DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION

RH-TP-16-30,764

In re: 4234 4th Street, SE, Unit 301

Ward Eight (8)

LASHAWLA WALLER and
TYRONE WISE
Tenants/Appellants

v.

NOVO DEVELOPMENT CORPORATION
Housing Provider/Appellee

DECISION AND ORDER

February 15, 2018

EPPS, COMMISSIONER: 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 Department of Housing and Community Development ("DHCD").[1] These proceedings are governed by 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 Procedures Act ("DCAPA"), D.C. OFFICIAL CODE §§ 2-501-510 (2012 Repl.), and the District of Columbia Municipal Regulations ("DCMR"), 1 DCMR §§ 2800-2899 (2016), 1 DCMR §§ 2921-2941 (2016), and 14 DCMR §§ 3800-4399 (2004).

[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 Office of Administrative Hearings Establishment Act of 2001, D.C. Law 14-76, D.C. OFFICIAL CODE § 2-1831.03(b-1)(1) (2012 Repl.). The functions and duties of RACD in DCRA were transferred to the RAD in 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 (2012 Repl.).

I. PROCEDURAL HISTORY

On December 30, 2015, tenants/appellants Tyrone Wise and LaShawla Waller ("Tenants"), residents of 4234 4th Street SE, Unit 301 ("Housing Accommodation") filed tenant petition 30,764 ("Tenant Petition") against housing provider/appellee Novo Development Corporation ("Housing Provider"). *See* Tenant Petition 1-4; R. at Tab 1. The parties appeared for mediation on May 13, 2016, which was unsuccessful.

On May 24, 2016, Tenants filed a Motion for Leave to Amend Tenant Petition to Include Additional Claim ("Motion to Amend") and an Amended Tenant Petition challenging the Housing Provider's June 1, 2016 rent increase. Motion to Amend at 1; R. at Tab 14; Amended Tenant Petition at 1; R. at Tab 13. On June 15, 2016, a status hearing was held at which Tenants' Motion to Amend was granted. Case Management Order at 1; R. at Tab 17. The Amended Tenant Petition raised the following claims against the Housing Provider:

1. The Petitioner's unit has suffered from substantial and/or prolonged violations of the D.C. Housing Regulations.

2. Services and/or facilities provided as part of rent and/or tenancy have been substantially reduced, where the housing provider failed to remedy substantial and prolonged housing code violations.

3. The Respondent has taken affirmative legal action against Petitioners in retaliation for seeking the abatement of the conditions.

4. The Respondent has willfully interfered with the operation of a tenant organization.

5. The Rental Increase to be take [sic] on June 1, 2016 from $950 to $965 is taken while the unit is not in substantial compliance with the housing code.

Amended Tenant Petition at 2-5; R. at Tab 13. An evidentiary hearing was held on this matter on August 30, 2016, and September 13, 2016. Administrative Law Judge Ann C. Yahner

("ALJ") issued a final order on October 14, 2016. Waller v. Novo Devel. Corp., 2016-DHCD-TP-30,764 (OAH June 15, 2016) ("Final Order") at 2; R. at Tab 31.

In the Final Order, the ALJ made the following findings of fact.[2]

1. Housing Provider Novo Development Corporation (Novo) owns the Property known as Cascade Park Apartments. There are five buildings as well as a parking courtyard behind the buildings. [Petitioner's Exhibit ("PX")] 120-124, 126, 127.

2. Tenants Lashawla Waller and Tyrone Wise live together at Cascade Park Apartments. They have lived in several different units in different buildings at the complex. Tenants moved on or about June 25, 2014, from a one-bedroom apartment at 4234 Fourth Street, SE, to a two-bedroom apartment, Apartment 301 (Housing Accommodation or unit), in the same building. There are 10 units in the building, on three levels. Tenants have four children, ranging in age from three to twelve years old.

3. Tenants signed a Lease for unit 301 on June 25, 2014. [Respondent's Exhibit ("RX")] 201. The rent for the unit was $950. *Id.* The Lease included "House Rules," two of which related to the parking lot. Rule 31 provides that there is "[n]o working on cars or motorcycles in the parking area. This includes all oil changes, tire changes, and tune ups." *Id.* Rule 32 provides that "[t]enants are responsible for cleaning up all oil dripping from Tenant's parking automobile(s)." *Id.* Both Tenants initialed each page of the Lease and of the House Rules.

4. Rule 13 of the House Rules provides that "[a]ny dripping faucets, running toilets, or any other items that need repair must be reported promptly." *Id.*

5. Tembile Roxo became the full-time Property Manager for Cascade Park Apartments in January, 2014. Mr. Roxo earlier worked as a consultant at Cascade Park Apartments and met Mr. Wise at that time.

6. Unit 301 has two bedrooms, a living room, a dining room, a bathroom and a kitchen.

7. When they moved into unit 301 in June 2014, Tenants filled out a "Move-In Inventory & Condition Form" or punch list. PX 101. Mr. Wise identified all the problems in the unit and had Ms. Waller fill [sic] out the punch list. They gave the punch list to Housing Provider about a week after they moved in.

[2] The findings of fact are recited here using the same numbering, language, and terms as used by the ALJ in the Final Order.

8. On the punch list, PX 101, they identified the following issues:

   a. Living Room: "AC-needs charge"

   b. Dining Room: "Ceiling fan"

   c. Kitchen: "Paint cabinet inside; Kitchen fan make noise, loose; kitchen cabinet [illegible]; cabinet top board loose; need outlet don't work; Cabinet weak look like about to fall"

   d. Bedrooms: "Door lock and door loose"

   e. Bath: "Bathroom touchup; Bathroom window needs; Strip on bottom sink not on tight don't go down in tiles"

   f. Miscellaneous: "No fire extinguisher; front door bottom lock need."

9. Mr. Wise felt they had no problems moving into unit 301 and no problems at that time with Mr. Roxo.

10. Mr. Wise fixed some of the problems, such as ceiling fan, on the punch list because he felt Housing Provider was slow in responding. Mr. Wise thought the Property had too few maintenance people, which delayed repairs. A fire extinguisher was provided.

11. Tenants can lodge a complaint or request for service in several different ways. They can appear at the office, call and leave a message on a 24-hour telephone line, or send a message via the computer. Mr. Roxo told his employees not to take oral maintenance requests while walking around the Property, as the request could be forgotten.

12. Certain maintenance requests were handled by in-house maintenance staff and other requests, usually larger jobs, were passed to an outside contractor. A contractor also provided porter services.

13. According to Novo's records, on August 1, 2014, Mr. Roxo and Ms. Waller spoke about pending maintenance issue. RX 202.

14. According to Novo's records, various employees, including Mr. Roxo, observed Mr. Wise working on cars in the parking lot behind the buildings on October 8, 2014, and March 15, 2015. RX 202. On October 8, 2014, Mr. Wise told Mr. Roxo he had been given permission by another manager or owner to work on cars in the lot. *Id.* Mr. Roxo told Mr. Wise he did not have permission to do so.

15. Housing Provider issued a Notice to Correct or Vacate to Tenants on April 7, 2015. PX 107, RX 203. The basis of the Notice was violations of

House Rules 31 and 32, working on cars in the parking lot. *Id.* Rusty Baltimore, a Novo employee, delivered the Notice in person to Mr. Wise. Mr. Wise complained that Mr. Baltimore had thrown the Notice at him in front of his children, which Mr. Wise thought was rude.

16. A little over two weeks later, Mr. Wise asked management for permission to work on a car in the parking lot whose tires had been slashed. Permission was denied and Mr. Wise did not work on the car. RX 202. Mr. Wise subsequently bought and equipped a mobile van which allowed him to work on cars in various locations off the Property. PX 166, 167.

17. Tenants saw mice in their unit soon after they moved in. Tenants have seen mice holes and damage to their furniture from mice. PX 130, 134. Around the start of 2016, Housing Provider gave Tenants pellets and glue traps to use. There was a hole behind their stove, allowing mice access. Housing Provider eventually covered with hole with a steel plate. As of the dates of the hearings in the matter, Tenants still see mice and mice droppings in their unit. PX 135-141. Mice leave droppings in the stove and in the kitchen.

18. Tenants had a problem with cockroaches about a year ago. A screen was split, allowing them access. Mr. Wise repaired the screen.

19. Tenant Wise filed a complaint to enforce housing code regulations in the District of Columbia Superior Court on April 24, 2015. *Wise v. Novo Development Corp.*, 15 CA 00299. PX 112. https://www.dccourts.gov/cco/maincase.jsf.

20. As a result, DCRA Inspector Lesley Seidensticker inspected the unit on April 30, 2015. Mr. Wise showed the Inspector around the unit and identified problems to her. The Inspector issued an Inspection Summary Report on the same day. PX 114, RX 206.

21. In her summary report, PX 114, RX 206, the Inspector identified the following violations:

    a. Entire property is not maintained in a reasonably rodent-free state.

    b. Bathroom: peeling enamel on shower tiles

    c. Bathroom: "per tenant, there is a leak from the base of the toilet (most evident in the morning)"

    d. First Bedroom: crack on ceiling

    e. Kitchen: cabinet door loose on hinges.

22. The Summary Report did not identify any violations related to roaches, mold, leaks from the air conditioning unit, electrical sockets, or cracks in the walls.

23. Before June 8, 2015, Ms. Waller initialed four of the violations and circled "yes" on the Summary Report to indicate repairs had been completed. RX 206. Ms. Waller wrote "yes" next to violation concerning a leak from the base of the toilet and the violation is labelled as "TBD." Mr. Wise felt that all the problems had been fixed but not "accurately."

24. *Wise v. Novo Devel. Corp.*, 15 CA 002994, was dismissed without prejudice on June 8, 2015. The court found all repairs complete except for extermination. http://www.dccourts.gov/cco/maincase.jsf.

25. On July 7, 2015, Housing Provider issued a notice to tenants that kitchen stoves would be cleaned and visible holes sealed on July 8, 2015. RX 208.

26. Housing Provider issued a second Notice to Correct or Vacate to Tenants on July 24, 2015. PX 110. The Notice refers to House Rule 13, which requires tenants to report the need for repairs promptly. However, the Notice describes the violations as alleged illegal activity on the Property, acting in a loud or boisterous manner, and loitering. *Id.*

27. Novo record reflects that on August 30, 2015, security officers at the Property told Mr. Wise not to continue working on the cars in the parking lot. RX 202.

28. Housing Provider issued a third Notice to Correct or Vacate to Tenants on September 3, 2015. PX 108. The Notice alleged that, in violation of House Rules 31 and 32, Tenants were conducting an automobile repair business in the parking lot of the building. *Id.*

29. Housing Provider filed a case against Tenants in Landlord Tenant Branch of the District of Columbia Superior Court on September 9, 2015. *Novo Devel. Corp. v. Wise & Waller*, 15 LTB 21809. PX 109. The case was dismissed at roll call by Housing Provider on October 8, 2015. https://www.dccourts.gov/cc/maincase.jsf.

30. Mr. Wise joined a tenant organization at the Property shortly after receiving the third Notice to Correct or Vacate in early September, 2015. Mr. Wise never spoke to anyone in management about the tenant organization. He did not provide management with a roster of its members. Nor did he tell Mr. Roxo that he was a member. Mr. Wise does not believe that retaliatory action was taken against him because of the tenant organization. He was aware of only one meeting of the tenant organization at the Property on Sixth Street. Marcus Jackson, the head of

the organization, communicated with management. Mr. Wise recalled a meeting of a group of tenants where Mr. Roxo and Mr. Jackson "had words."

31. Mr. Wise views the Housing Provider's actions to prohibit him from working on cars in the parking lot to be retaliatory action. He attributes these retaliatory actions to problems starting with Mr. Baltimore.

32. On September 16, 2015, Novo records reflect that Mr. Roxo saw Mr. Wise working on a red Cadillac in the parking lot. RX 202.

33. On October 14, 2015, Novo record reflects Mr. Wise was seen working on cars in the parking lot. RX 202.

34. Tenants filed a second complaint in the District of Columbia Superior Court to enforce housing code regulations on October 19, 2015. *Wise v. Novo Devel. Corp.*, 15 CA 00901. https://www.dccourts.gov/cco/maincase.jsf. PX 113.

35. On October 20, 2015, Novo records reflect that Mr. Roxo saw Mr. Wise working on two cars in the parking lot. RX 202. Mr. Wise was seen underneath a white Honda.

36. Housing Provider filed a second case against Tenants in Landlord and Tenant Branch of the District of Columbia Superior Court on November 15, 2015. *Novo Devel. Corp. v. Wise & Waller*, 15 LTB 27519. PX 109. Discovery and motion practice occurred. On September 30, 2016, the court granted Housing Provider's motion to dismiss the case. http://www.dccourts.gov/cco/maincase.jsf.

37. As a result of Tenants' case, DCRA Inspector Seidensticker inspected the unit on December 17, 2015, about eight months after her first inspection. She issued an Inspection Summary Report the same day. PX 116.

38. In her Summary Report, PX 116, the Inspector identified the following violations:

    a. Entire property is not maintained in a reasonably insect-free and rodent-free state. Proper precautions to prevent rodent infestation are not present, including the sealing of all potential access points for rodents into the unit/property. "Evidence of mice (dead mouse) and bedbugs (live and dead bedbugs) found."

    b. Living room: peeling, sagging, and cracking paint on wall and below A/C unit.

    c. First Bedroom: entry hollow core door front portion becoming detached.

d. First bedroom: peeling paint on ceiling, on windowsill and wall by windows.

e. Bathroom/hall: protruding nails from carpet tack board, install threshold.

39. Housing Provider uses an outside contractor for pest control. If a resident calls about a pest problem, the resident is placed on a list. Every other Tuesday, the contractor services the complaints on the list.

40. Housing Provider issued a "Pest Control Prep Notice" to Tenants for inspection and treatment of their unit on the next day, December 18, 2015. RX 209. AmericanPest was Housing Provider's contractor and prepared the Notice. Tenants' unit was treated that day.

41. On December 22, 2015, Housing Provider circulated a notice stating that all the units in the building would be inspected for bedbugs on December 29, 2015. RX 210.

42. On December 29, 2015, AmericanPest inspected Tenants' unit and found live bedbugs in the children's room. RX 211. Bedbugs were also seen in Unit 302. *Id.*

43. On December 30, 2015, Tenants filed their Tenant Petition with the RAD. It was transferred to OAH on January 12, 2016.

44. On January 13, 2016, AmericanPest again treated Tenants' unit for bedbugs. RX 212. The company reported "[l]ive activity [was] found in both bedrooms and living room." *Id.* Ms. Waller found bedbugs bites on one of her sons.

45. Housing Provider issued a "Pest Control Prep Notice" from AmericanPest to Tenants for inspection and treatment of their unit on January 29, 2016. RX 213. The unit was treated that day.

46. DCRA Inspector Seidensticker returned to inspect the unit on February 4, 2016. Her inspection occurred about six weeks after her prior inspection. RX 215.

47. In her Summary Report, RX 215, the Inspector identified the following violations:

a. Unit is not maintained in a reasonably insect-free and rodent-free state. Landlord is responsible for prompt extermination by approved processes. "Evidence of mice (dead mouse) and bedbugs (live and dead bedbugs) found."

b. Proper precautions to prevent rodent infestation are not present, including the sealing of all potential access points for rodents into the unit/property. "Exterminations are regularly scheduled and ongoing."

c. Living room: peeling, sagging, and cracking paint on wall and below A/C unit.

d. First Bedroom: entry hollow core door front portion becoming detached.

e. First bedroom: peeling paint on ceiling, on windowsill and wall by windows.

f. Bathroom/hall: protruding nails from carpet tack board, install threshold.

