragraph 10; the use or misuse of the elevator in paragraph 10; the unauthorized alteration of the interior or exterior of the housing accommodation in paragraph 13; and the failure to provide a 60 day notice to quit in paragraph 21. *Id.* Under these circumstances, the tenant could use the elevator once, without <u>any</u> resulting physical damage, and be subjected to pay $10,000 to the landlord under the contract. These types of minor "breaches" by the tenant under this lease would provide the Landlord with a shockingly excessive windfall. Furthermore, the $10,000 liquidated damages clause is disproportionate to the level of damages that are reasonably foreseeable for several of these provisions, if breached. Therefore, the amount of liquidated damages is conspicuously disproportionate to the actual damages suffered by Housing Provider.

Accordingly, the lease terms imposing liquidated damages in the form of one month's rent must be held as invalid and unenforceable.

6. Although the lease terms requiring liquidated damages are void and unenforceable, Housing Provider is not left without recourse. The remedy is precisely what he already received; actual damages based on the evidentiary record. *Kingston Contractors, Inc.* v. *WMATA*, 930 F. Supp. 651, 656 (D.D.C. 1996) (reasoning that if a "liquidated damages clause is stricken, only actual damages may be recovered."); *See e.g., Irving Tire Co. v. Stage II Apparel Corp.*, 230 A.D.2d 772 (N.Y.2d Dept. 1996) (only awarding actual damages where damages are easy to compute and the liquidation is significantly higher than the actual damages).

Final Order after Remand at 3-6 (Tab 36) (footnotes omitted).

The Housing Provider filed a timely appeal of the Final Order after Remand ("Second Notice of Appeal") on July 13, 2016. Neither party filed a brief on appeal. The Commission held a hearing on June 7, 2017, at which the Housing Provider appeared *pro se* and counsel for the Tenants appeared on behalf of the Tenants. Hearing CD (RHC June 7, 2017) at 2:00.

II. ISSUES ON APPEAL[8]

A. Whether the ALJ erred in determining that several clauses in the Lease Agreement imposing liability for a breach of such clauses in the entire amount of the security deposit constituted penalty provisions, rather than liquidated damages provisions of the Lease Agreement.

[8] The Commission observes that within the Second Notice of Appeal filed by the Housing Provider, several of the twenty-one enumerated issues broadly contend that the ALJ ignored facts and refused to consider the evidence provided by the Housing Provider. Further, the Second Notice of Appeal asserts that the ALJ ignored the observations of the Commission during remand, that case law concerning liquidated damages was inapplicable to this case, and that the ALJ did not consider that the Housing Provider had retained the security deposit to cover a "fraction of the actual damages." The final issue provided by the Housing Provider lists ten damages that the Housing Provider asserts were caused by the Tenants and, thus, entitle him to the entire security deposit.

The Commission, understanding the challenges a *pro se* litigant faces, may exercise discretion in identifying cognizable issues to address. *See, e.g.*, Goodman v. D.C. Rental Hous. Comm'n, 573 A.2d 1293, 1295 n.2 (D.C. 1990) (condensing eighteen "free-wheeling" issues identified by *pro se* party into "three principal questions"); Dreyfuss Mgmt. v. Beckford, RH-TP-07-28,895 (RHC Sept. 27, 2013) at n.7 (recasting the statement of the issues on appeal, consistent with the language in the notice of appeal, to clearly identify legal grounds under the Act); Watkis v. Farmer, RH-TP-07-29,045 (RHC Aug. 15, 2013) (where *pro se* housing provider presented a narrative statement in the notice of appeal, the Commission, in its discretion, restated the issue to identify the allegation of error); Carmel Partners, Inc. v. Levy, RH-TP-06-28,830 & RH-TP-06-28,835 (RHC May 16, 2014) at n.15 (restating *pro se* Tenant's issue on appeal). While the Housing Provider's Second Notice of Appeal contains several narrative and broad statements, the Commission is satisfied that the Housing Provider does identify the following issue: that the ALJ erred in determining that he was not entitled to retain the entire amount of the Tenants' security deposit.

B. Whether the ALJ erred in determining the permissible deductions to the security deposit.

III. DISCUSSION

Pursuant to section 217(b) of the Act, D.C. OFFICIAL CODE § 42-3502.17(b),[9] OAH has jurisdiction over complaints regarding the return of tenant security deposits. Under the Security Deposit Act, as codified at 14 DCMR §§ 308-11, a housing provider may charge a tenant up to the equivalent of one month's rent as "security for performance of the tenant's obligations in a lease or rental of a dwelling unit[.]" 14 DCMR § 308.2; D.C. OFFICIAL CODE § 42-3502.17. If, at the termination of a tenancy, a housing provider withholds any portion of the security deposit, within forty-five days after termination of the tenancy the housing provider must "notify the tenant . . . of the owner's intention to withhold and apply the monies toward defraying the cost of expenses properly incurred under the terms and conditions of the security deposit agreement." 14 DCMR § 309.1(2). Within thirty days of the notification, the Housing Provider must also provide an "itemized statement of the repairs and other uses to which the monies were applied and the cost of each repair or other use." 14 DCMR § 309.2.[10]

The ALJ determined that the Housing Provider notified the Tenants within forty-five days of the termination of the Lease Agreement and timely provided the Tenants with an itemized list as required by 14 DCMR § 309.2. PX 103; R 217-19. The notice that the Housing Provider sent on September 10, 2013, *see supra* at 5-6, relied upon several provisions of the

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[9] D.C. OFFICIAL CODE § 4203592.17(b) provides:

> The Office of Administrative Hearings may adjudicate complaints for the non-return of tenant security deposits and for the nonpayment of interest on tenant security deposits pursuant to section 2908 of the Housing Regulations of the District of Columbia (14 DCMR §§ 308-311).

[10] A housing provider is entitled to use the monies secured through the deposit to defray costs of expenses properly incurred under the terms and conditions of the security deposit agreement. 14 DCMR §§ 309.1-.2. The merits of this claim are discussed *infra* at 22-35.

