DISTRICT OF COLUMBIA
OFFICE OF ADMINISTRATIVE HEARINGS
One Judiciary Square
441 Fourth Street, N.W., Suite 450N
Washington, DC 20001-2714
TEL: (202) 442-9094 FAX: (202) 442-4789 EMAIL: oah.filing@dc.gov

HARRY GURAL, *Tenant / Appellant,* v. EQUITY RESIDENTIAL MANAGEMENT LLC and SMITH PROPERTY HOLDINGS VAN NESS, LP, *Housing Providers / Appellees*	Case No.: 2016-DHCD-TP-30,855 In Re: 3003 Van Ness Street, NW Unit S 707

HOUSING PROVIDER'S REBUTTAL BRIEF

Mr. Gural's Rebuttal to Housing Provider's Closing Arguments, filed a day late, raises no new information of substance and articulates no reason to enter judgment for Tenant. The fundamental flaw in Mr. Gural's argument as to bad faith is that it relies on factual and legal developments that happened well after the contested rent increase was assessed. Mr. Gural asks the court to look at subsequent changes in the law and to treat those changes as if they were the state of the law at the time the rent increase was assessed. As it pertains to his retaliation claims, Mr. Gural failed to produce a witness with personal knowledge of his case, which was the purpose of the limited remand on that issue. Judgment should be entered for Housing Provider.

I. THE OPINIONS MR. GURAL RELIES UPON FOR "RENT CHARGED" DID NOT EXIST AT THE TIME THE CHALLENGED RENT INCREASE WAS ASSESSED.

In his rebuttal brief, Mr. Gural relies on cases with opinions issued years after his rent increase was assessed to establish that the increase was undertaken in bad faith. *See* Rebuttal at 2-3. Mr. Gural's challenged rent increase was assessed in 2016. *See* Tenant Petition. *Fineman* was

issued in 2018.[1] The RHC Order in the *Gural* matter was not issued until 2020. Neither of these cases can be relied upon for a claim of bad faith. Cases with opinions in existence at the time that the disputed rent increase was assessed repeatedly held that the use of pre-concession rent increases was acceptable. *See Maxwell v. Equity Management*, 2015 DHCD-TP 30,704, final order of April 22, 2015 at 5-6; *Pope v. Equity Residential Management*, 2015 DHCD-TP-30,312; *Jenkins v. Equity Residential Management*, 2012 DHCD-TP 30,191; *see also* Order on Remedies of April 23, 2021, 2017 CA 008334 B (Williams, J.).

II. THERE IS NO BASIS TO ASSESS TREBLE DAMAGES HERE OR TO AWARD DAMAGES FOR UNCHALLENGED RENT INCREASES.

In his rebuttal brief, Mr. Gural cites alleged instances of bad faith—all of which occurred well after the tenant petition was filed. *See* Rebuttal at 3-4. Conditions that occur prior to the filing of a tenant petition are the relevant matters that the parties are adjudicating. *Menor v. Weinbaum*, TP 22,769 (RHC August 4, 1993). Even if this Court were to consider events occurring after the filing of the tenant petition in its evaluation of alleged bad faith (which it should not under applicable case law), the Housing Provider is under no obligation to concede the case in the Superior Court based on a split of authority between Judge Williams, of the D.C. Superior Court, and the Rental Housing Commission as to the retroactivity of *Fineman*.

Mr. Gural has filed a tenant petition pertaining to a single rent increase. He has not challenged the 2017, 2018, 2019, or 2022 increase. He has not at any point successfully amended his tenant petition. Indeed, he is foreclosed by doing so for 2017, 2018, and 2019 by the applicable statute of limitations. In *Kennedy v. D.C. Rental Housing Commission*, 709 A.2d 97 (1998), the tenant association filed a petition seeking refunds of excessive rents paid over a three-year period.

[1] *Fineman* cannot be held to apply retroactively. The challenged rent increase was permissible under applicable law in effect at the time it was assessed. *See* Housing Provider Closing Arguments at 11-12.

Id. at 97-98. The tenant association asserted that the statute ***only limited their recovery*** to the excess rent paid over the three years preceding the petition. *See id.* at 99. The Court held that the statute of limitations barred ***any investigations of validity*** of rent levels in place more than three years prior to the date of the filing of the tenant petition. *See id.* Similarly, here, Mr. Gural is limited to the rent increase complained of in his tenant petition—and to allow him to challenge and seek recovery for subsequent increases is impermissible under applicable law. *See id.* ("Tenants must file any challenge to any type of rent adjustment within three years after the adjustment takes effect."); *see also Parreco v. District of Columbia Rental Housing Commission*, 885 A.2d 327, 334 (D.C. 2005).