48. All the violations noted in the February 4, 2016, Inspection Summary Report were also noted in the Inspection Summary Report of December 17, 2015. RX 215, PX 116.

49. The February 4, 2016, Inspection Summary Report indicates by typed "x" marks that all the listed violations were "abated." RX 215. Mr. Wise also believed that management had completed the repairs.

50. On February 8, 2016, *Wise v. Novo Devel. Corp.*, 15 CA 008016, was dismissed because repairs were completed. http://www.dccourts.gov/cco/maincase.jsf.

51. Mr. Roxo is not aware of Tenants' making any other requests for maintenance since February 8, 2016.

52. In the Spring of 2016, Tenants saw bedbugs in their apartment. PX 142, 143.

53. On April 20, 2016, Novo records reflect that security officers saw Mr. Wise working on cars in the parking lot. RX 202.

54. On April 22, 2016, Housing Provider issued a Notice to Tenants of Adjustment in Rent Charged. Effective June 1, 2016, the rent for the unit increased from $950 to $969.

55. MPD Officers William Flemming and Richard Carter have known Mr. Wise for several years, simply from their patrolling the neighborhood. Housing Provider's private security officers call MPD to assist with issues such as parked cars with expired license plates.

56. On one occasion, a female employee asked Officer Flemming why he was speaking to Mr. Wise. On another occasion, an employee asked Officer Flemming to take a report about broken windows in a car. The employee accused Mr. Wise and his friends of the vandalism but had no proof to support the accusation.

57. On another occasion, there was a party in the parking lot. Someone from Novo called and complained that no one had gotten a permit for the party. MPD told management that the party was on private property and did not need a city permit.

58. As part of a detail to District 7D, Officer Carter patrols the neighborhood about every six weeks. He could not remember the last time he had seen Mr. Wise, except that it was about four months prior to the hearing. Officer Carter visits with Mr. Wise and others in the parking lot.

59. Officer Carter has been approached in the parking lot by security officers who say that management is watching the parking lot through security cameras. According to Officer Carter, security officers were told by management if they saw Mr. Wise talking to an MPD officer, they should come out and see what was happening. The security officers were also told to write Mr. Wise up for any possible violation and to "step over" Mr. Wise if he was hurt.

60. Both Officer Flemming and Officer Carter felt that Housing Provider was always complaining about Mr. Wise. Neither officer is familiar with the House Rules on use of the parking lot or the parking policy. Neither officer has seen Mr. Wise being given any kind of violation notice.

61. Tenants have observed others, including residents, working on cars in the parking lot for the building, for example, on May 14, 2016. PX 163, 164. Mr. Wise also observed Property security officers at a car with an open hood in the parking lot on July 20, 2016, for about 15-20 minutes. PX 165.

62. Housing Provider has issued a 30-day Notice to another tenant for working on a car in the parking lot.

63. On June 1, 2016, recently-installed security cameras recorded Mr. Wise working on cars in the parking lot. RX 202, 204.

64. Mr. Roxo did not know which tenants were members of the tenant organization. Mr. Jackson communicated with Mr. Roxo about space for a meeting. Mr. Roxo told Mr. Jackson that a request for a meeting space had to come from a tenant, and Mr. Jackson was not a tenant. Mr. Roxo was aware of a meeting with a D.C. tenants group but was not aware of

the purpose of the meeting. Mr. Roxo saw Mr. Wise in the parking lot on the day of that meeting, not at the meeting.

65. When Tenants rented the unit in June 2014, each had two cars. Each got two parking stickers from Novo to identify their cars as belonging to tenants of the buildings.

66. The Novo parking policy was that each car had to be licensed in the District of Columbia, be insured, and be owned by a tenant. If a car met those requirements, the tenant could get a parking sticker. The parking sticker was assigned to a particular car, by make, model, and year. Mr. Roxo asked security officers to put stickers warning a car could be towed on vehicles without parking stickers in the lot. No copy of a parking policy was introduced into evidence.

67. Mr. Wise eventually had four cars; he put a parking sticker on a BMW and a Jaguar. When he got rid of those two cars, Mr. Wise did not remove the parking stickers because it was too hard to remove them.

68. When Mr. Wise tried to get additional parking stickers, he understood from Novo employees that the price would be $150. However, Novo policy was that to get an additional sticker, there would be a charge of $50 only if the old sticker was not returned.

69. When Ms. Waller sold her car, she returned the old parking sticker and was given a new one without charge.

70. In 2016, Mr. Wise had three cars in the parking lot. PX 119. At one point, Mr. Wise had a parking sticker that he moved from one car to the other, depending on which he was leaving on the parking lot. Mr. Wise thinks that the parking lot is usually almost empty, PX 120-124, 126, and he should be allowed to have four cars parked there. He does not want to pay extra for new stickers.

71. At least one Novo employee, who lives on the Property, has a car licensed outside the District of Columbia and has been given a parking sticker.

72. Stolen cars have been left on the parking lot at times.

73. In 2016, Tenants' cars have had warning stickers put on them. PX 150, 152. Mr. Wise has seen out-of-state cars parked in the parked lot without warning stickers on them. PX 175-178. None of Tenants' vehicles have been towed.

74. Sometime in July 2016, Novo stopped enforcing the parking policy because management was reconsidering the terms of the parking policy. Security cameras were installed in the summer of 2016 and management is considering a gated entrance, activated by a parking sticker or tag.

75. Mr. Wise believes that initially he was on good terms with management, including Mr. Roxo, at the Property. When Mr. Wise was making efforts to help the kids in the community, Mr. Wise felt management pushed him out. When management was adding new sidewalks to the rear of the Property in July 2016, Mr. Wise had a table chained to a nearby wall. PX 168. Mr. Wise believes maintenance workers were told to cut the chain by management. They did and the top of the table was broken. PX 169. Up until a year or so ago, Mr. Wise, unbeknownst to management, had a key to the gate and to the laundry room. When the maintenance man did not go out and lock the gate and the room at night, Mr. Wise would do so. When Mr. Roxo found out about the arrangement, the locks were changed.

Final Order at 3-18 (footnotes omitted); R. at Tab 31. The ALJ made the following conclusions of law in the Final Order:[3]

A. Services or Facilities were Substantially Reduced By Substantial and Prolonged Housing Code Violations

1. In their Amended Tenant Petition, Tenants allege the following violations of the housing regulations: mold throughout the unit; multiple plumbing leaks; frequent water outages and hot water outages; holes and cracks throughout the unit on the floor, walls, ceilings; broken kitchen cabinets; broken or inoperable doors, including the front door; inoperative hearing and cooling; uncontrolled mice, roach, bedbug, and other pest infestation; inoperative electrical sockets and other electrical problems throughout the unit; inoperative kitchen appliances; and inoperable bathroom appliances. Amended Tenant Petition at 2.

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.

3. The assessment of a tenant's claims for reductions of services or facilities requires a three-part analysis. *Karpinksi v. Evolve Mgmt.*, RH-TP-09-29,590 (RHC Aug. 19, 2014); *Kuratu v. Ahmed, Inc.*, RH-TP-07-28,985 (RHC Dec. 27, 2010). First, the tenant must establish that a "related" service or facility was "substantially" reduced. D.C. Official Code § 42-3509.01(a). Although the Act does not state what constitutes a substantial reduction of services, the District of Columbia Court of Appeals has applied the Act's definition of a "substantial violation" as one measure of

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

a substantial reduction in services. There must exist a housing condition in violation of a statute of regulation that "may endanger or materially impair the health and safety of any tenant or person occupying the property." *Parreco v. D.C. Rental Hous. Comm'n*, 885 A.2d at 337 (quoting D.C. Official Code § 42-3501.03(35)). The Rental Housing Commission (RHC or Commission) has held that a determination of whether a reduction is "substantial" is a "function of the 'degree of loss' . . . substantiated by the length of time that the tenants were without service." *Karpinski*, RH-TP-09-29,590 at 19 (quoting *Newton v. Hope*, TP 27,034 (RHC May 29, 2002)). Title 14 DCMR [§] 4216.2 defines "substantial compliance with the housing code" as the absence of certain substantial housing violations as defined in D.C. Official Code § 42-3501.03(35). The regulation lists 20 specific violations ranging from leaks in the roof, to infestations or insects, to falling plaster. There is a final catch-all provision covering a "[l]arge number of housing code violations, each of which may be either substantial or non-substantial, the aggregate of which is substantial, because of the number of violations."

4. Second, the tenant must present "competent evidence of the existence, duration, and severity of the reduced services." *Jonathan Woodner Co. v. Enobakhare*, TP 27,730 (RHC Feb. 3, 2005) at 11 (citations omitted). The burden is on the tenant to establish a substantial housing code violation exists. *See Hutchinson v. Home Realty, Inc.*, TP 20,523 (RHC Sept. 5, 1989), citing *Nwanko v. William J. Davis, Inc.*, TP 11,728 (RHC Aug. 6, 1986), aff'd, 542 A.2d 827 (D.C. 1988). To meet the burden, tenant must submit proof of "the dates of duration of those violations." *Payne v. A & A Marbury, LLC*, OAH No. RH-TP-06-28[,]616 at 11 (Final Order, May 16, 2007), citing *Russell v. Smithy Braedon Prop. Co.*, TP 22,361 (RHC July 20, 1995) at 16.

5. Finally, a tenant must show that the housing provider had knowledge of the alleged reduction in services and that the tenant gave the housing provider reasonable access to the premises and reasonable time to make repairs. *Payne*, *supra* at 11, citing *Gavin v. Fred A. Smith Co.*, TP 21,198 (RHC Nov. 18, 1992) at 4. If a tenant fails to prove any of the three elements, the entire claim will fail. *Karpinski*, RH-TP-09-29,590 at 19; *Kuratu*, RH-TP-07-28,985 at 14.

. . .

Uncontrolled mice, roach, bedbug and other pest infestation.

6. Although the June 2014 punch list does not identify mice and insects as a problem, the DCRA Inspection Summary Reports of April 30, 2015, December 17, 2015, and February 4, 2016, do. PX 114, 116, RX 215. Housing Provider had the unit inspected and treated several times. On July 8, 2015, maintenance men cleaned the stove and sealed any observed

holes. RX 20. The unit was inspected and treated on December 18, 2015, for cockroaches and rodents. RX 209. All the units in the building were inspected for bedbugs on December 29, 2015, and bedbugs were found in Tenants' unit. RX 210, 211. On January 13, 2016, bedbugs were found once again in Tenants' unit and the unit was treated. RX 212. Another inspection and treatment was scheduled for January 29, 2016. RX 216, RX 213. Tenants took pictures of bedbugs in their unit in Spring, 2016. PX 142, 143. Ms. Waller found bedbug bites on one of her children. Tenants took pictures of dead mice and miscellaneous bugs in August 2016. PX 135-141. Tenants have observed mouse holes and damages to their furniture from mice. PX 130, 134. Housing Provider sealed a hole behind the stove that was allowing mice access to the unit. Ms. Waller still finds mice droppings on the kitchen stove and sees live mice in the unit.

7. Infestations of insects or rodents are substantial as a matter of law. 14 DCMR [§] 4216.2(f) [sic]. The Property Maintenance Code describes an "infestation" indirectly by stating that all structures shall be maintained in a "reasonably insect-free and rodent-free state." 12[G] DCMR [§] 309.1. The Commission reversed a finding of no reduction in facilities of services where several tenants in a single building at Cascade Park Apartments described killing a certain number of rodents in their apartments; findings rodent feces in their drawers and cabinets; making multiple requests for extermination; being bitten by a rat and requiring anti-biotic treatment as a result. *Cascade Park Apartments v. Walker*, TP 26,197 (RHC Jan. 14, 2005) at 23. The Commission affirmed a finding of cockroach infestation where the tenant provided letters to the housing provider documenting a cockroach and rodent infestation; photographs of the infestation in the kitchen; and testimony about the landlord's setting off a fumigator bomb while the tenant and her pets were still in the unit. *Pena v. Woynarowsky, In Re 1435 Girard Street, NW*, TP-28,817 (RHC Feb. 3, 2012).

8. The April, 2015, DCRA Inspection Summary Report establishes that there was an infestation of rodents and insects in unit 301 at least as of April 2015. PX 114, RX 20. The infestation continued and was noted again in the DCRA Inspection Summary Report on February 4, 2016. PX 116, 215. The DCRA Inspector noted on February 4, 2016, that proper precautions to prevent rodent infestation were not present, but exterminations were regular and ongoing. PX 215 [sic]. Tenants produced photographs of dead mice, insects, bedbugs, and mouse holes from Spring 2016 and August 2016. PX 130, 134-143. Ms. Waller also testified she saw mice droppings up to the day of the hearing.

9. Housing Provider presented evidence that it has taken some steps to exterminate the bedbugs and mice. However, the Commission has held that a "housing provider's unsuccessful efforts to abate conditions in a tenant's unit, including rodent or insect infestations, are irrelevant to the

question of whether services have been reduced in a tenant's unit." *The Woodner Apts. v. Taylor*, RH-TP-07-29,040 (RHC Sept. 1, 2015) at 55-56.

10. I conclude that there was and is an ingoing infestation of insects and rodents in Tenants' unit from April 30, 2015, to the date of the last hearing, September 13, 2016.

Mold throughout unit.

11. Tenants did not identify mold as a problem in the June 2014 punch list. PX 101. Nor was it noted as a problem in any of the DCRA Inspection Summary Reports of April 30, 2015, December 17, 2015, or February 4, 2016. PX 114, 116, RX 215. Ms. Waller testified that what she believed was mold was not present when they moved in but started to appear on some windowsills about six months later. Ms. Waller testified that Housing Provider painted a windowsill but the mold has never come back. Tenants provided photographs, taken in the summer of 2016, of an area under an air conditioning unit that is blackened. PX 128-129. If there was mold present in the apartment, there was no evidence about the extent or duration of the problem. I conclude that services or facilities were not substantially reduced as a result.

Multiple plumbing leaks.

12. Tenants did not identify multiple plumbing leaks as a problem in the punch list. PX 101. In the DCRA Inspection Summary Report of April 30, 2015, the Inspector noted that "per tenant, there is a leak from the base of the toilet (most evident in the morning)." PX 114. Plumbing leaks were not noted as a problem in the subsequent DCRA Inspection Summary Reports of December 17, 2015, and February 4, 2016. PX 116, RX 215. Because Tenants have failed to establish the existence of a problem, its extent, or duration, I conclude that services or facilities were not substantially reduced as a result.

Frequent water outages and hot water outages.

13. Tenants did not identify water problems in the punch list. PX 101. Nor were they noted as a problem in any of the DCRA Inspection Summary Reports of April 30, 2015, December 17, 2015, and February 4, 2016. PX 114, 116, RX 215. No testimony was provided on the issue and the existence of any violation was not established. I conclude that services or facilities were not substantially reduced as a result.

Holes and cracks throughout the unit on the floor, walls, and ceilings.