Lease Agreement that the ALJ determined were unenforceable penalty clauses, or, in the case of the 60-day notice requirement before vacating, that the record did not support a finding that the Tenants breached. Final Order after Remand at 5 (Tab 36). In the First Final Order, the ALJ addressed the Housing Provider's claims of actual damages and awarded the Housing Provider $555 for damages to the air conditioner ("AC") and garage. In the Final Order after Remand, the ALJ again determined that the damages totaled $555 and, as a result, the Tenants were entitled to $9,655 of the original security deposit, including $210 for interest accrued. *Id.* at 5-6; *see* First Final Order at 11-12; R at 130-31.

The Housing Provider contends in his Second Notice of Appeal that the ALJ erred by not allowing him to retain the entire amount of the security deposit. Second Notice of Appeal at 18. The Housing Provider contends that the ALJ erred with respect to both: (1) failing to determine that Tenants' alleged breach of certain provisions of the Lease Agreement entitled the Housing Provider to at least $10,000; and (2) failing to allow eight other, specific deductions from the security deposit for actual damages to the housing accommodation and losses to the Housing Provider. The Commission addresses each claim herein.

A. Whether the ALJ erred in determining that several clauses in the Lease Agreement imposing liability for a breach of such clauses in the entire amount of the security deposit constituted penalty provisions, rather than liquidated damages provisions of the Lease Agreement.

In the First Commission Decision, the Commission observed that the Lease Agreement for the Housing Accommodation contained several provisions that were in the nature of liquidated damages. First Commission Decision at 15-16 n.10. The Housing Provider made specific reference to these clauses in his September 10, 2013 and February 13, 2014, communications with the Tenants in which he asserted that, because the Tenants had breached these provisions, that he was entitled to "one month's rent," *i.e.*, the entire amount of the security

deposit. PX 103; R at 217-19. During the hearing on July 31, 2014, the Tenants contended that these clauses were not enforceable damage clauses, but rather unenforceable penalties. Hearing CD (OAH July 31, 2014) at 15:06-09. Even though the Lease Agreement contained specific provisions concerning the forfeiture of the entire security deposit and those provisions were addressed at the evidentiary hearing, the ALJ did not address the validity of these clauses in her First Final Order. *See* First Commission Decision at 14-15.

In the Housing Provider's First Notice of Appeal, he contended that several clauses within the Lease Agreement were overlooked by the ALJ. First Notice of Appeal at 5-7; R at 17-19. These clauses included the following: (1) the requirement that Tenants perform bi-annual inspections of the AC; (2) the requirement for the Tenants to replace the batteries within the smoke detectors; (3) the requirement to have each tenant secure renter's insurance; (4) the requirement for the Tenants to forward the Housing Provider's mail; and (5) the requirement for the Tenants to provide written notice of their intent to vacate within 60 days of termination. *Id.* The Commission observed that, under the Lease Agreement, these clauses necessitated the Tenants' payment of $10,000 to the Housing Provider upon any Tenant's breach of the Lease Agreement and remanded to the ALJ with instructions to make findings of fact and conclusions of law as to whether these clauses were enforceable liquidated damage clauses. First Commission Decision at 15-16. In the Final Order after Remand, the ALJ determined that none of the clauses that imposed damages in the amount of one month's rent were valid or enforceable under District of Columbia law because they constituted penalty provisions rather than permissible liquidated damages provisions. Final Order after Remand at 5 (Tab 36) (citing Dist. Cablevision Ltd. P'ship v. Bassin, 828 A.2d 714, 724 (D.C. 2003); Davy v. Crawford, 147 F.2d 574, 575 (D.C. Cir.1945)).

The Housing Provider's appeal of the ALJ's Final Order after Remand repeatedly contends that the ALJ, in making her determination that the clauses were penalties, "unjustifiably . . . insinuate[d]" that the damages inflicted by the Tenants were "minor" breaches. Second Notice of Appeal at 4-5. As such, he rejects the analogy between his case and cases cited by the ALJ, maintaining that she "incorrectly and unfairly" interpreted the law to support her decision. Second Notice of Appeal at 3; see Final Order After Remand at 3-4 (citing Davy, 147 F.2d at 575 (D.C. Cir.1945)). Accordingly, the Commission will examine whether the following provisions in the Lease Agreement constitute enforceable, liquidated damages provisions or unenforceable penalty provisions with respect to imposing liability of one month's rent of $10,000: (1) the requirement for the Tenants to perform bi-annual inspections of the AC; (2) the requirement for the Tenants to replace the batteries in the smoke detectors; (3) the requirement of each Tenant to obtain renters insurance; (4) the requirement for the Tenants to forward the Housing Provider's mail; and (5) the requirement for the Tenants to provide written notice of the intent to vacate the Housing Accommodation at least 60 days in advance.

The Commission's standard of review of the ALJ's decision is provided by 14 DCMR § 3807.1, which reads:

> The Commission shall reverse final decisions of the Rent Administrator [or 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 Rent Administrator [or OAH].[11]

[11] As described *supra* at n.1, jurisdiction over evidentiary hearings under the Act has been transferred from the Rent Administrator to OAH.

"Substantial evidence" has been consistently defined by the Commission as "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." Fort Chaplin Park Assocs. v. D.C. Rental Hous. Comm'n, 649 A.2d 1076, 1079 n.10 (D.C. 1994); Allen v. D.C. Rental Hous. Comm'n, 538 A.2d 752, 753 (D.C. 1988); Hardy v. Sigalas, RH-TP-09-29,503 (RHC July 21, 20114). The role of the Commission on appeal "is not to weigh the testimony and substitute ourselves for the trier of fact who heard the conflicting testimony, observed the adversary witnesses, and determined the weight to be accorded their testimony." Washington Cmtys. v. Joyner, TP 28,151 (RHC Jul. 22, 2008) at 15 (quoting Fort Chaplin Park Assocs., 49 A.2d at 1079). Nonetheless, the Commission will review legal questions raised by an ALJ's determination *de novo* to determine if it is unreasonable or embodies a material misconception of the law. *See* Wilson v. D.C. Rental Hous. Comm'n, 159 A.3d 1211, 1216 n.3 (D.C. 2017) (citing 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); Tenants of 1754 Lanier Pl., N.W. v. 1754 Lanier, LLC, RH-SF-15-20,126 (RHC Mar. 25, 2016).