III. HOUSING PROVIDER HAS ALREADY ESTABLISHED THAT RETALIATION DID NOT OCCUR AND GURAL HAS OFFERED NO EVIDENCE TO UNDERMINE THE COURT'S ORIGINAL RULING ON REMAND.

The Housing Provider has already provided clear and convincing evidence that retaliation did not occur, this honorable Court has already held as much, and Mr. Gural has failed to produce a witness with personal knowledge of this case to undermine that holding—which was the entire purpose of the limited remand on this issue. *See* RHC Order at 26-27. The Court should be bound by its original decision in this matter.

Mr. Gural's involvement in protected activities has already been established and was unchallenged on appeal. Mr. Gural is one tenant in a building of over 600 units. His rent increase was an ordinary and routine business undertaking. The emails relied upon by Mr. Gural are routine interactions that reflect the standard and professional communications from the Housing Provider. *See* Exhibit 164 ("We will work with any resident regarding their renewal rates and will do so directly with them.") and 165 ("We are certain and confident that we are in full compliance of rent control laws."); *see also* Exhibit 142 ("It will be my sincere pleasure to continue doing business

with you. Please contact me about your renewal decision."). These emails offer no basis to undermine the Court's original decision on this issue.

Mr. Gural has already been told by this Court that Ms. Duvall's inability to recall another tenant who was sued for $297 is not a basis for retaliation. *See* Order in First Trial at 21 ("Tenant argues that Ms. Duvall's inability to remember if Housing Provider ever sought legal recourse in a situation where so little rent remained due after the grace period is evidence that Housing Provider singled Tenant out because of his protected activities. However, there is no evidence to support this argument."). Housing Provider has already established, and this Court has already held:

> Housing Provider followed a policy that was applicable to all tenants: if rent was not paid in full by the time the applicable grace period had expired, Housing Provider would seek legal recourse. This is clear and convincing evidence of a legitimate business purpose. Housing Provider was not retaliating against Tenant.

See id. Recognizing this, Mr. Gural points to the protective order in the Landlord/Tenant case—for which he has never filed an applicable motion to challenge the protective order under D.C. Superior Court Landlord-Tenant Rule 12-I(c). This provides no support for his claims of retaliation. Judgment should be entered for housing provider.

IV. MR. GURAL IS LIMITED TO THE RENT INCREASE COMPLAINED OF IN HIS TENANT PETITION.

Mr. Gural bemoans "endless litigation" dispute prolonging this case over a near decade. *See* Rebuttal at 5. The Court can only calculate damages based on the alleged overcharges for the period before the petition was filed. It can use the highest number of the overcharge for that period to date of the hearing—but may not take into account increases during the period after the petition was filed. *See Menor, supra*. Mr. Gural would not be justified in filing new litigation to "cover

the overcharges since August 2016" because, for at least three of them, he would be foreclosed by the statute of limitations.

V. CONCLUSION.

Mr. Gural's rebuttal brief offers no additional information of substance. His case is not unique. His increase was based on a good-faith interpretation of the Act—which itself required clarifying legislation and is the subject of different interpretations as to the term "Rent Charged.". Judgment should be entered for Housing Provider.

Dated: April 29, 2024

Respectfully submitted,

GREENSTEIN DELORME & LUCHS, PC

/s/ Spencer B. Ritchie

Richard W. Luchs (D.C. Bar No. 243931)
Spencer B. Ritchie (D.C. Bar No. 1673542)
801 17th Street NW Suite 1000
Washington, DC 20006
Telephone: (202) 452-1400
Facsimile: (202) 452-1410
Email: rwl@gdllaw.com
Email: sbr@gdllaw.com
Counsel for Housing Providers / Appellees

CERTIFICATE OF SERVICE

THE UNDERSIGNED COUNSEL HEREBY CERTIFY that a copy of the foregoing was served this 29th day of April, 2024 by email, upon:

Harry Gural
144 Ridgeway Drive
Lewisburg, PA 17837
harrygural@gmail.com

/s/ Spencer Bruce Ritchie
Spencer B. Ritchie