14. Tenants did not identify holes and cracks in the punch list. PX 101. The DCRA Inspection Summary Report of April 30, 2015, notes a crack on the ceiling in the first bedroom. PX 114. Before June 8, 2015, Ms. Waller

initialed four of the violations, including the crack on the ceiling and circled "yes" on the Summary Report to indicate repairs had been completed. RX 206. Tenants provided photographs, taken in August 2016, to show that there were cracks at a window frame near an air conditioning unit. PX 146, 147. The cracks do not appear substantial. There was no testimony about the extent of the problem throughout the unit. I conclude that services or facilities were not substantially reduced as a result.

Broken kitchen cabinets.

15. Ms. Waller testified that when they moved in, the doors to the kitchen cabinets would swing open. As a result, people could hit their heads on cabinet doors. The problem was not identified in the punch list. PX 101. The punch list noted that the kitchen looked "weak" and there was a problem with a board inside the cabinet. *Id.* The DCRA Inspection Summary Report of April 30, 2015, notes "cabinet door loose on hinges." PX 114. Before June 8, 2015, Ms. Waller initialed four of the violations, including the cabinet door loose on hinges, and circled "yes" on the Summary Report to indicate repairs had been completed. RX 206. Mr. Wise stated that he thought all the problems on the punch list were fixed, some not accurately. The cabinets were not mentioned in the DCRA Inspection Summary Report of February 4, 2016. RX 215. Tenants have not established a substantial problem. I conclude that services or facilities were not substantially reduced as a result.

Broken or inoperable doors, including the front door.

16. On the punch list, Tenants identified a problem with the doors to the bedrooms, and a problem to the bottom lock of the front door. PX 101. A problem with a bedroom door is noted in the DCRA Inspection Summary Reports of December 17, 2015, and February 4, 2016. PX 116, RX 215. The problem is described as "entry hollow core door front portion becoming detached." *Id.* There is no further mention of a problem with the bottom lock on the front door. There is no reference to the front door as "inoperable." The February 4, 2016, Inspection Summary Report shows by typed "x" marks that the problems were abated, including the door problem. RX 2015. As a result, the Tenants' case was dismissed on February 8, 2016. There was no evidence about the extent or duration of any problem. I conclude that services or facilities were not substantially reduced as a result.

Inoperative heating and cooling.

17. Neither the heating nor the cooling system was identified as an issue in the punch list or in any of the DCRA Inspection Summary Reports. PX 101, 114, 116, RX 215. The punch list identified the air conditioner in the

living room as needing a charge. PX 101. Ms. Waller thought that the apartment was cold in the winters of 2015 and 2016. The Inspector brought a temperature gauge to the unit and told Ms. Waller temperature was average. Ms. Waller also testified that Housing Provider paid half of their PEPCO bill for the winter of 2014-2015 because they were using space heaters and the oven to heat the unit. Housing Provider, therefore, has compensated for the problem already. There was no other evidence about the extent or duration of the problem. I conclude that services or facilities were not substantially reduced as a result.

Inoperative electrical sockets and other electrical problems throughout the unit.

18. On the punch list, there is a reference to an outlet—"need outlet don't work." PX 101. There were no mentions of any electrical problems in the DCRA Inspection Summary Reports of April 30, 2015, December 17, 2015, and February 4, 2016. PX 114, 116, RX 215. Ms. Waller testified that electrical sockets in the dining room, kitchen, and in one bedroom do not work. Mr. Wise agreed there was a problem. Although they told Housing Provider at some point, there was no response. There was no evidence about the extent or duration of the problem. I conclude that services or facilities were not substantially reduced as a result.

Inoperative kitchen appliances.

19. Kitchen appliances were not identified as an issue in the punch list or in the DCRA Inspection Summary Report. PX 101, 114, 116, RX 215. There was no testimony concerning problems with broken kitchen appliances. I conclude that services or facilities were not substantially reduced as a result.

Inoperable bathroom appliances.

20. The punch list mentions that a knob on a faucet in the bathroom was loose. As noted above, in the DCRA Inspection Summary Report of April 30, 2015, the Inspector noted that "per tenant, there is a leak from the base of the toilet (most evident in the morning)." PX 114. Neither plumbing leaks nor problems with bathroom appliances were noted as problems in the subsequent DCRA Inspection Summary Reports of December 17, 2015, and February 4, 2016. PX 116, RX 215. There was no testimony about any other problems with bathroom appliances. Because Tenants have failed to establish the existence of a problem, its extent, or duration, I conclude that services or facilities were not substantially reduced as a result.

Peeling and cracked paint.

21. The DCRA Inspection Summary Reports of December 17, 2015, and February 4, 2016, identify peeling paint in the living room and one bedroom as problems. PX 116, RX 215. The February 4, 2016, Inspection Summary shows by typed "x" marks that the problems were abated, including the peeling paint problems. RX 215. As a result, the Tenants' case in housing conditions court was dismissed on February 8, 2016. Tenants submitted photographs of peeling and cracked paint at the baseboards in the living room in August 2016. PX 145, 148. The problem was not substantial. Tenants did not establish the extent or duration of any problem after February 2016. I conclude that services or facilities were not substantially reduced as a result.

Remedy.

22. The remedies for tenants who prove that services or facilities were reduced are set forth in D.C. Official Code § 42-3509.01(a). One remedy is a rent refund. The other remedy is a rent rollback. When facilities are reduced or eliminated, a housing provider is required to reduce the rent for the housing accommodation by an amount which reflects the monthly value of the decrease in related services or facilities. D.C. Official Code § 42-3502.11; 14 DCMR [§] 4211.6.

23. Because services or facilities were substantially reduced here due to the mouse and insect infestation, I award damages pursuant to the Act. D.C. Official Code § 42-3502.11. It is not necessary to assess the value of a reduction in services and facilities with "scientific precision," but I may instead rely on my "knowledge, expertise, and discretion as long as there is substantial evidence on the record regarding the nature of the violation, duration, and substantially." *Kemp v. Marshall Heights Cmty. Dev.*, TP 24,786 (RHC Aug. 1, 2000) at 8 (citing *Calomiris v. Misuriello*, TP 4809 (RHC Aug. 30, 1982) and *Nicholls v. Tenants of 5005, 07, 09 D St., S.E.*, TP 11,302 (RHC Sept. 6, 1985)). It is not necessary for an Administrative Law Judge to receive expert testimony or precise evidence concerning the degree to which services and facilities have been reduce in order to compensate tenants for the value of the reduced services.

24. Because mice and bedbugs were a problem throughout the unit and continue to be present up to the date of the hearing, I conclude the infestation was severe and award a rent refund of $50 a month from May 2015 through September 2016, for a total refund of $850. I award a rent rollback to $900 starting in October 2016, until Housing Provider is in substantial compliance with the housing regulations.

B. The June 1, 2016 Rent Increase was Taken While the Apartment was Not in Substantial Compliance with the Housing Code

25. Under the Rental Housing Act and regulations, a housing provider may increase a tenant's rent once every 12 months by an amount authorized by the Act. The most common type of rent increase is known as an adjustment of general applicability or a "CPI-W" increase. The RHC sets the adjustment based on the "Consume Price Index for Urban Wage and Clerical Workers (CPI-W), Washington-Baltimore, DC-MD-VA-WV, All Items." D.C. Official Code § 42-3502.06(b). The adjustment of general applicability allows housing providers to increase rents annually in order to keep up with inflation.

26. To increase a tenant's rent, the Act requires that a Housing Provider: (a) provide the tenant with at least 30 days written notice; (b) certify that the unit and common elements are in substantial compliance with the housing regulations; (c) provide the tenant with a notice of rent adjustment filed with the RAD; (d) provide the tenant with a summary of tenant rights under the Act; and (e) simultaneously file with the RAD, a sample copy of the notice of rent adjustment along with an affidavit of service. D.C. Official Code § 42-3502.08(f): 14 DCMR [§] 4205.4.

27. Tenants allege that their rent was increased when a rental unit was not in substantial compliance with the housing code violation of D.C. Code § 42-3502.08(a)(1)(A). As discussed above, the existence of a mouse and insect infestation in the unit is a substantial violation of the housing code and a substantial reduction in services or facilities. Therefore, in June, 2016, when Housing Provider increased the rent by $19, the unit was not in substantial compliance with the housing code. Housing Provider is not entitled to increase the rent and Tenants are entitled to a refund of $95 for months June 2016 through October 2016.

28. As a consequence of the rent rollback and the invalidity of the rent increase, the rent is $900 going forward, starting in October 2016, until Housing Provider is in substantial compliance with the housing regulation.

C. Retaliation

29. Tenants contend Housing Provider has retaliated against them. A tenant has an available remedy if a housing provider engaged in prohibited retaliation against her. The remedy is the imposition of a civil fine of up to $5,000, payable to the District of Columbia, if there was a willful violation of the retaliation provision. D.C. Official Code § 42-3509.01(b).

30. Retaliation under the Rental Housing Act is a term of art. It is an act intentionally taken to injure or get back at a tenant for taking certain protected actions. 14 DCMR [§] 4303.1. The Act, D.C. Official Code

§ 42-3505.02(a), provides that "[n]o housing provider shall take any retaliatory action against any tenant who exercises any right conferred upon the tenant by this chapter." Retaliatory actions may include:

- any action or proceeding not otherwise permitted by law which seeks to recover possession of a rental unit;
- action which would unlawfully increase rent, decrease services, increase the obligation of a tenant, or constitute undue or unavoidable inconvenience, violate the privacy of the tenant, harass, or reduce the quality or quantity of service;
- an refusal to honor a lease or rental agreement or any provision of a lease or rental agreement,
- refusal to renew a lease or rental agreement;
- termination of a tenancy without cause; or
- any other form or threat of coercion.

Id.

31. The Act creates a presumption of retaliation in situations where a housing provider engages in certain activities within six months of when a tenant exercises rights under the Act. If the presumption applies, the housing provider must rebut it by clear and convincing evidence. D.C. Official Code § 42-3505.02(b). The presumption applies if, within six months preceding the housing provider's action, the tenant[:]

(1) Has made a witnessed oral or written request to the housing provider to make repairs which are necessary to bring the housing accommodation or the rental unit into compliance with the housing regulations;

(2) Contacted appropriate officials of the District government, either orally in the presence of a witness or in writing, concerning existing violations of the housing regulations in the rental unit the tenant occupies or pertaining to the housing accommodation in which the rental unit is located, or reported to the officials suspected violations which, if confirmed, would render the rental unit or housing accommodation in noncompliance with the housing regulations;

(3) Legally withheld all or part of the tenant's rent after having given a reasonable notice to housing provider, either orally in the presence of a witness or in writing, of a violation of the housing regulations;

(4) Organized, been a member of, or been involved in any lawful activities pertaining to a tenant organization;

(5) Made an effort to secure or enforce any of the tenant's rights under the tenant's lease or contract with the housing provider; or

(6) Brought legal action against the housing provider.

D.C. Official Code § 42-3505.02(b).

32. In this case, Tenants contend that Housing Provider retaliated against them because they sought to have the conditions in their unit abated. Amended Tenant Petition, Third Claim. Tenants contend that Housing Provider filed two lawsuits against them, failed to repair or took a long time to schedule repairs, and verbally harassed or abusively communicated with Tenants and their guests. *Id.* At the hearing, Mr. Wise testified that Housing Provider also retaliated against him by singling him out for violations of the Novo parking policy.

33. On November 5, 2015, Housing Provider filed 1 LTB 27519 against Tenants; Tenants had filed 15 CA 8016 within the prior six months. On September 9, 2015, Housing Provider filed 15 LTB 21809 against Tenants; Tenants had filed 15 CA 2994 within the prior six months. Therefore, there is a presumption that Housing Provider filed its two cases against Tenants in retaliation for Tenants' protected acts of filing two cases about housing conditions against Housing Provider.

34. Because retaliation is presumed, the burden shifts to the housing provider to provide clear and convincing evidence that is actions were not retaliatory. 14 DCMR [§] 4303.4; *see Youssef v. United Management Co., Inc.*, A.2d 152, 155 (D.C. 1996).

35. The two Landlord and Tenant Branch cases filed by Housing Provider on September 9, 2015, and November 5, 2015, followed three Notices to Correct or Vacate served on Tenants. All three Notices cited violations of the House Rules. RX 203, PX 110, PX 108. Two dealt with violations of the parking lot policy and one dealt with illegal activities. *Id.* The first case was dismissed at roll call on October 8, 2015. The second was dismissed on September 30, 2016.

36. Mr. Wise testified that after he received the first Notice to Correct on April 7, 2015, he never worked on cars in the parking lot again. Mr. Wise stated that he had purchased a mobile van and could do car repair[s] at other locations. Mr. Wise also testified that there were other people allowed to work in the parking lot. Evidence also shows that on repeated occasions in 2014, 2015, and 2016, Mr. Wise worked on cars in the parking lot, regardless of his possession of the mobile van. Mr. Wise

asserted the parking lot was never full and there was plenty of room to work on cars. Mr. Wise also stated that a prior owner or manager had given him permission to work on cars in the parking lot as long as he cleaned up thereafter. Mr. Wise apparently feels that, regardless of the House Rules, he should be free to work on cars in the parking lot. After being given the 30-day Notice on April 7, 2015, for violating those rules, the evidence showed he continued to work on cars.

37. I conclude that Housing Provider has established clear and convincing evidence that it had a basis for alleging that Mr. Wise violating "House Rules." Housing Provider's actions in filing cases against Mr. Wise were responsive to Mr. Wise's behavior but not retaliatory against him.

38. Tenants also asserted that Housing Provider retaliated against them by being slow to make repairs and by verbally harassing or abusively communicating with Tenants and their guests. Because Tenants' testimony about requesting repairs was vague, Tenants did not establish that Housing Provider was slow to make repairs. After each of the DCRA inspections, Tenants agreed that repairs had been done. With respect to the insect and rodent infestation, Housing Provider established that it made repeated efforts to abate the problems. The only evidence coming close to "abusive communication" was Mr. Wise's testimony that the employee who hand-delivered the first Notice was not respectful to him. These actions are not of such a magnitude to constitute retaliation – a housing provider's attempt to "get back at" a tenant.

D. Notice to vacate

39. In their Tenant Petition, by checking Box M on the Tenant Petition form, Tenants alleged that Housing Provider had served Tenants with a Notice to Vacate in violation of the Act. The allegation is not addressed in the details to their Petition. A "Notice to Correct or to Vacate" is different from a "Notice to Vacate," which is treated differently under the regulations. A "notice to correct or vacate" requires that a housing provider give a tenant 30 days to correct the violation and the notice "may state that the housing provider may evict if the violations are uncorrected at the conclusion of the 30 day notice period." 14 DCMR [§] 4301.3.

40. Housing Provider here served Tenants with three "30-Day Notices to Correct or Vacate" starting April 7, 2015. PX 107, 108, 110. The form is authorized by D.C. Official Code § 42-3505.01(b). One Notice appears to be missing only the RAD Registration Number. PX 107. Tenants did not identify a specific problem with any of the Notices. Tenants have presented no evidence to establish that Housing Provider served them with an improper Notice to Vacate.

E. Interference with Tenant Organization

41. In their Tenant Petition, tenants alleged that Housing Provider interfered with the operation of a tenant organization. The Tenant Petition asserts that Housing Provider removed literature about the tenant organization from common areas; threatened tenants, including Tenants here, who participate in the tenant organization; and sought to intrude during meetings of the tenant organization. Amended Tenant Petition, Fourth Claim.