In interpreting the terms of a contract (including a lease agreement), a court must "honor the intentions of the parties as reflected in the settled usage of the terms they accepted in the contract." Unfoldment, Inc. v. D.C. Contract Appeals Bd., 909 A.2d 204, 209 (D.C. 2006); *see also* Saul Subsidiary II Ltd. P'ship v. Venator Grp. Specialty, Inc., 830 A.2d 854, 861 (D.C. 2003) ("Leases of real property are to be construed as contracts.") (quoting Capital City Mortgage Corp v. Habana Vill. Art & Folklore, Inc., 747 A.2d 564, 567 (D.C. 2000)). Parties to a contract may agree in advance to an amount of money to be forfeited as liquidated damages if the contract is breached. Burns v. Hanover Ins. Co., 454 A.2d 325, 327 (D.C. 1982). An

enforceable liquidated damages clause, however, "must not be disproportionate to the level of damages reasonably foreseeable at the time of the making of the contract." Dist. Cablevision Ltd. P'ship, 828 A.2d at 724 (quoting Council v. Hogan, 566 A.2d 1070, 1072 (D.C. 1989)).

> [W]hen a contract specifies a single sum in damages for any and all breaches even though it is apparent that all are not all of the same gravity, the specification is not a reasonable effort to estimate damages and when[,] in addition the fixed sum[,] greatly exceeds the actual damages likely to be imposed by a minor breach, its character as a penalty becomes unmistakable.

Id. (quoting Lake River Corp. v. Carborundum Co., 769 F.2d 1284, 1290 (7th Cir. 1985)). Liquidated damages will also be construed as penalties if they are "designed to make the default of the party against whom it runs more profitable to the other party than performance would be[.]" *Id.* The courts will refuse to uphold a contract that could result in a significant windfall to one party as the result of another party's minor and insubstantial default. Davy, 147 F.2d at 575.

The ALJ determined that the Housing Provider is not entitled to the security deposit based upon the liquidated damage clauses within the contract. Final Order after Remand at 5 (Tab 36). The ALJ highlighted several provisions within the Lease Agreement that would have led to an unreasonably disproportionate payout to the Housing Provider as the result of a "minor and insubstantial default" on the part of the Tenants. *Id.*; *see* Lease Agreement; Dist. Cablevision Ltd. P'ship, 828 A.2d at 724. Specifically, the ALJ addressed: (1) the failure of the Tenants to report damages to the property; (2) the Tenants' use or misuse of the elevator; (3) the Tenants' unauthorized alteration of the interior or exterior of the housing accommodation; and (4) the catchall provision that stated that if any conditions were violated by the Tenants that the Tenants would pay a fee "equal to one month's rent." Final Order after Remand at 5 (Tab 36).

The Commission's review of the record shows that the ALJ correctly found that the Lease Agreement imposes liability on the Tenants for payment in the amount of a "single sum . . . for any and all breaches," *i.e.*, the entire $10,000 security deposit, regardless of the gravity of

a tenant's potential breach. PX 100; *see* Dist. Cablevision Ltd. P'ship, 828 A.2d 724; Lake River Corp., 769 F.2d at 1290. As applied to the breaches claimed by the Housing Provider, the Commission observes that the fixed sum of $10,000 greatly exceeds the actual damages likely to be incurred for a breach of the following requirements imposed upon the Tenants under the Lease Agreement: (1) the failure of the Tenants to forward the Housing Provider mail; (2) the failure of the Tenants to have bi-annual inspections of the AC; (3) the failure of the Tenants to secure renter's insurance for every Tenant; or (4) the failure of the Tenants to replace the batteries in the smoke detectors. Final Order after Remand at 5 (Tab 36); Dist. Cablevision Ltd. P'ship, 828 A.2d at 724; Hogan, 566 A.2d at 1072.[12] The Commission is therefore satisfied that the ALJ did not err in finding that the Tenants' forfeiture of one month's rent or the entire amount of the security deposit for these violations constitutes a penalty provision that was not a

[12] The Commission observes that, within the September 10, 2013, notification to the Tenants and both of the Housing Provider's appeals, the Housing Provider also claims he is entitled to $10,000 in damages for the Tenants failure to abide by the "notice" clause. First Notice of Appeal at 7; Second Notice of Appeal 13-14. In the Final Order after Remand, the ALJ identified the "notice" clause within the Lease Agreement as an example of a "minor and insubstantial default" that would result in the Tenants having to pay $10,000. Final Order after Remand at 5. The Commission does not need to address whether such a failure to provide notice would be a "minor and insubstantial default" for which one month's rent would be disproportionate to likely, actual damages at the time the Lease Agreement was written. *See* Dist. Cablevision Ltd. P'ship, 828 A.2d 724. Rather, the Commission is satisfied that the ALJ's determination that the Tenants did not breach the notice requirement was supported by substantial evidence. *See* 14 DCMR § 3807.1; Fort Chaplin Park Assocs., 649 A.2d at 1079 n.10; Hardy, RH-TP-09-29,503.

The Commission notes that the Tenants, who were in communication with the subsequent renters, were able to arrange the subsequent renters' signing of a lease. PX 102; R. at 203-16. The Tenant's Lease Agreement ended on July 31, 2013, and they were required to provide written notice of vacating to the Housing Provider on or before June 1, 2013. The subsequent renters signed their lease on March 11 and 12, 2013, with their tenancy beginning in August 2013. PX 102; R. at 206, 216. Thus, the Commission is persuaded that the existence of a lease executed in March by new tenants constitutes substantial evidence on the record to support on appeal the ALJ's determination that it was "more probable than not that the Housing Provider was on notice 60 days prior" to the Tenant's departure. Final Order at 9; R. at 133; *see* 14 DCMR § 3807.1. As such, the Commission is satisfied that the ALJ did not err in determining that the Housing Provider may not retain the full security deposit for the Tenant's alleged failure to provide timely notice. *See* 14 DCMR §§ 309.1-.2; *see, e.g.*, Clark v. Bridges, 75 A.2d 149, 156 (D.C. 2013) ("To prevail on a claim of breach of contract, the landlord would have to prove not only a breach of a contractual obligation, but also some type of injury resulting from the breach.").

reasonable assessment by the Housing Provider of foreseeable damages at the time the Lease Agreement was written. Dist. Cablevision Ltd. P'ship, 828 A.2d at 724; Davy, 147 F.2d at 575.

