

**DISTRICT OF COLUMBIA  
Office of Administrative Hearings**

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HARRY GURAL,

Tenant/Petitioner,

v.

SMITH PROPERTY HOLDINGS VAN NESS  
L.P.,

Housing Provider/Respondent.

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Case No.: 2016 DHCD TP 30,855  
3003 Van Ness Street, N.W., Apt. S-707

**HOUSING PROVIDER'S BRIEF REGARDING LACHES**

Housing Provider/Respondent Smith Property Holdings Van Ness L.P. ("Housing Provider"), by undersigned counsel, submits this brief regarding laches as permitted by the Court during the hearing on the pending Motion for Summary Judgment (the "Motion") on January 13, 2017. Housing Provider states as follows:

The Lease identifies that the rent for the Unit is \$2,048. *See* Exhibit D.<sup>1</sup> As the Motion explains, Mr. Gural received a \$278 concession (the "Concession") pursuant to the terms of his Lease from April 1, 2014 through March 31, 2015 and therefore, Mr. Gural paid \$1,770 during those months. *See* Exhibits C and D. As explained in its Reply, the Housing Provider was contractually obligated to provide that benefit of the Concession for a one year period through March 31, 2015. As of April 1, 2015, Housing Provider was no longer obligated to provide the Concession as the Lease had expired and Mr. Gural was now a month-to-month tenant.<sup>2</sup> *See* Exhibits D and E. In fact, Mr. Gural had already received notice that his rent would be increased from \$2,048 to \$2,118 effective \$2,118 April 1, 2015. *See* Exhibit G. Nevertheless, Housing

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<sup>1</sup> All references to exhibits are exhibits to Housing Provider's Motion for Summary Judgment.

<sup>2</sup> As explained in the Motion, as a month-to-month tenant, all provisions of the lease remain applicable.

Provider ultimately extended the benefits of a new concession through March 31, 2016, without signing a new lease with Mr. Gural. *See* Exhibit C. When the Lease expired, as the rent had increased, the Housing Provider agreed to a \$288 concession through March 31, 2016. *Id.* As a result of the negotiated concession, Mr. Gural paid \$1,830 from April 1, 2015 through March 31, 2016. *See* Mr. Gural's Opposition to the Motion at 4.

During the Motion Hearing, the Court, *sua sponte*, raised the issue whether the Motion for Summary Judgment must be denied due to laches. Black's Law Dictionary, Eight Edition, defines laches as:

1. Unreasonable delay in pursuing a right or claim – almost always an equitable one – in a way that prejudices the party against whom relief is sought. – Also termed *sleeping on rights*.
2. The equitable doctrine by which a court denies relief to a claimant who has unreasonably delayed in asserting the claim, when the delay has prejudiced the party against whom relief is sought.

Laches is inapplicable to this case. First, laches is an equitable claim and therefore is not within the jurisdiction of a tenant petition before the Office of Administrative Hearings. *See, e.g. Pope v. Equity Residential Management*, 2014-DHCD-TP 30,612 (OAH July 9, 2015) (Tenant must assert equitable claims through D.C. Superior Court's Civil Division, as the "jurisdiction of this administrative court is limited to apply the Rental Housing Act and I find that the rent concession was not in violation of the Rental Housing Act.").

Second, "Laches, which bars stale claims asserted by the plaintiff, comes into play when two prerequisites have been met: the defendant must have been prejudiced by plaintiff's delay, and plaintiff's delay must have been unreasonable." *Martin v. Carter*, 400 A.2d 326, 329 (D.C. 1979), citing *King v. Kitchen Magic*, D.C.App., 391 A.2d 1184, 1187-88 (1978); *Van Bourg v. Nitze*, 128 U.S.App.D.C. 301, 388 F.2d 557 (1967). Neither of these circumstances applies in

this case. Laches is an equitable defense to a claim. As Mr. Gural is the “plaintiff” in this case, he cannot invoke laches as a defense. *LaPrade v. Rosinky*, 882 A.2d 192, 198 (D.C. 2005) (“Laches may be used as a shield, but not as a sword by one seeking affirmative relief.”). Moreover, it is without a doubt that Mr. Gural was not prejudiced but instead benefited from the Housing Provider providing a new concession. Due to the terms of the agreement requiring the Concession, he was not obligated to pay \$2,048 in rent as identified in the Lease even though that was the legally contracted rent until the Concession expired on March 31, 2015. He was on notice that his rent had increased effective April 1, 2015 to \$2,118. Yet, Mr. Gural began paying \$1,830 as of April 1, 2015, as agreed by the parties. Any prejudice would be suffered by the Housing Provider if Mr. Gural were permitted to alter the contractual agreement.

Furthermore, there was no delay in enforcing the terms of the Lease. Pursuant to the Rental Housing Act, the statute of limitations bars claims prior to May 12, 2013. See D.C. Code § 42-3502.06(e). Furthermore, rent claims by the Housing Provider must be asserted within three years pursuant to D.C. Code § 12-301(8). Housing Provider’s has not been barred by the statute of limitations and did not unreasonably delay the enforcement of the terms of the Lease or the agreement with Mr. Gural regarding the concession. Finally, the failure to demand full rent is not a waiver of Housing Provider’s right to later demand payment of the full rent. *Nowinski v. Randall H. Hagner & Co.*, 100 A.2d 452 (D.C. 1953). Paragraph 31 of the Lease (Exhibit D) states:

**Waivers:** Our failure to insist upon strict compliance with the terms of this Lease or any delay by us in enforcing your obligations under the Lease will not constitute a waiver of our right to act on other breaches or to make demands on you to perform. Your obligation to pay rent during the Lease term or during your continued occupancy of the Premises will continue notwithstanding our issuance of any notice, demand for possession, notice of termination of tenancy, institution of any action or forcible detainer,

or any other act which might result in the termination of your right to live in the Premises. Unless otherwise restricted by applicable law, our acceptance of rent from you after it falls due or after knowledge of your breach of any obligations under this Lease is not a waiver of our rights under this Lease nor is it an election to not proceed under any provision of this Lease or the law.

For the foregoing reasons, as well as the reasons stated in the Motion for Summary Judgment and the Reply, the Motion for Summary Judgment should be granted.

Respectfully submitted,

GREENSTEIN DELORME & LUCHS, P.C.

*Debra F. Leege*

Dated: January 26, 2017

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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing Brief was served on this the 26th day of January, 2017, by first class mail, postage pre-paid upon:

Harry Gural  
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*Debra F. Leege*

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