42. Tenants established that Mr. Wise joined the tenant organization after receiving a 30-day Notice, sometime in early September, 2015. Mr. Wise testified that he never spoke with anyone in management about the tenant organization or its members. He did not tell Mr. Roxo that he was a member. He was aware of only one meeting of the tenant organization at the Property. Mr. Wise does not believe that retaliatory action was taken against him because of the tenant organization.

43. For his part, Mr. Roxo testified that he did not know which tenants were members of the tenant organization. He communicated with Mr. Jackson, not Mr. Wise, about space at the Property for a meeting. Mr. Roxo was aware of a meeting with a D.C. tenants group but was not aware of the purpose of the meeting. Mr. Roxo saw Tenant Wise in the parking lot on the day of the meeting, not at the meeting. There was no evidence related to tenant literature or threats to members.

44. Tenants have failed to establish the Housing Provider took any steps to interfere with a tenant organization.

F. Bad Faith

45. Tenants have requested an award for treble damages because they contend Housing Provider acted in bad faith in its violations of the Act. In interpreting "bad faith" for the purposes of treble damages, the Commission has held 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 (D.C. 2008) (quoting *P'ship Placements, Inc. v. Landmark Ins. Co.*, 722 A.2d 837, 845 (D.C. 1998)). Housing Provider must have 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," *id.* at 8, it is sufficient that a housing provider's action 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 Apts.*, TP 26,197 at 35.

46. In this case, Tenants argued that Housing Provider acted willfully and in bad faith. Tenants have failed to establish that Housing Provider's actions were motivated by a fraudulent, deceptive, misleading, dishonest, or unreasonably self-serving purpose and not by simple negligence, bad judgement, or an honest belief in the course of action taken. The burden of proving bad faith is a high burden. I am unable to find that Housing Provider's actions were taken in bad faith and, therefore, no treble damages are awarded.

G. Attorneys' Fees

47. In the Tenant Petition, Tenants seek an award of attorneys' fees. A presumption of entitlement to attorneys' fees is created by a prevailing tenant in a rental housing case. 14 DCMR [§] 3825.3. OAH Rules require that, unless a timely motion for reconsideration is filed, motion for an award of attorney's fees in a rental housing case be filed within 30 days of service of the final order. OAH Rule 1940.1. Standards for the award of attorneys' fees are found in Title 14, DCMR.

H. Calculation of Damages.

48. The Rental Housing Act provides that "[I]f the Rent Administrator determines that the related services or related facilities supplied by a housing provider for any rental unit in the housing accommodation are substantially increased or decreased, the Rent Administrator may increase or decrease the rent charged, as applicable, to reflect proportionally the value of the damage of the change in services or facilities." D.C. Official Code § 42-3502.11. I have concluded that there was and is an ongoing infestation of rodents and insects in the unit since April 30, 2015. The infestation was severe. Based on the reduction in services, I award a rent refund of $50 per month from May, 2015, to and including September, 2016, the month of the last hearing. Going forward, I roll the rent back to $900 until Housing Provider is in substantial compliance with the housing regulations.

49. Based on the substantial violation of the housing code, I conclude that Housing Provider could not increase the rent by $19 in June 2016. Table 1 below reflects the rent reductions. [4]

50. The Rental Housing Commission Rules provide for the award on rent refunds at the interest rate used by the Superior Court of the District of

[4] The Commission omits a recitation of the ALJ's Table 1, detailing Tenants' rent refund based on reduction of services/facilities, which was attached to the Final Order. Final Order at 40; R. at Tab 31.

Columbia on the date of the decision from the date of the violation to the date of issuance in the decision. 14 DCMR [§] 3826; *Marshall v. D.C. Rental Hous. Comm'n*, 544 A.2d 1271, 1278 (D.C. 1987). Interest at the current 3% per annum rate of the District of Columbia Superior Court is reflected in Table 2 below through the date of the decision.[5] Total interest is $20.78.

51. The total amount of refunds and interest is $965.78.

Final Order at 18-37 (footnotes omitted); R. at Tab 31.

On April 25, 2017, the Tenants filed a notice of appeal ("Notice of Appeal") with the Commission, raising the following issues on appeal.[6]

1. The Rent Administrator erred in its finding of fact that Novo's records included various employees observing Mr. Wise working on cars. Final Order Sec. IV Par. 14.

2. The Rent Administrator erred in its finding of fact that Mr. Wise joined a tenant's association in September 2015 and that he never spoke to anyone in management about the organization and that he did not feel retaliated against because of his involvement in the tenants' association. Final Order Sec. IV Par. 30.

3. The Rent Administrator erred in its finding of fact that on April 20, 2016 Novo's records reflect that security officers saw Mr. Wise working on cars in the parking lot. Final Order Sec. IV Par. 53.

4. The Rent Administrator erred in its finding of fact that Housing Provider has issued a 30-day Notice to another tenant for working on a car in the parking lot. Final Order Sec. IV Par. 62.

5. The Rent Administrator erred in its finding of fact that on June 1, 2016, recently installed security cameras recorded Mr. Wise working on cars in the parking lot. Final Order Sec. IV Par. 63.

6. The Rent Administrator erred in its finding of fact that Mr. Wise eventually had four cars and that he did not remove parking stickers on those cars because they were too difficult to remove. Final Order Sec. IV Par. 67.

[5] The Commission omits a recitation of the ALJ's Table 2. Final Order at 40; R. at Tab 31.

[6] The Tenants' issues on appeal are recited herein using the Tenants' language and numbering from the Notice of Appeal.

7. The Rent Administrator erred in its finding of fact that in 2016 Mr. Wise had three cars in the paring [sic] lot and that he moved parking stickers between cars. Final Order Sec. IV Par. 70.

8. The Rent Administrator erred in its finding of fact that Mr. Wise was pushed out due to helping kids in the community. Final Order Sec. IV Par. 75.

9. The Rent Administrator erred in its conclusion of law that services and facilities were not substantially reduced as a result of mold throughout the unit. Final Order Sec. V Part A page 23.

10. The Rent Administrator erred in its conclusion of law that services and facilities were not substantially reduced as a result of multiple plumbing leaks. Final Order Sec. V Part A page 23.

11. The Rent Administrator erred in its conclusion of law that services and facilities were not substantially reduced as a result of holes and cracks throughout the unit on the floor, walls and ceilings. Final Order Sec. V Part A page 24.

12. The Rent Administrator erred in its conclusion of law that services and facilities were not substantially reduced as a result of broken kitchen cabinets. Final Order Sec. V Part A page 24.

13. The Rent Administrator erred in its conclusion of law that services and facilities were not substantially reduced as a result of broken or inoperable doors, including the front door. Final Order Sec. V Part A page 25.

14. The Rent Administrator erred in its conclusion of law that services and facilities were not substantially reduced as a result of inoperative heating and cooling. Final Order Sec. V Part A page 25.

15. The Rent Administrator erred in its conclusion of law that services and facilities were not substantially reduced as a result of inoperative electrical sockets and other electrical problems throughout the unit. Final Order Sec. V Part A page 26.

16. The Rent Administrator erred in its conclusion of law that services and facilities were not substantially reduced as a result of peeling and cracked paint. Final Order Sec. V Part A page 27.

17. The Rent Administrator erred in its conclusion of law that the Housing Provider did not retaliate against the Tenants. Final Order Sec, V Part E.

18. The Rent Administrator erred in its conclusion of law that the Housing Provider did not interfere with a Tenant Organization. Sec. V Part E.

19. The Rent Administrator erred in its conclusion of law that the Housing Provider did not act in bad faith. Sec. V Part F.

Notice of Appeal at 1-3. The Commission held a hearing on this matter on July 19, 2017.

II. ISSUES ON APPEAL[7]

1. Whether the ALJ made findings of fact not supported by substantial evidence related to the Tenants' use of the parking lot.

2. Whether the ALJ erred in determining that Tenant Wise joined a tenant association in September 2015, that he never spoke with anyone in management about the association, and that he did not feel retaliated against because of his involvement in the association.

3. Whether the ALJ erred in determining that Tenant Wise was pushed out due to helping kids in the community.

4. Whether the ALJ erred in concluding that certain services or facilities were not substantially reduced.

5. Whether the ALJ erred in concluding that the Housing Provider did not retaliate against the Tenants.

6. Whether the ALJ erred in concluding that the Housing Provider did not interfere with a Tenant Organization.

7. Whether the ALJ erred in concluding that the Housing Provider did not act in bad faith.

III. DISCUSSION

1. Whether the ALJ made findings of fact not supported by substantial evidence related to the Tenants' use of the parking lot.

The Tenants assert six issues on appeal that contest the ALJ's findings of fact regarding Tenant Wise's use of the parking lot at the Housing Accommodation: issue 1, "that Novo's records included various employees observing Mr. Wise working on cars;" issue 3, "that on April 20, 2016 Novo's records reflect that security officers saw Mr. Wise working on cars in the parking lot;" issue 4, "that Housing Provider has issued a 30-day Notice to another tenant for

[7] The Commission, in its discretion, has rephrased and grouped together claims that involve overlapping legal issues and the application of common legal principles. *See, e.g.*, Ahmed, Inc. v. Avila, RH-TP-28,799 (RHC April 10, 2011) at n.8; Levy v. Carmel Partners, Inc., RH-TP-06-28,830 & RH-TP-06-28,835 (RHC Mar. 19, 2012) at n.9.

working on a car in the parking lot;" issue 5, "that on June 1, 2016, recently installed security cameras recorded Mr. Wise working on cars in the parking lot;" issue 6, "that Mr. Wise eventually had four cars and that he did not remove parking stickers on those cars because they were too difficult to remove;" and issue 7, "that Mr. Wise had three cars in the parking lot and that he moved parking stickers between cars." Notice of Appeal at 1-2.

The Commission's standard of review is found 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 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 (other citations omitted); Bower v. Chastleton Assocs., TP 27,838 (RHC Mar. 27, 2014) at 22; Jackson v. Peters, RH-TP-07-28,898 (RHC Feb. 3, 2012) at 4-5; Eastern Savings Bank v. Mitchell, RH-TP-08-29,397 (RHC Oct. 31, 2012) at 11-12; Marguerite Corsetti Trust v. Segreti, RH-TP-06-28,207 (RHC Sept. 18, 2012) at 11-12. Where the Commission determines that substantial evidence exists to support a hearing examiner'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].'" Boyd v. Warren, RH-TP-10-29,819 (RHC June 5, 2013) (quoting Hago v. Gerwirz, RH-TP-08-11,552 & RH-TP-08-12,085 (RHC Feb. 15, 2012)); *see* Tenants of 2480 16th St., N.W. v. Dorchester House Assocs., LLC, RH-SF-09-20,098 (RHC Mar. 24, 2015); Siegel v. B.F. Saul Co., RH-TP-06-28,524 (RHC Sept. 9, 2015); Karpinski v. Evolve Prop. Mgmt., LLC, RH-TP-09-29,590 (RHC Aug. 19, 2014).

When reviewing an ALJ's findings of fact, "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); *see* Dorchester House Assocs., RH-SF-09-20,098; Notsch v. Carmel Partners, LLC, RH-TP-06-28,690 (RHC May 16, 2014). The Commission has consistently held that "credibility determinations are 'committed to the sole and sound discretion of the [ALJ].'" *See, e.g.*, Dorchester House Assocs., RH-SF-09-20,098; Burkhardt v. B.F. Saul Co., RH-TP-06-28,708 (RHC Sept. 25, 2014); Notsch, RH-TP-06-28,690.

The record reflects conflicting evidence and testimony concerning incidents of Tenant Wise working on cars. In the Final Order, the ALJ stated the following, summarizing the evidence regarding Tenant Wise's use of the parking lot:

> Mr. Wise testified that after he received the first Notice to Correct on April 7, 2015, he never worked on cars in the parking lot again. . . . Evidence also shows that on repeated occasions in 2014, 2015, and 2016, Mr. Wise worked on cars in the parking lot. . . . After being given the 30-day Notice on April 7, 2015, for violating those rules, the evidence shows he continued to work on cars.

Final Order at 33; R. at Tab 31.

The Commissions review of the record reveals substantial evidence to support the ALJ's findings of fact that Tenant Wise violated the Lease by working on cars in the parking lot and misusing parking stickers issued by the Housing Provider. Regarding issues 1, 3, and 5 in the Notice of Appeal, the Housing Provider provided communication logs with entries detailing various employees and security officers' observations of Tenant Wise working on cars in the parking lot. RX 202; R. at Tab 20; *see* Notice of Appeal at 1-2. Additionally, Tembile Roxo, the Housing Provider's head of management, testified to the accuracy of the Housing Provider's business records and photo evidence of security footage that show Tenant Wise working on cars. Hearing CD (OAH Sept. 13, 2016) at 13:22; *see* RX 202; R. at Tab 20. Regarding issue 4 in the

Notice of Appeal, Mr. Roxo also testified that the Housing Provider issued 30 day notices to vacate to other tenants working cars. *Id.* at 13:04-13:12. Finally, regarding issues 6 and 7 in the Notice of Appeal, Tenant Wise's use of parking stickers came from his own testimony, in which he described how he moved the parking stickers among his cars. *Id.* at 14:55.

Because the ALJ credited the Housing Provider's testimony and documentary evidence and some, but not all, of the Tenants' testimony, the Commission affirms the Final Order on this issue. *See* Wash. Metro. Area Transit Auth. v. D.C. Dep't of Emp't Servs., 926 A.2d 140, 147 (D.C. 2007); Gary, 723 A.2d at 1209; Dorchester House Assocs., RH-SF-09-20,098.

2. Whether the ALJ erred in determining that Tenant Wise joined a tenant association in September 2015, that he never spoke with anyone in management about the association, and that he did not feel retaliated against because of his involvement in the association.

The Tenants assert that the ALJ erred in making findings of fact regarding Tenant Wise's membership in a tenant association at the Housing Accommodation. Notice of Appeal at 1.

As stated previously, the Commission's standard of review is contained at 14 DCMR § 3807.1, and provides that the Commission shall reverse an ALJ's decision which the Commission finds to contain conclusions of law not in accordance with the Act, or findings of fact unsupported by substantial evidence. The Commission will sustain an ALJ's decision that is supported by substantial evidence. 14 DCMR § 3807.1; Fort Chaplin Park Assocs., 649 A.2d at 1079; Palmer, RH-TP-13-30,431; *see also* Dorchester House Assocs., RH-SF-09-20,098 at 42 ("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") (quoting Gary, 723 A.2d at 1209). The Commission will not substitute its judgement of the ALJ in determining credibility determinations or the weighing of evidence. *See* Wash. Metro. Area

Transit Auth., 926 A.2d at 147; Atchole v. Royal, RH-TP-10-29,891 (RHC Mar. 27, 2014); Marguerite Corsetti Trust, RH-TP-06-28,207; Hago, RH-TP-08-11,552 & RH-TP-08-12,085.

The Commission's review of the record reveals substantial evidence to support the ALJ's findings of fact. The ALJ relied on the Tenants' own testimony, in which Tenant Wise described his involvement in the tenant association at the Housing Accommodation, and although he felt that the Housing Provider personally targeted him, he asserted that he did not feel that the targeting was because of his involvement in the tenant association, and that he had not communicated with Mr. Roxo or other staff of the Housing Provider regarding his membership in the tenant association. Hearing CD (OAH Aug. 30, 2016) at 16:40-16:46; *see* Final Order at 35; R. at Tab 31.

Because the ALJ's finding of fact is supported by substantial evidence in the record, the Commission affirms the Final Order on this issue. *See* 14 DCMR § 3807.1; Fort Chaplin Park Assocs., 649 A.2d at 1079.