Accordingly, the Housing Provider may not retain the entire security deposit based on his aforementioned claimed breaches of the Lease Agreement by the Tenants, described *supra* at 21, and the provision of the Lease Agreement imposing a penalty of $10,000 for the claimed breaches of the Lease Agreement regardless of the amount of proven damages arising from such claimed breaches. *See* Lease Agreement at 8; R. at 190.

B. Whether the ALJ erred in determining the permissible deductions to the security deposit.

Without an enforceable liquidated damage clause to entitle the Housing Provider to the full security deposit, the only lawful basis the Housing Provider may claim for withholding any or all of the security deposit is actual damages based on the evidentiary record. 14 DCMR §§ 309.1-.2; *see* Burns, 454 A.2d at 327; Dist. Cablevision Ltd. P'ship, 828 A.2d at 724. In its First Commission Decision, the Commission did not address whether the ALJ erred in denying any individual deductions for damage caused by the Tenants to the Housing Accommodation or the other alleged breaches of the Lease Agreement whose claimed damages were not fixed by the clause in the Lease Agreement in the amount of one month's rent or $10,000.[13] The Housing Provider's Second Notice of Appeal maintains that the ALJ incorrectly determined the "actual damage" caused by the Tenants to the Housing Accommodation or for the alleged, individual breaches of the Lease Agreement and, consequently, the amount of the "actual damages" for such breaches. *See* Second Notice of Appeal at 8-17.

[13] As noted *supra* at 16, the ALJ did not address the liquidated damages clauses throughout the Lease Agreement. Without findings of fact and conclusions of law concerning the validity of these clauses, the Commission was required to remand the issue to OAH for further consideration by the ALJ. First Commission Decision at 14.

The Commission will therefore review whether substantial evidence in the record supports ALJ's determination of the lawful amount of itemized damages for all claimed breaches of the Lease Agreement by the Tenants. 14 DCMR § 3807.1. In the First Final Order, the ALJ made the following determinations related to itemized damages claimed by the Housing Provider for each of the Tenants' alleged breaches of the Lease Agreement or damage to the Housing Accommodation:

1. The Housing Provider was entitled to a $180 deduction from the security deposit for the Tenant's admitted failure to have two inspections of the air conditioner. The amount awarded was based on an invoice provided by Tenants from the only time they had the air conditioner serviced and repaired.

2. The Housing Provider was entitled to a $375 deduction for damage to the garage frame because the Tenants conceded the damage. Further, the Housing Provider introduced an estimate that asserted $375 as the cost of repair.

3. The Housing Provider was not entitled to a deduction for cleaning the gutters because the Tenants had no requirement to get the gutters professionally cleaned. Further, he was not entitled to any alleged damages to the neighbor's property caused by inattention to the gutters because he never provided notice to the Tenants of any damage that they had caused.

4. The Housing Provider was not entitled to a deduction for damage to the dishwasher's metallic surface because the photo provided by the Tenants failed "to exhibit any deep scar or damage."

5. The Housing Provider was not entitled to a deduction for damage as the result of the Tenant's failure to forward mail because these assertions were not developed at the hearing, nor was any evidence produced "to show the direct connection between the failure of the Tenants to forward his mail and his credit rating."

6. The Housing Provider was not entitled to a deduction for the kitchen cabinet door because it "came apart because of normal usage and was rather loose when the Tenants moved in."

7. The Housing Provider was not entitled to a deduction for cleaning the chimney, because the Tenants never used the chimney.

8. The Housing Provider was not entitled to a deduction for damage to the wine cooler because the Housing Provider did not develop any testimony about it, nor did he submit a cost estimate from a company for repairing the cooler.

First Final Order at 8-10; R. at 132-34.

The Housing Provider disputed the above findings in his First and Second Notices of Appeal. In the Second Notice of Appeal, the Housing Provider contends that the ALJ erred by failing to permit his retention of the security deposit, based on the following claims:

1. The actual damage caused by the Tenant's failure to service the AC was $8,500.
2. The actual damage to the garage frame was $6,500.
3. The actual damage to the gutter and to the neighbor's property was $3,500.
4. The actual damage to the dishwasher was $850.
5. The actual damage caused by the Tenants' failure to forward the Housing Providers mail was $12,000.
6. The actual damage to the kitchen, including the cabinet door, was $2,500
7. The cost of cleaning the chimney was $300.
8. The actual damage to the wine cooler was $150.

Second Notice of Appeal at 8-17.

As described *supra* at 18-19, the Commission's standard of review of the ALJ's decision is contained at 14 DCMR § 3807.1 and provides that the Commission shall reverse final decisions that are not based on substantial evidence in the record or are not otherwise in accordance with the Act. The Commission has consistently determined that "[w]here substantial evidence exists to support the [ALJ's] findings, even 'the existence of substantial evidence to the contrary does not permit the reviewing agency to substitute its judgment for that of the [ALJ].'" *See* Boyd v. Warren, RH-TP-10-29,816 (RHC June 5, 2013) (quoting Hago v. Gewirz, RH-TP-

08-11,552 & RH-TP-08-12,085 (RHC Feb. 3, 2012)); Loney v. Tenants of 710 Jefferson St., N.W., SR 20,089 (RHC Jan. 29, 2013) at n.13; Marguerite L. Corsetti Trust v. Segreti, RH-TP-06-28,207 (RHC Sept. 18, 2012). When reviewing an ALJ's weighing of the evidence, "the relevant inquiry is whether the [ALJ's] decision was supported by substantial evidence, not whether an alternative decision might also have been supported by substantial evidence." Gary v. D.C. Dep't of Emp't. Servs., 723 A.2d 1205, 1209 (D.C. 1998) (quoting McEvily v. D.C. Dep't of Emp't. Servs., 500 A.2d 1022, 1024 n.3 (D.C. 1985)); *see* Notsch v. Carmel Partners, LLC, RH-TP-06-28,690 (RHC May 16, 2014) (explaining that where an ALJ's findings are supported by substantial evidence, the findings will not be overturned even if substantial evidence exists to the contrary); Boyd, RH-TP-10-29,819; Hago, RH-TP-08-11,552 & RH-TP-08-12,085. Finally, "the Commission has consistently stated that credibility determinations are 'committed to the sole and sound discretion of the ALJ.'" Notsch, RH-TP-06-28,690 (quoting Fort Chaplin Park Assocs., 649 A.2d at 1079) (emphasis added); Burkhardt v B.F. Saul Co., RH-TP-06-28,706 (RHC Sept. 25, 2014); Marguerite Corsetti Trust, RH-TP-06-28,207.