3. Whether the ALJ erred in determining that Tenant Wise was pushed out due to helping kids in the community.

In the Final Order, the ALJ made the finding of fact that "[w]hen Mr. Wise was making efforts to help the kids in the community, Mr. Wise felt management pushed him out." Final Order at 18 (emphasis added); R. at Tab 31. The Tenants purport to challenge a finding of fact made by the ALJ "that Mr. Wise was pushed out due to helping kids in the community." Notice of Appeal at 1 (emphasis added). At the Commission's hearing, counsel for the Tenants explained that this issue relates to the Tenants' claim of retaliation, potentially explaining the Housing Provider's motivation for "targeting" Tenant Wise. Hearing CD (RHC July 19, 2017) at 2:32-2:35.

As stated previously, the Commission will reverse an ALJ's decision which the Commission finds to contain conclusions of law not in accordance with the Act, or findings of fact unsupported by substantial evidence. 14 DCMR § 3807.1. The Commission's review of the record reveals that the claim that Tenant Wise was "pushed out" by management due to his community involvement with children was based on Tenant Wise's own testimony. Hearing CD (OAH Aug. 30, 2016) at 16:00. However, the Tenants do not provide any explanation on appeal for how the ALJ purportedly erred by finding that Tenant Wise felt "pushed out." To the extent the Tenants may be suggesting that the ALJ erred by failing to find that the Housing Provider was *in fact* motivated to "target" Tenant Wise for his community work, the Tenants again do not identify any substantial evidence in the record or legal error by the ALJ. *See* Notice of Appeal at 1-2; Hearing CD (RHC July 19, 2017) at 2:32-2:35.[8]

For these reasons, the Commission is not satisfied that the Tenants have provided the Commission with a basis to find that the ALJ erred regarding this finding of fact. 14 DCMR § 3807.1; Barac Co., VA 02-107; Am. Rental Mgmt. Co., RH-TP-06-28,366. Accordingly, the Tenants' appeal of this issue is dismissed.

---

[8] The Commission notes, moreover, that has repeatedly held that it cannot review issues on appeal that do not contain a clear and concise statement of alleged errors in the ALJ's decision. 14 DCMR § 3802.5(b); Sellers v. Lawson, TP 29,437 (RHC Dec. 6, 2012). The Commission will dismiss issues that are "vague, overly broad, or do not allege a clear and concise statement of error." *See, e.g.*, Bohn Corp. v. Robinson, RH-TP-08-29,328 (RHC July 2, 2014) (dismissing housing provider's contention that the ALJ gave the tenant legal advice where the housing provider failed to provide any additional details concerning the alleged advice given); Tenants of 1460 Irving St., N.W. v. 1460 Irving St., L.P., CIs 20,760-20,763 (RHC April 5, 2005) (denying appeal issue where tenants failed to refer to any record evidence to reverse the challenged finding of fact of fact). The Commission is not satisfied that, without reference to record evidence or citation to law, the Tenant's bare allegation constitutes a clear and concise statement of an error in the ALJ's decision. 14 DCMR § 3802.5(b); Sellers, TP 29,437; Hawkins v. Jackson, RH-TP-08-29,201 (RHC Aug. 31, 2009). The Tenants have simply reiterated a finding of fact made by the ALJ and cited it as an error with no further explanation on why it is an error. *See* Final Order at 18; R. at Tab 33; Notice of Appeal at 1.

4. Whether the ALJ erred in concluding that certain services or facilities were not substantially reduced.

The Tenants assert in the Notice of Appeal that the ALJ made several errors evaluating their claim of substantial reduction in services and/or facilities. *See* Notice of Appeal at 1-2. Specifically, the Tenants allege that the ALJ erred in concluding that services and/or facilities were not substantially reduced regarding the following conditions: (a) mold throughout the unit; (b) multiple plumbing leaks; (c) holes and cracks throughout the unit; (d) broken kitchen cabinets; (e) broken/inoperable doors; (f) inoperative heating and cooling; (g) inoperative electrical sockets; and (h) peeling and cracked paint. *Id.*

The DCAPA, D.C. OFFICIAL CODE § 2-509(e),[9] requires that an ALJ's decision: "(1) . . . must state findings of fact on each material, contested issue; (2) those findings must be based on substantial evidence; and (3) the conclusions of law must follow rationally from the findings." Perkins v. D.C. Dep't of Emp't Servs., 482 A.2d 401, 402 (D.C. 1984); *see also* Majerle Mgmt. v. D.C. Rental Hous. Comm'n, 866 A.2d 41, 46 (D.C. 2004) (citing ABC, Inc. v. D.C. Dep't of Emp't Servs., 822 A.2d 1085, 1088 (D.C. 2003)); Carmel Partners, Inc. v. Fahrenholz, TP 28,273 (RHC Oct. 9, 2012). As noted, the Commission shall reverse final decisions of the Administrative Law Judge 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]. 14 DCMR § 3807.1.

---

[9] D.C. OFFICIAL CODE § 2-509(e) provides, in relevant part, that:

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

The Commission will review legal questions raised by an ALJ's interpretation of the Act *de novo* to determine if it is unreasonable or embodies 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). Nonetheless, the Commission may find that an error of law is harmless where the application of the correct legal standard would not change the ultimate result. *See, e.g.*, United Dominion Mgmt., 101 A.3d at 430 (erroneous statement of deferential standard of review was immaterial where review was in fact thorough and de novo); LCP, Inc. v. D.C. Alcoholic Beverage Control Bd., 499 A.2d 897, 903 (D.C. 1985) ("[R]eversal and remand is required only if substantial doubt exists whether the agency would have made the same ultimate finding with the error removed.") (quoting Arthur v. D.C. Nurses' Examining Bd., 459 A.2d 141,146 (D.C. 1983)); Barac Co. v. Tenants of 809 Kennedy St., N.W., VA 02-107 (RHC Sept. 27, 2013) at n.15 (defining "harmless error" as "[a]n error which is trivial . . . and was not prejudicial to the substantial rights of the party assigning it, and in no way affected the final outcome of the case . . .") (quoting BLACK'S LAW DICTIONARY 646 (5th ed. 1975)).

A tenant may be awarded a rent refund under the Act where an "unauthorized reduction in services or facilities related to the rental unit" has occurred. 14 DCMR § 4214.4(d).[10] A

[10] 14 DCMR § 4214.4(d) provides as follows:

> The tenant of a rental unit or an association of tenants of a housing accommodation may, by petition filed with the Rent Administrator, complain of and request appropriate relief for any other violation of the Act including, but not limited to, the following: . . .

housing provider is not permitted to reduce or eliminate services or facilities "required by law or the terms of a rental agreement" without decreasing the rent to "reflect proportionally the value of the change in services." D.C. OFFICIAL CODE §§ 42-3501.03(27), 42-3502.11.[11]

The Commission has held that the burden of proof is on the tenant when asserting a claim of reduction of services or facilities under the Act. *See* Atchole, RH-TP-10-29,891; Pena v. Woynarowsky, RH-TP-06-28,817 (RHC Feb. 3, 2012); *see also* D.C. OFFICIAL CODE § 2-509(b);[12] Wilson v. KMG Mgmt, LLC, RH-TP-11-30,087 (RHC May 24, 2013); Barnes-Mosaid v. Zalco Realty, Inc., RH-TP-08-29,316 (RHC Feb. 24, 2012); Stancil v. Davis, TP 24,709 (RHC Oct. 30, 2000). The Commission has previously stated that a tenant must satisfy a three-prong test in order to successfully pursue a claim of reduction or elimination of services and/or facilities. *See, e.g.*, Kuratu v. Ahmed, Inc., RH-TP-07-28,985 (RHC Dec. 27, 2012); Pena, RH-TP-06-28,817; 1773 Lanier Place N.W., Tenants' Ass'n v. Drell, TP 27,344 (RHC Aug. 31, 2009); Davis v. Madden, TP 24,983 (RHC Mar. 28, 2002); Ford v. Dudley, TP 23,973 (RHC June 3, 1999). First, a tenant must establish that a substantial elimination or reduction in a related service occurred; second, a tenant must establish the extent and duration of the reduction

---

(d) Any unauthorized reduction in services or facilities related to the rental unit not permitted by the Act or authorized by order of the Rent Administrator.

[11] D.C. OFFICIAL CODE § 42-3501.03 provides, in relevant part, the following:

(26) "Related facility" means any facility, furnishing, or equipment made available to a tenant by a housing provider, the use of which is authorized by the payment of the rent charged for a rental unit, including any use of a kitchen, bath, laundry facility, parking facility, or the common use of any common room, yard, or other common area.

(27) "Related services" means 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 of a rental unit, including repairs, decorating and maintenance, the provision of light, heat, hot and cold water, air conditioning, telephone answering or elevator services, janitorial services, or the removal of trash and refuse.

[12] D.C. OFFICIAL CODE § 2-509(b) provides, in relevant part, the following: "In contested cases, except as may otherwise be provided by law, other than this subchapter, the proponent of a rule or order shall have the burden of proof[.]"

in services; finally, a tenant must establish that the housing provider had knowledge of the alleged reduction in services. *See* Pena, RH-TP-06-28,817; Ford, TP 23,973. If a tenant fails to prove any one of the three elements, the entire claim will fail. *See* Pena, RH-TP-06-28,817. The Commission has explained that the determination of whether a reduction is "substantial" is "a function of the 'degree of loss;' the degree of loss 'is substantiated by the length of time that the tenants were without service.'" Drell, TP 27,344 (quoting Newton v. Hope, TP 27,034 (RHC May 29, 2002)).

The Commission will address the contested determinations regarding related services or facilities in turn, as listed in the Tenants' Notice of Appeal.

a. Mold throughout the unit

In the Final Order, the ALJ stated the following regarding the Tenants' claim of substantial reduction of services due to mold throughout the unit:

> Tenants did not identify mold as a problem in the June 2014 punch list. PX 101. Nor was it noted as a problem in any of the DCRA Inspection Summary Reports of April 30, 2015, December 17, 2015, or February 4, 2016. PX 114, 116, RX 215. Ms. Waller testified that what she believed was mold was not present when they moved in but started to appear on some windowsills about six months later. Ms. Waller testified that Housing Provider painted a windowsill but the mold has never come back. Tenants provided photographs, taken in the summer of 2016, of an area under an air conditioning unit that is blackened. PX 128-129. If there was mold present in the apartment, there is no evidence about the extent or duration of the problem.

Final Order at 23; R. at Tab 31.

The Commission is satisfied that the ALJ's determination that the Tenants failed to prove the existence or extent of mold in the rental unit is supported by substantial evidence on the record. Jonathan Woodner Co. v. Enobakhare, TP 27,730 (RHC Feb. 3, 2005). The Commission has consistently stated that credibility determinations are "committed to the sole and sound discretion of the ALJ." *See* Fort Chaplin Park Assoc, 649 A.2d at 1079; Marguerite

Corsetti Trust, RH-TP-06-28,207 (citing In re M.A.C., 761 A.2d 32, 42 (D.C. 2000)); *see* Eilers v. Bureau of Motor Vehicles Servs., 583 A.2d 677, 684 (D.C. 1990); Smith Prop. Holdings Three D.C., L.P. v. Tenants of 2601 Woodley Place, N.W., CI 20,736 (RHC June 30, 1999); Ford, TP 23,973. The ALJ has the responsibility to weigh the record evidence and has "discretion to reasonably reject any evidence offered." Harris v. D.C. Rental Hous. Comm'n, 505 A.2d 66, 69 (D.C. 1986) (citing Roumel v. D.C. Bd. of Zoning Adjustment, 417 A.2d 405, 408-409 (D.C. 1980)); Kopff v. D.C. Alcoholic Beverage and Control Bd., 381 A.2d 1372, 1386 (D.C. 1977). "In rendering a decision, the [ALJ] is entrusted with a degree of latitude in deciding how [s]he shall evaluate and credit the evidence presented." Harris, 505 A.2d at 69.

The Commission's review of the record reveals that the Tenants presented testimony and photographic evidence purporting to show mold in their apartment. Hearing CD (OAH Aug. 30, 2016) at 10:58:50; PX 128-129; R. at Tab 19. Tenant Waller also testified that she did not know as a fact that the discoloration near the air conditioning was mold. Hearing CD (OAH Aug. 30, 2016) at 11:27. The Final Order shows that the ALJ was not persuaded that the testimony and evidence proved that the blackened area near the Tenants' air conditioning unit was, in fact, mold. Final Order at 23; R. at Tab 31, *see* PX 128-129, R. at Tab 19.[13] The Commission's role is not to substitute itself for the ALJ as the trier of fact in evaluating whether the Tenants met their burden of proof. Fort Chaplin Park Assocs., 649 A.2d at 1079; Harris, 505 A.2d at 69. Accordingly, the Commission affirms the Final Order on this issue.

[13] The Commission observes that the ALJ's evaluation of the evidence of purported mold refers to the absence of any mold-related violations on the DCRA inspection reports, at least with respect to the duration of the alleged violation. The Commission notes, however, that it is not readily apparent that DCRA inspectors are authorized to inspect or cite residential premises for indoor mold contamination. *See* D.C. OFFICIAL CODE § 8-241.01 *et seq.* (2015 Supp.) (delegating authority to the Director of the Department of the Environment to establish contamination standards, license inspection professionals, and require remediation of contamination). Although the Commission is nonetheless satisfied that the ALJ was within her discretion to credit and weigh the other evidence of mold and to disbelieve the Tenants' testimony, the Commission cautions that the absence of mold-related citations by DCRA is not necessarily probative evidence of the absence of mold.

b. Multiple plumbing leaks

In the Final Order, the ALJ stated the following regarding the Tenants' claim of multiple plumbing leaks:

> Tenants did not identify multiple plumbing leaks as a problem in the punch list. PX 101. In the DCRA Inspection Summary Report of April 30, 2015, the Inspector noted that "per tenant, there is a leak from the base of the toilet (most evident in the morning)." PX 114. Plumbing leaks were not noted as a problem in the subsequent DCRA Inspection Summary Reports of December 17, 2015, and February 4, 2016. PX 116, RX 215. Because Tenants have failed to establish the existence of a problem, its extent, or duration, I conclude that services or facilities were not substantially reduced as a result.

Final Order at 23; R. at Tab 31.

The Commission's review of the record shows substantial evidence related to the existence of two specific plumbing defects, neither of which the Housing Provider appears to dispute existed: a defective bathroom faucet handle, noted in the Tenants' move-in punch list, *see* PX 101; R. at Tab 19; and a leak from the toilet, noted in the April 30, 2015, DCRA inspection report, *see* PX 114; R. at Tab 19; RX 206; R. at Tab 21. Tenant Waller testified that Tenant Wise eventually fixed the faucet. Hearing CD (OAH Aug. 30, 2016) at 10:39. Tenant Waller also testified that the toilet leak was fixed by the Housing Provider sometime after the DCRA inspection and before she signed the Housing Provider's copy of the inspection report (RX 206) to indicate the abatement of all cited violations. Hearing CD (OAH Aug. 30, 2016) at 11:33 (testifying that she signed the report because the job was done).