As described *supra* at 23-24, the Housing Provider maintains that the ALJ erred in failing to determine that he is entitled to retain part of the security deposit due to the following, itemized breaches by the Tenants of the Lease Agreement: (1) damage to the AC; (2) damage to the garage; (3) damage to the gutter; (4) damage to the dishwasher; (5) costs incurred by Tenants failing to forward mail; (6) damage to the kitchen cabinets; (7) costs incurred by Tenants failing to clean the chimney and (8) damage to the wine cooler. The Commission addresses each claim in turn.

1. Damage to the AC

The ALJ approved a deduction from the security deposit for the Tenant's failure to have the AC serviced twice as required by the Lease Agreement. First Final Order at 8; R. at 134.

The Commission's review of the record shows that the cost of the damage to the AC was contested at the evidentiary hearing. The Tenants testified, and provided an invoice showing, that they paid $180 to have the AC serviced and cleaned shortly before moving out.[14] Hearing CD (OAH July 31, 2014) at 11:55; PX 106; R at 225. The Housing Provider testified that because the AC was not serviced twice that the house's walls were covered in soot and would need to be repainted; however, however, he did not testify to, nor provide any other evidence regarding, the specific cost of the repairs to, or painting of, the walls damaged by soot. Hearing CD (OAH July 31, 2014) at 14:04.

The Commission observes that the amount of money that the Housing Provider believes that he is entitled to withhold to fix the damage related to the Tenants' failure to service the AC has fluctuated during the litigation of this case, as has the exact nature of the damage that the Tenants' failure allegedly caused. In the Housing Provider's September 10, 2013, notification to Tenants, he claimed he was entitled to $10,000 because the Tenants violated the Lease Agreement by their failure to service the AC. In his February 13, 2014, notification to Tenants, the Housing Provider claimed he was entitled to $14,000 to repaint the house as a result of the AC's production of soot due to the Tenants' failure to service the AC, in addition to $10,000 because the Tenants violated the Lease Agreement by their failure to service the AC. In the Housing Provider's First Notice of Appeal he asserted that he was entitled to $6,000 for repairs to the AC. In his Second Notice of Appeal, the Housing Provider asserts that the AC was extensively damaged and needed to be repaired following the tenancy and that he is entitled to $8,500. Second Notice of Appeal at 8.

[14] The invoice is dated June 4, 2013, less than two months before the Tenants' tenancy ended on July 31, 2013.

When the ALJ is presented with conflicting evidence and testimony from opposing witnesses, she is responsible for "determining the weight to be accorded to their testimony." Washington Cmtys., TP 28,151 (quoting Fort Chaplin Park Assocs., 49 A.2d at 1079); *see* Burkhardt, RH-TP-06-28,706; Karpinski v. Evolve Prop. Mgmt., RH-TP-09-29,590 (RHC Aug. 19, 2014). Despite the Housing Provider's claim that there is substantial evidence undermining, if not negating, the ALJ's credibility determinations of the Tenants and their testimony and her weighing of the evidence, the Commission is obligated to affirm the ALJ's decision if it is based on substantial evidence in the record. Boyd, RH-TP-10-29,816; Hago, RH-TP-08-11,552 & RH-TP-08-12,085; Loney, SR 20,089; Marguerite Corsetti Trust, RH-TP-06-28,207; *see also* Gary, 723 A.2d at 1209; McEvily, 500 A.2d at 1024 n.3; Notsch, RH-TP-06-28,690.

Because the Commission's review of the record reveals substantial evidence (*e.g.*, the Tenants' testimony and the Tenants' invoice) to support the ALJ's determination that the Housing Provider was entitled to withhold $180 for the AC, the Commission affirms the Final Order after Remand on this issue. 14 DCMR § 3807.1; Burkhardt, RH-TP-06-28,706; Karpinski, RH-TP-09-29,590; Washington Cmtys., TP 28,151; Boyd, RH-TP-10-29,816 (quoting Hago, RH-TP-08-11,552 & RH-TP-08-12,085 at 6); Loney, SR 20,089; Marguerite Corsetti Trust, RH-TP-06-28,207.

2. Damage to the Garage

The ALJ approved a deduction for the Tenants' damage to the garage. Tenant Buhr testified at the evidentiary hearing that he caused minor damage to the garage and admitted to never obtaining an estimate for the damage. Hearing CD (OAH July 31, 2014) at 13:20. The Commission notes that the ALJ solely relied on a contractor's report that was obtained by the Housing Provider on August 2, 2013, two days after the Tenant's vacated, to determine that the

damage to the garage's frame was $375. RX 202; R. at 240. The Housing Provider did not testify to a specific amount of damages at the hearing.

The Commission observes that the amount of damages that the Housing Provider asserts that he is entitled to withhold to fix the damages related to the garage has fluctuated during the litigation of this case. In the Housing Provider's September 10, 2013, and February 13, 2014, notifications to Tenants, he claimed he was entitled to $550. PX 103; PX 104. In the Housing Provider's First Notice of Appeal he asserted that he was entitled to over $8,000 dollars for repairs to the garage. First Notice of Appeal at 6. In his Second Notice of Appeal, the Housing Provider asserts that the garage was extensively damaged and that he is entitled to $8,500. Second Notice of Appeal at 16.