The Commission's review of the record does not reveal substantial evidence of the specific, or even approximate, date either plumbing fixture leak was corrected or of dates on which the leaks continued to exist after the Housing Provider was first put on notice. A determination of whether a reduction of services entitles a tenant to a relief must be "substantiated by the length of time that the tenants were without service." Drell, TP 27,344

(quoting Newton v. Hope, TP 27,034 (RHC May 29, 2002)). Therefore, the Commission is satisfied that the ALJ did not err in concluding that the Tenants failed to establish the duration of the alleged housing code violation. *See* Atchole, RH-TP-10-29,891; Kuratu, RH-TP-07-28,985; Drell, TP 27,344. Accordingly, the Commission affirms the Final Order on this issue.

c. Holes and cracks throughout the unit on the floor, walls, and ceilings

The ALJ stated the following regarding holes and cracks throughout the unit:

> Tenants did not identify holes and cracks in the punch list. PX 101. The DCRA Inspection Summary Report of April 30, 2015, notes a crack on the ceiling in the first bedroom. PX 114. Before June 8, 2015, Ms. Waller initialed four of the violations, including the crack on the ceiling and circled "yes" on the Summary Report to indicate repairs had been completed. RX 206. Tenants provided photographs, taken in August 2016, to show that there were cracks at a window frame near an air conditioning unit. PX 146, 147. The cracks do not appear substantial. There was no testimony about the extent of the problem throughout the unit. I conclude that services or facilities were not substantially reduced as a result.

Final Order at 24; R. at Tab 31.

The Commission observes that the ALJ's determination that "there was no testimony about the extent of the problem throughout the unit" is not supported by the record. Final Order at 24; R. at Tab 31. The Commission's review of the record reveals that Tenant Waller testified about both the crack in the ceiling and the photos of the cracks in the window frame near the air conditioning unit. Hearing CD (OAH Aug. 30, 2016) at 10:25. Tenant Wise also testified to the leak in the living room near the air conditioning unit. Hearing CD (OAH Sept. 13, 2016) at 13:32.

However, the Commission is satisfied that substantial evidence supports the ALJ's determination that the cracks near the air conditioning were not substantial. *See* Atchole, RH-TP-10-29,891; Kuratu, RH-TP-07-28,985; Drell, TP 27,344. Specifically, the ALJ was within her discretion to credit and weigh the testimony and photographic evidence presented by the

Tenants, including PX 146 and 147. *See* R. at Tab 19; Hearing CD (OAH Aug. 30, 2016) at 10:25. As stated previously, the Commission will not substitute its judgement of the ALJ in making credibility determinations or the weighing the evidence. *See* Wash. Metro. Area Transit Auth., 926 A.2d at 147; Atchole, RH-TP-10-29,891; Marguerite Corsetti Trust, RH-TP-06-28,207; Hago, RH-TP-08-11,552 & RH-TP-08-12,085.

With respect to the bedroom ceiling, the Final Order is unclear as to whether the ALJ also found the crack cited by DCRA to be insubstantial. *See* Final Order at 24 ("[DCRA report] notes a crack on the ceiling in the first bedroom[;] . . . there were cracks at a window frame near an air conditioning unit[:] . . . [t]he cracks do not appear substantial."); R. at Tab 31. In either case, the Commission's review of the record reveals a lack of substantial evidence that the ALJ could have relied on to determine how long the crack in the bedroom ceiling existed. *See* Atchole, RH-TP-10-29,891; Kuratu, RH-TP-07-28,985; Drell, TP 27,344. As with the leak from the toilet, Tenant Waller testified that the crack in the ceiling fixed by the Housing Provider sometime after the DCRA inspection and before she signed the Housing Provider's copy of the inspection report (RX 206) to indicate the abatement of all cited violations. Hearing CD (OAH Aug. 30, 2016) at 11:33. Because the Commission's review of the record does not reveal substantial evidence of the specific, or even approximate, date the ceiling crack was repaired or continued to exist after the Housing Provider was first put on notice, the Commission is satisfied that the ALJ did not err in concluding that the Tenants failed to establish the duration of the alleged housing code violation. *See* Atchole, RH-TP-10-29,891; Kuratu, RH-TP-07-28,985; Drell, TP 27,344.

Because the Tenants failed to establish that the cracks near the air conditioning were substantial or the duration of the crack in the bedroom ceiling, the Commission affirms the Final Order on these issues.

d. Broken kitchen cabinets

In the Final Order, the ALJ concluded that the "Tenants have not established a substantial problem" with respect to the condition of their kitchen cabinets and "conclude[d] services and facilities were not substantially reduced as a result." Final Order at 24; R. at Tab 31. The Commission's review of the record shows that the Tenants noted in the move-in punch list that some part of the kitchen cabinets appeared weak and about to fall. PX 101; R. at Tab 19; Hearing CD (OAH Aug. 30, 2016) at 10:06. The April 30, 2015, DCRA inspection report noted that a kitchen cabinet door was loose on its hinges. PX 114; R. at Tab 19. The Commission's review of the record does not reveal any more specific description of the condition of the kitchen cabinets.

The Commission is satisfied that the ALJ's conclusion that the Tenants failed to prove the substantiality of the alleged problems with the kitchen cabinets is supported by substantial evidence and in accordance with the Act. 14 DCMR § 3807.1. As described *supra* at 36-37, the Commission's role is not to substitute itself for the ALJ as the trier of fact in evaluating the credibility of testimony and weighing the evidence. *See* Wash. Metro. Area Transit Auth., 926 A.2d at 147; Atchole, RH-TP-10-29,891; Marguerite Corsetti Trust, RH-TP-06-28,207; Hago, RH-TP-08-11,552 & RH-TP-08-12,085.

Accordingly, the Commission affirms the Final Order on this issue.

e. Broken or inoperable doors, including the front door

In the Final Order, the ALJ concluded that "there was no evidence about the extent or duration of any problem" involving the doors in the rental unit and "conclude[s] that services or facilities were not substantially reduced as a result." Final Order at 25; R. at Tab 31.

As stated, the Commission will defer to an ALJ's decision so long as it flows rationally from the facts and is supported by substantial evidence. Majerle Mgmt., Inc., 866 A.2d at 46;

Fahrenholz, TP 28,273; *see also* Perkins, 482 A.2d at 402. The Commission's review of the record, however, does not support the ALJ's determination that there is no evidence about the extent or duration of broken or inoperable doors in the Tenants' unit. The Commission observes that the ALJ did cite evidence about the extent and duration of this alleged housing code violation, such as the punch list submitted to the Housing Provider after the Tenants moved in, indicating issues with doors in the unit. Final Order at 25; R. at Tab 31; PX 101; R. at Tab 19. The subsequent DCRA Inspection Summary Reports for December 17, 2015, and February 4, 2016, also indicate a problem, described as "entry hollow core door front potion coming detached." PX 116; R. at Tab 19; RX 215; R. at Tab 21.

Where the ALJ fails to demonstrate a full and reasoned consideration of all the material facts and issues in a case, the Commission is unable to perform its review function. 14 DCMR § 3807.1; *see, e.g.*, Butler-Truesdale v. Aimco Props., LLC, 954 A.2d 1170, 1171 (D.C. 2008) ("When an agency has failed to consider and resolve each contested issue of material fact, we have remanded the case back to the agency for further proceedings."); Branson v. D.C. Dep't of Emp't Servs., 801 A.2d 975, 979 (D.C. 2002) (explaining that the DCCA cannot "assume that an issue has been considered . . . when there is no discernible evidence that it has.") (quoting Washington Times v. D.C. Dep't of Emp't Servs., 724 A.2d 1212, 1221 (D.C. 1999))); *see also* Parsons v. D.C. Bd. of Zoning Adjustment, 61 A.3d 650, 654 (D.C. 2013) (Schwelb, J., concurring) (stating the DCCA can only perform its review function where an agency "discloses the basis of its order by an articulation with reasonable clarity of its reasons for the decision." (quoting Dietrich v. D.C. Bd. of Zoning Adjustment, 293 A.2d 470,473 (D.C. 1972))).

Accordingly, the Commission remands on this issue, with instructions to review the relevant portions of the record and to provide revised findings of fact based on substantial

evidence in the record regarding whether services and facilities were substantially reduced as a result of broken and inoperable doors.

f. Inoperative heating and cooling

In the Final Order, the ALJ concluded that services were not substantially reduced as a result of inoperative heating or cooling. Final Order at 25-26; R. at Tab 31. Specifically, the ALJ determined that the only evidence of the extent and duration of a problem with the temperature in the rental unit was Tenant Waller's testimony that, because the unit was cold in the winter of 2014-2015 and the Tenants used appliances to heat the unit, the Housing Provider paid half of the Tenants' utility bills during those months. *Id.*

The Commission is satisfied that the ALJ's conclusion that Tenants failed to prove that there was a substantial reduction of services due to inoperative heating and cooling "flows rationally from the findings of fact." *See* Perkins, 482 A.2d at 402. The Commission's review of the record does not reveal any other substantial evidence to establish the duration of the loss of heat with any greater specificity than the winter of 2014-2015. The Commission's review of the record reveals that Tenant Waller testified that the DCRA inspector thought the temperature of the Housing Accommodation was normal in the winter of 2015-2016 and neither the heating or cooling system were noted in any of the DCRA Inspection Summary Reports. Hearing CD (OAH Aug. 30, 2016) at 11:59; *see* PX 114,116; R. at Tab 19; RX 215; R. at Tab 21. As stated, the Commission will not substitute its judgement of the ALJ in determining credibility determinations or the weighing of evidence to determine when the Tenants' unit lacked proper heating. *See* Wash. Metro. Area Transit Auth., 926 A.2d at 147; Atchole, RH-TP-10-29,891; Marguerite Corsetti Trust, RH-TP-06-28,207; Hago, RH-TP-08-11,552 & RH-TP-08-12,085. Accordingly, the Commission affirms the Final Order on this issue.

g. Inoperative electrical sockets and other electrical problems throughout the unit

In the Final Order, the ALJ stated the following regarding electrical sockets throughout the unit:

> On the punch list, there is a reference to an outlet – "need outlet don't work." PX 101. There were no mentions of any electrical problems in the DCRA Inspection Summary Reports of April 30, 2015, December 17, 2015, and February 4, 2016. PX 114, 116, RX 215. Ms. Waller testified that electrical sockets in the dining room, kitchen, and in one bedroom do not work. Mr. Wise agreed there was a problem. Although they told Housing Provider at some point, there was no response. There was no evidence about the extent or duration of the problem. I conclude that services or facilities were not substantially reduced as a result.

Final Order at 26; R. at Tab 31.

As stated, the Commission will defer to an ALJ's decision so long as it flows rationally from the facts and is supported by substantial evidence. Majerle Mgmt., Inc., 866 A.2d at 46; Fahrenholz, TP 28,273; *see also* Perkins, 482 A.2d at 402. The Commission's review of the record, however, does not support the ALJ's determination that "there was no evidence about the extent and duration of this reduction of services/facilities." Final Order at 26; R. at Tab 31. Tenant Waller testified she first noticed inoperable electrical sockets in the living room, dining room, kitchen, and one of the bedrooms when she first moved in June 2014. Hearing CD (OAH Aug. 30, 2016) at 10:42. The move-in punch list notes a problem with the outlet in the kitchen. PX 101; R. at Tab 19. Tenant Wise also testified to a defective outlet in the living room where he attempted to plug in a fish tank. Hearing CD (OAH Aug. 30, 2016) at 13:37.

However, the Commission's review of the record reveals a lack of substantial evidence to establish the duration of a substantial reduction of services or that the Housing Provider had notice. Enobakhare, TP 27,730. Neither Tenants' testimony nor any documentary evidence, except for the move-in punch list, indicates when the Housing Provider was notified of the defective outlets. Tenant Waller testified that some outlets "still don't work" as of the date of the

hearing, but her testimony was unclear as to which outlets remained defective. Hearing CD (OAH Aug. 30, 2016) at 10:42. Because the Tenants did not present evidence to support all three of the prongs of the applicable legal test, the Commission is satisfied that the ALJ did not err in concluding that related services were not substantially reduced as a result of faulty electrical sockets. *See* Atchole, RH-TP-10-29,891; Kuratu, RH-TP-07-28,985; Drell, TP 27,344.

Accordingly, the Commission affirms the Final Order on this issue.

h. Peeling and cracked paint

In the Final Order, the ALJ concluded that the Tenants did not establish the extent or duration of any problems of peeling or cracked paint after February 2016, when the DCRA inspection found that the problems had been abated, and the ALJ therefore concludes that "services and facilities were not substantially reduced as a result." Final Order at 27; R. at Tab 31. The ALJ also found that pictures taken in August 2016 of peeling and cracked paint on the baseboards of the living room did not show a substantial problem. *Id.*; *see* PX 145, 148; R. at Tab 19.

The Commission is not satisfied that the ALJ's conclusion regarding the substantiality of the peeling and cracked paint flows rationally from the facts and is in accordance with the Act. *See, e.g.*, Perkins, 482 A.2d at 402; Bower, TP 27,838. Specifically, the Commission's regulations implementing the Act provide that it is a substantial violation of the housing code to have "[l]ead paint on the interior of the dwelling, or on the exterior of the dwelling where the paint is in a location or in a condition which creates a hazard of lead poisoning to children or the occupants[.]" 14 DCMR § 4216.2(j); 20 DCMR § 3301; *see* Palmer, RH-TP-13-30,431 at n.9

(applying legal presumption that paint in dwelling units constructed prior to 1978 is lead-based and therefore hazardous when deteriorating).[14]

However, the Commission's review of the record reveals a lack of substantial evidence to establish when the paint was peeling and cracked or when the Housing Provider had notice of the hazard. *See* Atchole, RH-TP-10-29,891; Kuratu, RH-TP-07-28,985; Drell, TP 27,344. Although the paint defects noted in the December 17, 2015, DCRA inspection report were abated before the February 4, 2016, inspection, no testimony or documentary evidence provides a specific or approximate date the paint was repaired or on which the hazard continued to exist. *See* PX 116; R. at Tab 19; RX 215; R. at Tab 20. Tenant Waller testified vaguely that the peeling and cracked paint near the air conditioning unit had been there for about a year as of the hearing date, and she did not testify clearly as to when the Housing Provider might have been put on notice of any problem other than the one found in the December 2015 inspection. Hearing CD (OAH Aug. 30, 2016) at 11:22.

Accordingly, the Commission affirms the Final Order on this issue.

5. Whether the ALJ erred in concluding that the Housing Provider did not retaliate against the Tenants.

The ALJ concluded in the Final Order that the Housing Provider did not retaliate against the Tenants and that the Housing Provider established through clear and convincing evidence that certain actions presumed to be retaliatory against the Tenants did not violate the Act because the actions were "responsive to Mr. Wise's behavior but not retaliatory." Final Order at 33; R. at Tab 31.

[14] The Commission notes that the Tenants' lease package contains a disclosure stating that lead-based paint "was found on the exterior of some of the building and has been abated." RX 201 (emphasis added); R. at Tab 20.

As stated previously, the Commission shall reverse the ALJ's decision if it is based on arbitrary action, capricious action, or an abuse of discretion, it is not in accordance with the provisions of the Act, or it is not supported by substantial evidence on the record. 14 DCMR § 3807.1. The Commission will review legal questions raised by an ALJ's interpretation of the Act *de novo* to determine if it is unreasonable or embodies a material misconception of the law. *See* United Dominion Mgmt., 101 A.3d at 430-31; Dorchester House Assocs., 938 A.2d at 702; Gelman Mgmt. Co., RH-TP-09-29,715; Carpenter, RH-TP-10-29,840. Further, the Commission shall remand a decision that fails to address each contested, material issue raised in the case. D.C. OFFICIAL CODE § 2-509(e); Butler-Truesdale, 954 A.2d at 1171; Branson, 801 A.2d at 979; *see also* Parsons, 61 A.3d at 654.

The retaliation provision of the Act provides, in relevant part, as follows:

> (a) No housing provider shall take any retaliatory action against any tenant who exercises any right conferred upon the tenant by this chapter, by any rule or order issued pursuant to this chapter, or by any other provision of law. Retaliatory action may include any action or proceeding not otherwise permitted by law which seeks to recover possession of a rental unit, action which would unlawfully increase rent, decrease services, increase the obligation of a tenant, or constitute undue or unavoidable inconvenience, violate the privacy of the tenant, harass, reduce the quality or quantity of service, any refusal to honor a lease or rental agreement or any provision of a lease or rental agreement, refusal to renew a lease or rental agreement, termination of a tenancy without cause, or any other form of threat or coercion.
>
> (b) In determining whether an action taken by a housing provider against a tenant is retaliatory action, the trier of fact shall presume retaliatory action has been taken, and shall enter judgment in the tenant's favor unless the housing provider comes forward with clear and convincing evidence to rebut this presumption, if within the 6 months preceding the housing provider's action, the tenant:
>
> (1) Has made a witnessed oral or written request to the housing provider to make repairs which are necessary to bring the housing

accommodation or the rental unit into compliance with the housing regulations;

(2) Contacted appropriate officials of the District government, either orally in the presence of a witness or in writing, concerning existing violations of the housing regulations in the rental unit the tenant occupies or pertaining to the housing accommodation in which the rental unit is located, or reported to the officials suspected violations which, if confirmed, would render the rental unit or housing accommodation in noncompliance with the housing regulations; . . .

(4) Organized, been a member of, or been involved in any lawful activities pertaining to a tenant organization . . . [.]

D.C. OFFICIAL CODE § 42-3505.02. The regulations further clarify what constitutes retaliatory action, providing that "'[r]etaliatory action,' is action intentionally taken against a tenant by a housing provider to injure or get back at the tenant for having exercised rights protected by § 502 of the Act." 14 DCMR § 4303.1.

The Commission has consistently explained that the determination of retaliation is a two-step process: first, the ALJ must determine whether a housing provider committed an act that is considered retaliatory under D.C. OFFICIAL CODE § 42-3505.02(a). *See, e.g.*, Wilson v. D.C. Rental Hous. Comm'n, 159 A.3d 1211, 1218 n.6 (D.C. 2017) (cases of retaliatory action have included "a landlord's repossession of property, failure to repair a fixture, monetary or service-related increase of rent, or the enforcement of previously unenforced lease provisions"). Second, for retaliation to be presumed, a tenant has to establish that a housing provider's conduct occurred within six months of the tenant performing one of the six protected acts listed in D.C. OFFICIAL CODE § 42-3505.02(b). *See, e.g.*, Jackson v. Peters, RH-TP-07-28,898 (RHC Feb. 3, 2012); Smith v. Joshua, RH-TP-07-28,961 at n.4 (RHC Feb. 3, 2012).

If a tenant establishes a presumption of retaliation under D.C. OFFICIAL CODE § 42-3505.02(b), the evidentiary burden shifts to the housing provider to come forward with "clear and convincing" evidence that its actions were not retaliatory, that is, not "intentionally taken . . . to injure or get back the tenant for having exercised" the protected right.[15] 14 DCMR § 4303.1; Gomez v. Independence Mgmt. of Delaware, Inc., 967 A.2d 1276, 1291 (D.C. 2009) (citing Robinson v. Diamond Hous. Corp., 463 F.2d 853, 865 (1972) ("Once the presumption is established, it is then up to the landlord to rebut it by demonstrating that he is motivated by some legitimate business purpose rather than by the illicit motive which would otherwise be presumed.")). If the housing provider does not rebut the presumption of retaliation with clear and convincing evidence, an ALJ is required to enter judgment in favor of the tenant. Smith v. Christian, TP 27,661 (RHC Sept. 23, 2005) (upholding determination that housing provider failed to produce clear and convincing evidence that rent increase was not retaliatory where housing provider testified about increased expenses for the housing accommodation as a whole, but was unable to show that the tenant's rent increase was proportional to the expenses attributable to her unit). Moreover, "when the statutory presumption comes into play, it will not suffice merely to articulate a legitimate, non-retaliatory reason, because the legislature has assigned a substantial burden of proof ('clear and convincing evidence') to the landlord." Gomez, 967 A.2d at 1291 (citing D.C. OFFICIAL CODE § 42-3505.02(b)); *see, e.g.*, Hoskinson v. Solem, TP 27,673 (RHC July 20, 2005) (explaining that clear and convincing evidence to rebut a presumption of retaliation must "extend beyond the defense that a law permitted the alleged

[15] "Clear and convincing evidence" has been defined by the DCCA as "the evidentiary standard that lies somewhere between a preponderance of evidence and evidence probative beyond a reasonable doubt." In re Estate of Frances Walker, 890 A.2d 216, 223 (D.C. 2006); In re K.A., 484 A.2d 992, 995 (D.C. 1984) (citing Addington v. Texas, 441 U.S. 418, 423 (1979)); Jackson, RH-TP-07-28,898. It "is such evidence as would 'produce in the mind of the trier of fact a firm belief or conviction as to the facts sought to be established.'" Dawkins v. United States, 535 A.2d 1383, 1384 (D.C. 1988) (citing District of Columbia v. Hudson, 404 A.2d 175, 178 (D.C. 1979)); Jackson, RH-TP-07-28,898.

retaliatory action" (quoting Redman v. Graham, TP 27,104 (RHC Apr. 30, 2005))); Kornblum v. Charles E. Smith Residential Realty, TP 26,155 (RHC Mar. 11, 2005) (presumption sufficiently rebutted where housing provider testified that it cleaned up tenant's belongings in area outside of storage unit because they presented fire hazard, not in response to tenant's letter objecting to charge of late fee).

In the Final Order, the ALJ noted that the Tenants claimed several different actions taken against them by the Housing Provider were retaliatory: (1) the Housing Provider filed two lawsuits against the Tenants to recover possession of the rental unit based on three notices to correct or vacate, which, in part, singled out Tenant Wise for violations of the Housing Accommodation's parking policy; (2) the Housing Provider failed to or was slow to make repairs; and (3) the Housing Provider verbally harassed or abused the Tenants and their guests. Final Order at 31-33; R. at Tab 31. The ALJ found that the lawsuits were both filed within six months of the Tenants' exercise of rights protected by D.C. OFFICIAL CODE § 42-3505.02(b), namely, that "they sought to have the conditions in their unit abated" by filing Landlord and Tenant Branch complaints in April 2015 and October 2015 to enforce housing code provisions, but the ALJ also found that the Housing Provider rebutted the presumption of retaliation by showing that it had a lawful basis to evict the Tenants. Final Order at 32; R. at Tab 31. The ALJ further found that the Tenants had failed to prove that the Housing Provider failed or was slow to make repairs or that the Housing Provider had made harassing or abusive statements. *Id.* at 33; R. at Tab 31.

First, with respect to the notices to correct or vacate, the Commission is not satisfied that the ALJ correctly applied the law in weighing whether the Housing Provider established by "clear and convincing evidence that it had a basis for alleging that Tenant Wise was violating

'House Rules'" and that its actions were "responsive to Mr. Wise's behavior but not retaliatory against him." Final Order at 33; R. at Tab 31. Retaliatory actions are "not limited to situations where the landlord acts illegally." Gomez, 967 A.2d at 1290. "In other words, a retaliatory motive may 'taint' an action that would otherwise be lawful." *Id.* (citing Arthur Young & Co. v. Sutherland, 631 A.2d 354, 367 (D.C. 1993) (District of Columbia Human Rights Act "contains no safe harbor for otherwise lawful acts done for an improper retaliatory purpose.")). Although the Housing Provider may have had a legitimate basis to exercise its legal right to evict the Tenants for violating an addendum to the lease, this alone does not constitute "clear and convincing evidence" that the Housing Provider did not intend to "injure or get back" at the Tenants. 14 DCMR § 4303.1; *see also* Hoskinson v. Solem, TP 27,673 (RHC July 20, 2005).

As noted *supra* at 49 & n.15, clear and convincing evidence is an "intentionally elevated standard," meaning "such evidence as would 'produce in the mind of the trier of fact a firm belief or conviction as to the facts sought to be established.'" Dawkins, 535 A.2d at 1384 (D.C. 1988) (citing Hudson, 404 A.2d at 178); In re Kline, 113 A.3d at 213 (citations omitted); Jackson, RH-TP-07-28,898. The Commission notes that the ALJ made several findings of fact regarding other tenants' apparent misuse of the parking lot in violation of the Housing Provider's parking policy. *See* Final Order at 14, 15, & 17 (including findings of fact number 57, 61, 73, & 74); R. at Tab 31. Although the ALJ found that other tenants had worked on cars in the parking lot of the Housing Accommodation, the ALJ did not make any finding of fact regarding whether Tenant Wise had been singled-out for enforcement of the policy against working on cars. The ALJ made a finding of fact that another tenant was served a notice to correct or vacate for working on a car in the lot; however it is unclear whether the Housing Provider also filed an eviction lawsuit after serving this notice. *See* Final Order at 15-17; R. at Tab 31.

The Commission further observes that, in concluding that the Housing Provider had a legal basis to evict the Tenants for violating the lease, the ALJ only addressed the basis for the second lawsuit brought by the Housing Provider against the Tenants but failed to address the first lawsuit. *See* Final Order at 33; R. at Tab 31. Although the ALJ noted that both eviction lawsuits were filed against the Tenants within six months of the Tenant's housing conditions lawsuit being filed, the ALJ only addressed whether the Housing Provider had a non-retaliatory reason for seeking to evict the Tenants with respect to alleged violations of the parking rules, that is, the subject matter of the second lawsuit. *Id.*; *see* PX 111; R. at Tab 19. The Commission's review of the record shows that the first lawsuit against the Tenants asserted that the Tenants violated the lease by engaging in illegal activity on the premises, acting in a "loud and boisterous manner," loitering, and violating "House Rule" 13.[16] PX 109, 110; R. at Tab 19. Although the ALJ noted that eviction lawsuits were each based on separate, unrelated violations of the lease addendum, *see* Final Order at 32; R. at Tab 19, the Commission observes the ALJ failed to determine whether the Housing Provider had met its burden of proof with regard to second lawsuit. Because the ALJ did not address whether the Housing Provider rebutted the presumption that both lawsuits for possession against the Tenants were retaliatory, the Commission is not satisfied that the Final Order contains findings of fact and conclusions of law on each material, contested issue. D.C. OFFICIAL CODE § 2-509(e); Butler-Truesdale, 954 A.2d at 1171; Branson, 801 A.2d at 979.

Second, with respect to the Housing Provider's timeliness in making repairs, the ALJ concluded that the Tenants' failed to establish that the Housing Provider retaliated against them in this manner. The ALJ determined that "[b]ecause [the] Tenants' testimony about requesting

[16] The Commission's review of the record indicates that house rule 13 requires tenants to promptly report plumbing leaks in need of repair. PX 104; R. at Tab 22.

repairs was vague, [the] Tenants did not establish that [the] Housing Provider was slow to make repairs." Although the Tenants testified that they believed the Housing Provider was slow to make repairs, Tenant Wise believed this was due to inadequate maintenance staff. *See* Hearing CD (OAH Aug. 30, 2016) at 14:08. Therefore the Commission is satisfied that the ALJ's determination that the Housing Provider did not retaliate against the Tenants by being slow to make repairs was supported by substantial evidence on the record, and the Commission will not substitute its judgement of the ALJ in determining credibility determinations or the weighing of evidence to determine whether this condition was a substantial reduction of facilities. *See* Wash. Metro. Area Transit Auth., 926 A.2d at 147; Atchole, RH-TP-10-29,891; Marguerite Corsetti Trust, RH-TP-06-28,207; Hago, RH-TP-08-11,552 & RH-TP-08-12,085.

Third, with respect to the Tenants' claim of verbal harassment and abusive communications, the Commission is satisfied that the ALJ's determination that the Tenants failed to establish that these actions by the Housing Provider were retaliatory is supported by substantial evidence on the record. The Commission's review of the record reveals the Tenants' claim of "abusive communication" by the Housing Provider was based on Tenant Wise's testimony that he felt disrespected when he was served a 30-day notice to correct or vacate. Hearing CD (OAH Aug. 30, 2016) at 13:51. Tenant Wise's testified that the employee who hand-delivered the first Notice threw it at him. Final Order at 33-34; R. at Tab 31. As explained *supra* at 47, in order to prevail on a claim of retaliation, a tenant must establish that the Housing Provider committed a retaliatory action as provided in D.C. OFFICIAL CODE § 42-3505.02(a) that was intended to "injure or get back at" the tenant for exercising a right protected by law. D.C. OFFICIAL CODE § 42-3505.02; 14 DCMR § 4303.1; *see, e.g.*, Lutsko, RH-TP-08-29,149; Karpinski, RH-TP-09-29,590; Smith, RH-TP-07-28,961. The Commission is satisfied that this

single incident of disrespectful behavior by one employee throwing paper does not constitute action by the Housing Provider to harass or otherwise injure the Tenants. D.C. OFFICIAL CODE § 42-3505.02; 14 DCMR § 4303.1.

Accordingly, the Commission remands this case with respect to the ALJ's conclusion that the two eviction lawsuits the Housing Provider filed against the Tenants were not retaliatory and affirms the Final Order with respect to the other claims of retaliation. The Commission instructs the ALJ make additional findings of facts and conclusions of law as to whether the Housing Provider presented "clear and convincing evidence," beyond the "defense that a law permitted the alleged retaliatory action," Redman, TP 27,104, that each of the eviction lawsuits was not retaliatory. *See* D.C. OFFICIAL CODE §§ 2-509(e), 42-3505.02(b); 14 DCMR § 4303.1; Gomez, 967 A.3d 1290-91. The Commission affirms the Final Order with respect to the other claims of retaliation.

6. Whether the ALJ erred in concluding that the Housing Provider did not interfere with a Tenant Organization.

The Tenants claim on appeal that the ALJ erred in concluding as a matter of law that the Housing Provider did not interfere with a tenant organization. Notice of Appeal at 2. In the Amended Tenant Petition, the Tenants claimed that the Housing Provider took various actions against the tenant association, including the removal of literature, threats of legal action against members, and intrusion on association meetings. Amended Tenant Petition at 4; R. at Tab 13.

The Commission will defer to an ALJ's finding of fact so long as it is supported by substantial evidence in the record. Majerle Mgmt., Inc., 866 A.2d at 46; Fahrenholz, TP 28,273. The Commission will review legal questions raised by an ALJ's interpretation of the Act *de novo* to determine if it is unreasonable or embodies a material misconception of the law. Dorchester House Assocs., 938 A.2d at 702; Fahrenholz, TP 28,273.

The DCAPA requires a 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 rationally from the findings of fact. *See, e.g.*, Majerle Mgmt, 866 A.2d at 46; ABC, Inc., 822 A.2d at 1089; Perkins, 482 A.2d 401, 402 (D.C. 1984); Bower, TP 27,838. In accordance with the applicable provisions of the DCAPA, D.C. OFFICIAL CODE § 2-509(e), the Final Order should clearly state the elements of the applicable and appropriate legal test or standard for each claim, and the ALJ should then systematically apply the findings of fact to those tests in order to assure that the conclusions of law "flow or flow rationally from the findings of fact."