As described *supra* at 26, the ALJ is responsible for weighing conflicting evidence and testimony. Fort Chaplin Park Assocs., 649 A.2d at 1079; Notsch, RH-TP-06-28,690; Marguerite Corsetti Trust, RH-TP-06-28,207. On appeal, the Commission will uphold the ALJ's decision if there is substantial evidence in the record to support her conclusion. Boyd, RH-TP-10-29,816; Hago, RH-TP-08-11,552 & RH-TP-08-12,085; Loney, SR 20,089; Marguerite Corsetti Trust, RH-TP-06-28,207. Because the Commission's review of the record reveals substantial evidence (*e.g.*, the Tenant's testimony and the Housing Provider's estimate) to support the ALJ's determination that the Housing Provider was entitled to withhold $375 for the garage, the Commission affirms the Final Order after Remand on this issue. 14 DCMR § 3807.1; Burkhardt, RH-TP-06-28,706; Karpinski, RH-TP-09-29,590; Washington Cmtys., TP 28,151; Boyd, RH-TP-10-29,816 (quoting Hago, RH-TP-08-11,552 & RH-TP-08-12,085 at 6); Loney, SR 20,089; Marguerite Corsetti Trust, RH-TP-06-28,207.

3. Damage to the Gutters

The Housing Provider alleges that the Tenant's failure to keep the gutters cleaned resulted in damage both to the gutters and to neighboring property, and he additionally asserts that the owners of the neighboring property sued him for the damage to their property, resulting in legal fees paid by the Housing Provider, the combined total of which was $3,500. Second Notice of Appeal at 17. At the hearing, the Tenants testified that they never saw damage to either the gutters or the neighbor's property that occurred because of their alleged negligence in not cleaning the gutters. Hearing CD (OAH July 31, 2014) at 11:57-58. Crediting the Tenants' testimony, the ALJ determined that the Housing Provider was not entitled to deduct any money from the security deposit for the alleged damages to the gutters or the neighboring property. First Final Order at 8; R. at 134.

The Commission observes that the amount of the security deposit the Housing Provider asserts he is entitled to withhold because of damage to the gutters, or the resulting damage to the neighboring property and subsequent legal action, has fluctuated during the litigation of this case. In the Housing Provider's September 10, 2013 notification to Tenants, he claimed he was entitled to $250 to clean the gutter and $10,000 because the Tenant's violated the Lease Agreement. PX 103; R. at 218-19. The ALJ also observed that in the September 10, 2013, notification to Tenants, the Housing Provider maintained that the Tenants owed him damages because they did not have the gutters "professionally cleaned." The Commission's review of the record reveals, however, that the Lease Agreement does not include any requirement for the Tenants to have the gutters professionally cleaned; the Lease Agreement only specifies that the Tenants were responsible for the removal of blockage from the gutter. PX 100; R 197.

In his February 13, 2014, notification to Tenants, the Housing Provider claimed he was entitled to $250 to clean the gutters, $1,100 to repair the gutters, and $10,000 for the Tenants'

lease violation. PX 104; R. at 221. At the evidentiary hearing, the Housing Provider introduced a contractor's report that estimated the cleaning of the gutter to be $450. RX 201; R. at 240. The estimate did not include repairs of damage to the neighboring property, *see id.*, nor did the Housing Provider provide any testimony about the alleged damage to the neighboring property. In his First Notice of Appeal, the Housing Provider did not mention a specific amount that he was entitled to for damage to the gutters. R. at 164-67. In his Second Notice of Appeal, the Housing Provider contends that he is entitled to $3,500 in damages to clean and repair the property's gutters and to cover legal fees incurred by the Tenant's negligence.[15] Second Notice of Appeal at 17.

As described *supra* at 26, the ALJ is responsible for weighing conflicting evidence and testimony. On appeal, the Commission will uphold the ALJ's decision if there is substantial evidence in the record to support her conclusion, despite the existence of substantial evidence to the contrary. *See* Boyd, RH-TP-10-29,816; Hago, RH-TP-08-11,552 & RH-TP-08-12,085; Loney, SR 20,089; Marguerite Corsetti Trust, RH-TP-06-28,207. Because the Commission's review of the record reveals substantial evidence (*e.g.*, the Tenants' testimony about the lack of damage, the language from the Lease Agreement requiring only "the removal of blockage," and the Housing Provider's September 10, 2013, notification demanding damages because they did not have the gutters "professionally" cleaned, in the absence of any such requirement in the Lease Agreement) to support the ALJ's determination that the Housing Provider was not entitled

[15] The Housing Provider asserts he is entitled to the legal fees he incurred because of a clause within the Lease Agreement that states "[i]f Landlord should incur any expenses. . . [for] reasonable attorney's fees in instituting, prosecuting or defending any action or proceeding instituted by reason of a default by Tenant, TENANT SHALL REIMBURSE LANDLORD FOR THE AMOUNT OF SUCH EXPENSE." PX 101; R at 188 (emphasis original). The Commission notes that 14 DCMR § 304.4 expressly bars housing providers from placing provisions in a lease that shift the obligation to pay a housing provider's legal fees to the tenants. When such a provision is within a lease, it is deemed "void and unenforceable." 14 DCMR 304.1; Pajic v. Foote Props., LLC, 72 A.3d 140, 145 (D.C. 2013).

to withhold money from the security deposit to repair the gutters, the Commission affirms the Final Order after Remand on this issue. 14 DCMR § 3807.1; Burkhardt, RH-TP-06-28,706; Karpinski, RH-TP-09-29,590; Washington Cmtys., TP 28,151; Boyd, RH-TP-10-29,816 (quoting Hago, RH-TP-08-11,552 & RH-TP-08-12,085 at 6); Loney, SR 20,089; Marguerite Corsetti Trust, RH-TP-06-28,207.

4. Damage to the Dishwasher

The Housing Provider asserts that he is entitled to retain $850 of the security deposit for a "deep scratch" to the metallic surface of the dishwasher. Second Notice of Appeal at 17. The ALJ determined that he was not entitled to deduct any money from the security deposit to cover alleged damages to the dishwasher. First Final Order at 8; R. at 134.

The Commission's review of the record shows that the contractor's estimated cost of repair of the alleged damage to the dishwasher was $850, and that the Housing Provider provided small photographs of the alleged damage at the evidentiary hearing. RX 201; R. at 240. The Commission further notes that the Tenants entered a photograph of the dishwasher into evidence. PX 107; R 226. The Tenants testified that this photograph was taken during a walk-through of the premises with the Housing Provider and Tenant Hasdeic after the end of the tenancy. Hearing CD (OAH July 31, 2014) at 11:59-12:00, 13:36. The ALJ found that the photograph provided by the Tenants showed no scratch or damage to the dishwasher. First Final Order at 8; R. at 134.

As described *supra* at 26, the ALJ is responsible for weighing conflicting evidence and testimony. On appeal, despite the claimed existence of substantial evidence in the record to the contrary, the Commission will uphold the ALJ's decision if there is substantial evidence in the record to support her conclusion. Boyd, RH-TP-10-29,816; Hago, RH-TP-08-11,552 & RH-TP-08-12,085; Loney, SR 20,089; Marguerite Corsetti Trust, RH-TP-06-28,207. Accordingly,

because the Commission's review of the record reveals substantial evidence (*e.g.*, the Tenant's testimony and picture) to support the ALJ's determination that the Housing Provider was not entitled to withhold money from the security deposit to repair the dishwasher, the Commission affirms the Final Order after Remand on this issue. 14 DCMR § 3807.1; Burkhardt, RH-TP-06-28,706; Karpinski, RH-TP-09-29,590; Washington Cmtys., TP 28,151; Boyd, RH-TP-10-29,816 (quoting Hago, RH-TP-08-11,552 & RH-TP-08-12,085 at 6); Loney, SR 20,089; Marguerite Corsetti Trust, RH-TP-06-28,207.

5. Costs Incurred Due to the Tenants' failure to Forward the Housing Provider's Mail.

The Housing Provider asserts that he is entitled to $12,000 in damages because the Tenants failed to forward his mail as required by the Lease Agreement. Second Notice of Appeal at 15.[16] The ALJ determined that the Housing Provider was not entitled to deduct any money from the security deposit to cover alleged damages related to the delivery of his mail. First Final Order at 9; R. at 133.

The Tenants testified at the evidentiary hearing that they did not forward the Housing Provider's mail over the course of their tenancy. Hearing CD (OAH July 31, 2014) at 12:11-12:13. The Housing Provider testified that, because the Tenants did not forward his mail, that there was a "huge impact" on his credit score and that he received notice that his home was going to be foreclosed upon. Hearing CD (OAH July 31, 2014) at 13:49-50. He further testified that, while he was able to handle the foreclosure issue, the damage to him could have been avoided if the Tenants had forwarded his mail as required by the Lease Agreement. Hearing CD

[16] The Commission observes that, in the Housing Provider's September 10, 2013, and February 13, 2014, notifications to Tenants, he asserted that he was entitled to $10,000 for the breach of the Lease Agreement. PX 103; R. at 218-19;PX 104; R. at 221. In his Second Notice of Appeal, the Housing Provider asserts that he has incurred $12,000 in actual damages as the result of the alleged breach.

(OAH July 31, 2014) at 13:49-50. The ALJ determined that the Housing Provider "did not develop these assertions at the hearing, nor did he present any evidence to show the direct connection between the failure of the Tenants to forward his mail and his credit rating." First Final Order at 9; R at 133. The Commission's review of the record further reveals that, although the ALJ approved a ten business day extension for the Housing Provider to supplement the record with additional evidence regarding this claimed breach of the Lease Agreement, the Housing Provider never produced reports or other evidentiary support that showed how the Tenants' admitted failure to forward the mail resulted in damages to the Housing Provider in the amount of $12,000. First Final Order at 5; R. at 137.

As described *supra* at 26, the ALJ is responsible for weighing conflicting evidence and testimony. On appeal, the Commission will uphold the ALJ's decision if there is substantial evidence in the record to support her conclusion. Boyd, RH-TP-10-29,816; Hago, RH-TP-08-11,552 & RH-TP-08-12,085; Loney, SR 20,089; Marguerite Corsetti Trust, RH-TP-06-28,207. Evaluating the credibility of testimony, moreover, is soundly within the discretion of the ALJ. Fort Chaplin Park Assocs., 649 A.2d at 1079; Notsch, RH-TP-06-28,690; Burkhardt, RH-TP-06-28,706.[17] Accordingly, because the Commission's review of the record reveals only vague testimony by the Housing Provider as to the "huge impact" on his credit score that the ALJ did not find sufficient to support a claim of any actual damages in the amount of $12,000, the Commission affirms the ALJ's decision on the basis of her credibility determination of the Housing Provider and the vagueness of his testimony that the Housing Provider is not entitled to retain money from the security deposit based on the Tenants' admitted breach of the provision of

[17] The Commission has also previously stated that vague testimony coupled with a lack of documentation is typically insufficient evidence to support a finding. *See* Smith v. Elliot, TP 11,157 (RHC Jul. 29, 1987) (finding that a tenant's vague testimony, which was unsupported by any documentation, could not prove an illegal rent demand).

the Lease Agreement related to forwarding his mail. 14 DCMR § 3807.1; Fort Chaplin Park Assocs., 649 A.2d at 1079; Burkhardt, RH-TP-06-28,706; Boyd, RH-TP-10-29,816; Hago, RH-TP-08-11,552 & RH-TP-08-12,085; Loney, SR 20,089; Marguerite Corsetti Trust, RH-TP-06-28,207.

6. Damage to the Kitchen Cabinets

In the First Final Order, the ALJ determined that the Housing Provider was not entitled to withhold any money from the security deposit for claimed damage to the kitchen cabinet because the only damage was the result of "normal usage." First Final Order at 8; R. at 134. The Housing Provider asserts in his Second Notice of Appeal that he is entitled to withhold $2,500 from the security deposit for damage to the kitchen, in part due to damage to a kitchen cabinet. Second Notice of Appeal at 11. The Commission observes, however, that the Housing Provider did not raise this specific allegation of error in his First Notice of Appeal.