D.C. OFFICIAL CODE § 42-3505.06(d) provides, in relevant part:

> No owner or agent of an owner of a multifamily housing accommodation shall interfere with the right of a tenant or tenant organizer to conduct the following activities related to the establishment or operation of a tenant organization:
>
> (1) Distributing literature in common areas, including lobby areas;
>
> (2) Placing literature at or under tenants' doors;
>
> (3) Posting information on all building bulletin boards;
>
> (4) Assisting tenants to participate in tenant organization activities;
>
> (5) Convening tenant or tenant organization meetings at any reasonable time and in any appropriate space that would reasonably be interpreted as areas that the tenant had access to under the terms of their lease, including any tenant's unit, a community room, a common area including lobbies, or other available space; provided, that an owner or agent of owner shall not attend or make audio recordings of such meetings unless permitted to do so by the tenant organization, if one exists, or by a majority of tenants in attendance, if a tenant organization does not exist;
>
> (6) Formulating responses to owner actions, including:
>
> (A) Rent or rent ceiling increases or requests for rent or rent ceiling increases;

(B) Proposed increases, decreases, or other changes in the housing accommodation's facilities and services; and

(C) Conversion of residential units to nonresidential use, cooperative housing, or condominiums;

(7) Proposing that the owner or management modify the housing accommodation's facilities and services; and

(8) Any other activity reasonably related to the establishment or operation of a tenant organization.

Although the Act does not define "interfere," the dictionary assigns two relevant meanings: "1. The act of meddling in another's affairs[:] 2. An obstruction or hinderance." BLACK'S LAW DICTIONARY at 831 (8th ed. 2004).

The Commission observes that the ALJ did not cite any legal authority or precedent to support her conclusion that the Housing Provider did not interfere with a tenant organization at the Housing Accommodation. Final Order at 35; R. at 31. However, based on its review of the record, the Commission is satisfied that substantial evidence supports the ALJ's conclusions of law flow rationally from the findings of fact under the applicable legal standard. Majerle Mgmt., 866 A.2d at 46; ABC, Inc., 822 A.2d at 1089; Perkins, 482 A.2d 401, 402 (D.C. 1984); Bower, TP 27,838; *see also* United Dominion Mgmt., 101 A.3d at 430 (erroneous statement of deferential standard of review was immaterial where review was in fact thorough and de novo); LCP, Inc. v. D.C. Alcoholic Beverage Control Bd., 499 A.2d 897, 903 (D.C. 1985) ("[R]eversal and remand is required only if substantial doubt exists whether the agency would have made the same ultimate finding with the error removed.") (quoting Arthur v. D.C. Nurses' Examining Bd., 459 A.2d 141,146 (D.C. 1983)).

The ALJ found that the evidence presented by the Tenants during the hearing did not establish that the Housing Provider threatened any tenants who were members of the tenant association, that the Housing Provider removed literature about the tenant association from

common areas, or that the Housing Provider sought to intrude during meetings of the tenant association. Final Order at 35; R. at Tab 31. The ALJ found that Tenant Wise had never informed the Housing Provider that he was a member of the tenant association and that Tenant Wise did not believe the Housing Provider retaliated against him because of his participation in the tenant association. *Id.* The Tenants do not specifically contest these findings of fact on appeal, and the Commission's review of the record reveals that Tenant Wise stated in his testimony that he had not informed the Housing Provider that he had joined the tenant association, and that Tenant Wise testified that the Housing Provider's alleged retaliation, *see supra* at 46-54, was not based on his participation in the tenant association, because the alleged retaliation began before his participation. Hearing CD (OAH Aug. 30, 2016) at 16:45.

The Commission additionally observes that neither the Tenants nor the Housing Provider presented any evidence during the hearing concerning the posting of any literature, nor did either party present any evidence concerning actions taken by the Housing Provider to intrude during any of the tenant organization meetings, and that Mr. Roxo stated he would be supportive of the formation of a tenant organization. *See* Hearing CD (OAH Sept. 13, 2016) at 14:05-14:07. The Commission is satisfied that none of these findings of fact would support a conclusion of law that the Housing Provider meddled in, obstructed, hindered, or otherwise interfered with the exercise of any of the organizational rights enumerated in D.C. OFFICIAL CODE § 42-3505.06(d). Therefore, the Commission is satisfied that the ALJ's conclusion that the Housing Provider did not interfere with a tenant organization at the Housing Accommodation "flows rationally from the facts and is supported by substantial evidence." Majerle Mgmt. Inc., 866 A.2d at 46; Fahrenholz, TP 28,273.

Accordingly, the Commission affirms the Final Order on this issue.

7. Whether the ALJ erred in concluding that the Housing Provider did not act in bad faith.

In the Final Order, the ALJ determined that the Tenants "failed to establish that [the] Housing Provider's actions were motivated by fraudulent, deceptive, misleading, dishonest, or unreasonably self-serving purpose" and therefore, is "unable to find that Housing Provider's actions were taken in bad faith." Final Order at 36; R. at Tab 31.

As stated previously, the Commission's standard of review is contained in 14 DCMR § 3807.1, and provides that the Commission shall reverse an ALJ's decision that the Commission finds to contain conclusions of law not in accordance with the Act, or findings of fact unsupported by substantial evidence. *See also* D.C. OFFICIAL CODE § 2-509(e); *see, e.g.*, Butler-Truesdale, 954 A.2d at 1171; Branson, 801 A.2d at 979. A decision must be "sufficiently detailed to demonstrate that the full record was considered." Cobb v. Charles E. Smith Mgmt. Co., TP 23,889 (RHC July 21, 1998); Zenith Trust v. Tenants of 3217 Conn. Ave., N.W., TP 20,510 (RHC Dec. 11, 1989).

The Act specifically allows for the imposition of treble damages upon the finding of "bad faith." According to D.C. OFFICIAL CODE § 42-3509.01(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, or (2) substantially reduces or eliminates related services previously provided for a rental unit, shall be held liable by the Rent Administrator or Rental Housing Commission, as applicable, for the amount by which the rent exceeds the applicable rent ceiling 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. (emphasis added)

See also Bernstein Mgmt. Corp. v. D.C. Rental Hous. Comm'n, 952 A.2d 190, 198 (D.C. 2008); Velrey Props. v. Wallace, TP 20,431 (RHC Sept. 11, 1989). Bad faith refers to the "character and quality" of a prohibited act, and not to "a specific act in itself." *See* Third Jones Corp. v.

Young, TP 20,300 (RHC Mar. 22, 1990). Intent or state of mind of the housing provider is "the most important factor" in determining bad faith. *Id.*

The Commission has established a two-pronged test to determine whether the housing provider acted in bad faith and is consequently liable for treble damages. First, the record evidence must show that the housing provider knowingly violated the Act. Cascade Park Apartments v. Walker, TP 26,197 (RHC Jan. 14, 2005) at 19-20 (citing Quality Mgmt. Co. v. D.C. Rental Hous. Comm'n, 505 A.2d 73 (D.C. 1986)); Third Jones Corp. v. Young, TP 20,300 (RHC Mar. 22, 1990). "Knowing" requires only knowledge of the essential facts which brings the conduct within the purview of the Act, not actual knowledge of the unlawfulness of the conduct. Miller v. D.C. Rental Hous. Comm'n, 870 A.2d 556, 558 (D.C. 2005). From knowledge of "essential facts" of the prohibited conduct, the law "presumes knowledge of the legal consequences" arising from the same conduct. *See* Quality Mgmt., Inc., 505 A.2d at 75-76; Third Jones Corp., TP 20,300. The burden of proof is on a tenant to show that the housing provider "knowingly" engaged in prohibited conduct. Quality Mgmt., Inc., 505 A.2d at 75-76. The Commission has also observed that:

> Mere knowledge of housing code violations does not automatically constitute bad faith sufficient to justify an award of treble damages. The record must demonstrate that the housing provider knew the unabated housing code violations were substantial.

Walker, TP 26,197 (citing Fazekas v. Dreyfuss Bros, Inc., TP 20,394 (RHC Aug. 16, 1993)).

The second prong of the analysis is whether the housing provider's conduct was sufficiently egregious to warrant the additional finding of bad faith. Fazekas v. Dreyfuss Brothers, Inc., TP 20,394 (RHC Apr. 14, 1989)). A finding of bad faith requires "egregious conduct, dishonest intent, sinister motive, or a heedless disregard of duty." Vicente v. Jackson, TP 27,614 (RHC Sept. 19, 2005) at 12 (citing Quality Mgmt., 505 A.2d at 75 and Third Jones

Corp., TP 20,300). Intent can be derived from testimony as to objective facts or from inferences that can be reasonably drawn from objective facts. Third Jones Corp., TP 20,300. The Commission has held that, in order to sustain a treble damages claim, a finding of "bad faith" must be "based upon specific findings of fact that will show a higher level of culpability." Wallace, TP 20,431.

In Walker, the tenants were "subjected to severe rodent infestation for several years" and had given "notice of the rodent problem to management since January 1998." TP 26,197. The Commission determined that the first prong of bad faith was met because "the housing provider knew that substantial housing code violations existed throughout the housing accommodation." *Id.* at 35. The Commission also determined that the second prong of bad faith was met because "the record reveals a continuing, heedless disregard of the duty to keep the rental units and common areas in substantial compliance with the housing regulations." *Id.* The Commission specifically observed that:

> The record revealed substantial evidence of chronic rodent infestation, constantly recurring trash, debris, and waste in the common areas, continual leaking pipes and collapsing ceilings, and the failure to provide air conditioning. Individually, these conditions evince a continuing and heedless disregard of the duty not to reduce services in a manner that affects the health, safety and security of the tenants. The evidence surrounding each reduced service is sufficiently egregious to warrant the additional finding of bad faith. In totality, the conditions under which the tenants lived, and the housing provider's failure to abate the conditions, far exceed the standard for the imposition of treble damages.

Id. (citations omitted).

Similarly in Caesar Arms, LLC v. Lizama, the "record contained substantial evidence that a rodent infestation lasted for several years, still existed at the time of the 2008 hearing, and the Housing Provider did not abate the infestation despite being repeatedly informed about it starting in 2004." RH-TP-07-29,063 (RHC Sept. 27, 2013). The Commission determined that the first prong of bad faith was met because the Housing Provider had knowledge of a substantial

housing code violation. *Id.* The Commission also determined that, "based on the nature of the violation, its length, and the Housing Provider's enduring failure to abate the infestation despite knowing about its existence" the second prong of bad faith was met because the "conditions evince a continuing and heedless disregard of the duty not to reduce services." *Id.*

In this case, the ALJ determined that services were reduced in the rental unit due to mice and bedbug infestations, in violation of the housing code, and determined that the planned rent increase in June 2016 would be illegal because the unit was not in substantial compliance with the housing code despite the Housing Provider's unsuccessful efforts to abate the violation. Final Order at 22, 36, 38; R. at Tab 31. However, in determining that the Tenants had failed to establish that the Housing Provider's action were taken in bad faith, the Commission observes that the ALJ failed to include any discussion of the record evidence relating to the extent, duration, and Housing Provider's knowledge or disregard of the housing code violations. Lizama, RH-TP-07-29,063; Walker, TP 26,197. While the ALJ did cite applicable case law about intent and the requisite state of mind of the Housing Provider for a finding of bad faith, the ALJ leaps from a discussion of the applicable legal standard to a conclusion of law that the Tenant's did not prove bad faith without any application of the legal standard to salient facts. *See* Final Order at 36; R. at Tab 31. Although there was evidence presented by the Tenants concerning the existence of rodents in the unit since as early as 2014 and the lack of response on the part of the Housing Provider prior to DCRA inspection in 2015, the ALJ simply concludes that the "Tenants have failed to establish that Housing Provider's actions were motivated by fraudulent, deceptive, misleading, dishonest, or unreasonably self-serving purpose" and that she is "unable to find that Housing Provider's actions were taken in bad faith." *Id.* 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. *See, e.g.*, Perkins, 482 A.2d at 402; Cobb, TP 23,889 (RHC July 21, 1998); Zenith Trust, TP 20,510; *see also* Sindram v. Tenacity Grp., RH-TP-07-29,094 (Sept. 14, 2011); Jackson, RH-TP-07-28,817.

The Commission remands the issue of bad faith and instructs the ALJ to make findings of fact based on record evidence and conclusions of law that rationally follow from the facts. Wilson v. Smith Prop. Holdings Van Ness, RH-TP-07-280,907 (RHC Mar. 10, 2015) ("both the DCAPA and the Act require [the Commission] to remand issues which are not fully considered in a final order for further consideration"); *see also* Miller, 870 A.2d at 559 ("Unless the Commission was of the view – not apparent from its opinion – that such findings could lead to only one conclusion on the record, *viz.*, non-willfulness, the proper course for it was to remand the case to the ALJ for the necessary findings of fact."). The Commission instructs the ALJ to make conclusions of law on whether the failure to abate this housing code violation warrants "egregious conduct," including a "heedless disregard of duty." Lizama, RH-TP-07-29,063; Walker, TP 26,197; Vicente, TP 27,614.

IV. CONCLUSION

For the foregoing reasons, the Commission affirms the Final Order in part and remands this case in part. The Final Order is affirmed with respect to the findings of fact regarding the Tenants' use of the parking lot. *See supra* at 27-30. The Final Order is affirmed with respect to the findings of fact regarding Tenant Wise's membership in and communications with the Housing Provider about the tenant association. *See supra* at 30-31. The Final Order is affirmed with respect to the finding of fact regarding Tenant Wise's belief that he was being pushed out for working with children. *See supra* at 31-33.

The Final Order is further affirmed with respect to the conclusion that the Tenants did not prove substantial reductions in related services or facilities due to mold, plumbing leaks, holes and cracks in the floors, walls, or ceilings, broken kitchen cabinets, inoperative heating or cooling, inoperative electrical outlets, or peeling or cracked interior paint. *See supra* at 33-46. This case is remanded with respect to the issue of whether the Tenants proved a substantial reduction in related services or facilities due to broken doors in their rental unit. *See supra* at 41-43.

This case is further remanded with respect to the issue of whether the Housing Provider rebutted, with clear and convincing evidence, the presumption that each notice to vacate issued to the Tenants was a retaliatory action. *See supra* at 46-54. The Final Order is affirmed with respect to the conclusion that the Tenants did not prove their other claims of retaliation. *Id.* The Final Order is affirmed with respect to the conclusion that the Tenants did not prove that the Housing Provider interfered with the organization of a tenant association. *See supra* at 54-58.

This case is further remanded with respect to the issue of whether the Housing Provider acted in bad faith when it substantially reduced related services or facilities. *See supra* at 58-62.

SO ORDERED.

MICHAEL T. SPENCER, CHAIRMAN

DIANA HARRIS EPPS, 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 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-16-30,764 was mailed, postage prepaid, by first class U.S. mail on this **15th day** of **February, 2018**, to:

Robert Pfeferman, Esq.
1629 K Street, N.W.
Suite 300
Washington, DC 20006

Brian Riger, Esq.
6001 Montrose Rd.
Suite 701
Rockville, MD 20852

LaTonya Miles
Clerk of the Court
(202) 442-8949