The Commission is mindful of the important role lay litigants play in the Act's enforcement and has long recognized the challenges that *pro se* litigants face. *See* Kissi v. Hardesty, 3 A.3d 1125, 1131 (D.C 2010) (citing Hudson v. Hardy, 412 F.2d 1091, 1094 (D.C. Cir. 1968)); *see, e.g.*, Goodman v. D.C. Rental Hous. Comm'n, 573 A.2d 1293, 1298-99 (D.C. 1990); Cohen v. D.C. Rental Hous. Comm'n, 496 A.2d 603, 605 (D.C. 1985). The Commission, however, "cannot generally be permitted to shift the burden litigating [a] case to the courts, nor to avoid the risks of failure that attend [the] decision to forego expert assistance." Macleod v. Georgetown Univ. Med. Ctr., 736 A.2d 977, 979 (D.C. 1999) (quoting Dozier v. Ford Motor Co., 702 F.2d 1189, 1194 (D.C. Cir. 1993)). The Commission notes that courts of appeal have routinely refused to consider issues that could have been, but were not, raised in a prior appeal in the same litigation. Gelman Mgmt.Co. v. Campbell, RH-TP-09-29,715 (March 11, 2015) at n.10. The "law of the case" doctrine prohibits the Commission from reopening and reconsidering an

issue that was resolved in a previous appeal. *See, e.g.,* Klingle Corp. v. Tenants of 3133 Connecticut Ave., CI 20,794 (September 1, 2015); 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).

While understanding the challenges that the Housing Provider faces as a *pro se* litigant, the Commission in its discretion is not required to amend the Housing Provider's First Notice of Appeal to include an issue that he failed to raise. *See* Kissi, 3 A.3d at 1131 (citing Hudson, 412 F.2d at 1094); Macleod, 736 A.2d at 979 (D.C. 1999); Dozier, 702 F.2d at 1194; *see, e.g.,* Goodman, 573 A.2d at 1298-99; Cohen, 496 A.2d at 605. For the Commission to do so would impermissibly relieve a party of its evidentiary burden to fully, fairly, and without impairment present its case to the Commission. *See* Macleod, 736 A.2d at 979. Therefore, the Housing Provider's contention that the ALJ erred in refusing to allow him to withhold part of the security deposit for damage to the kitchen cabinet is dismissed.

7. Expenses Incurred for Cleaning the Chimney

In the First Final Order, the ALJ determined that the Housing Provider was not entitled to withhold any money from the security deposit to clean the property's chimney because she determined that the Tenants never used the fireplace. First Final Order at 8; R 134. The Housing Provider asserts that he is entitled to $300 dollars to clean the chimney. Second Notice of Appeal at 17. The Commission observes, however, that the Housing Provider did not raise this allegation of error in his fist appeal. *See generally* First Notice of Appeal.

While understanding the challenges that the Housing Provider faces as a *pro se* litigant, the Commission in its discretion is not required to amend the Housing Provider's First Notice of Appeal to include an issue that he failed to raise. *See* Kissi, 3 A.3d at 1131 (citing Hudson, 412 F.2d at 1094); Macleod, 736 A.2d at 979; Dozier, 702 F.2d at 1194; *see, e.g.,* Goodman, 573

A.2d at 1298-99; Cohen, 496 A.2d at 605. For the Commission to do so would impermissibly relieve a party of its evidentiary burden to fully, fairly, and without impairment present its case to the Commission. To do so would impermissibly shift a burden of litigation to the Commission. *See* Macleod, 736 A.2d at 979. Therefore, the Housing Provider's contention that the ALJ erred in refusing to allow him to withhold part of the security deposit to clean the chimney is dismissed.

8. Damage to the Wine Cooler

In the First Final Order, the ALJ determined that the Housing Provider was not entitled to withhold any money from the security deposit to fix the wine cooler because no testimony was introduced at the evidentiary hearing and the Housing Provider provided no cost estimate for the wine cooler's repair. First Final Order at 10; R at 132. The Housing Provider asserts that he is entitled to retain $150 of the security deposit to fix the housing accommodation's wine cooler. Second Notice of Appeal at 17. The Commission observes, however, that the Housing Provider did not raise this allegation of error in his First Notice of Appeal.

While understanding the challenges that the Housing Provider faces as a *pro se* litigant, the Commission in its discretion is not required to amend the Housing Provider's First Notice of Appeal to include an issue that he failed to raise. *See* Kissi, 3 A.3d at 1131 (citing Hudson, 412 F.2d at 1094); Macleod, 736 A.2d 977, 979 (D.C. 1999); Dozier, 702 F.2d at 1194; *see, e.g.*, Goodman, 573 A.2d at 1298-99; Cohen, 496 A.2d at 605. For the Commission to do so would impermissibly relieve a party of its evidentiary burden to fully, fairly, and without impairment present its case to the Commission. To do so would impermissibly shift a burden of litigation to the Commission. *See* Macleod, 736 A.2d at 979. Therefore, the Housing Provider's contention that the ALJ erred in refusing to allow him to withhold part of the security deposit to repair the wine cooler is dismissed.

IV. CONCLUSION

Based on the foregoing, the Final Order after Remand is affirmed. Specifically, the Commission affirms the ALJ's determination that the Housing Provider is not entitled to retain the entire amount of the security deposit based on claimed breaches for which the Lease Agreement provided that the Tenants' would forfeit one month's rent or the entire amount of the security deposit, because such a clause constitutes an unenforceable penalty. *See supra* at 16-22.

The Commission also affirms the ALJ's determinations that the Housing Provider was only entitled to retain $555 in total from the security deposit because substantial evidence on the record supports the ALJ's determinations of the costs resulting from the alleged breaches of the Lease Agreement by the Tenants with respect to: (1) damage to the AC; (2) damage to the garage; (3) damage to the gutters; (4) damage to the dishwasher; and (5) costs incurred by the Housing Provider due to the Tenants' failure to forward mail. *See supra* at 25-34. The Commission also determines that the Housing Provider has forfeited any claims that the ALJ erred with respect to (6) damage to the kitchen cabinets; (7) costs for cleaning the chimney; and (8) damage to the wine cooler by not raising them in his First Notice of Appeal. *See supra* at 34-37.

SO ORDERED.

PETER B. SZEGEDY-MASZAK, CHAIRMAN

MICHAEL T. SPENCER, 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 (2016.), "[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
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-13-30,448 was mailed, postage prepaid, by first class U.S. mail on this **22nd day** of **September, 2017,** to:

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

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

Semir Hasedzic
214 Bates St., N.W.
Washington, DC 20001

Christopher H. Bell
2402 20th Street, N.W.
#4
Washington, DC 20009

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

Ben Pourbabai
9896 Sunnybrook Dr.
Great Falls, VA 22066

LaTonya Miles
Clerk of Court
(202) 442-8949