DISTRICT OF COLUMBIA
OFFICE OF ADMINISTRATIVE HEARINGS

HARRY GURAL *Tenant/Petitioner*, v. EQUITY RESIDENTIAL MANAGEMENT and SMITH PROPERTY HOLDINGS VAN NESS LP *Housing Provider/Respondent*	2016-DHCD-TP 30,855 *In re*: 3003 Van Ness St. NW, S-707 Chief Judge M. Colleen Currie

TENANT REBUTTAL OF HOUSING PROVIDER'S CLOSING ARGUMENTS

The Housing Provider demanded in 2016 that the Tenant pay a large rent increase of $362 per month – $4,344 per year – on his apartment in a rent-stabilized building. The Tenant voluntarily paid the maximum rent increase he claimed was permissible by law – $65 per month. The Housing Provider filed suit against him for supposed underpayment of $297. He has been forced to pay $28,474 under a protective order in DC Superior Court, and the Housing Provider claims that he owes $52,097, which includes additional rent increases and supposed late fees. The Tenant argues that these were deliberate overcharges, made in bad faith, and subject by law to remedies equal to three times the amount of the overcharges.

The Rental Housing Commission ("Commission" or "RHC") has ruled in favor of the Tenant's position regarding allowable rent increases, finding that the law states that maximum rent increases in rent-stabilized units are calculated based on the amount that a housing provider actually charges, and the tenant actually pays. Nevertheless, the Housing Provider rejects the RHC ruling, claiming that there are "differing legal opinions" and that rent increases may be calculated based on a "rent charged" that substantially exceeds the rent that is actually charged.

The Housing Provider denies that the overcharges were made in bad faith. However, its claim is disproven by the fact that it continues to overcharge the Tenant even today – several

years *after* the Commission ruled decisively against the Housing Provider in the Tenant's case ("Gural"), *after* the RHC decided against the Housing Provider in the closely related *Fineman* case, *after* a DC Superior Court judge ordered the Housing Provider to pay residents of the Tenant's apartment building $1 million in restitution for similar overcharges, and *after* the DC Council passed a clarification act affirming the Tenant's interpretation of the law.

Finally, the Housing Provider denies that it retaliated against the Tenant for his extensive work on behalf of residents as tenant association president. The law requires the Court to find the Housing Provider guilty of retaliation unless it has provided clear and convincing evidence that it has not done so. The Housing Provider has provided no evidence to make its case.

I. HOUSING PROVIDER REJECTS THE AUTHORITY OF THE RENTAL HOUSING COMMISSION

The core of the Housing Provider's Closing Arguments is its rejection of the RHC's decisions in *Harry Gural v. Equity Residential/Smith Property Holdings Van Ness LP* and *Gabriel Fineman v. Smith Property Holdings Van Ness LP*. The Housing Provider claims that there are "differing legal opinions in this jurisdiction" and a "split of authority," often citing the DC Superior Court decision in *District of Columbia v. Equity Residential Management.*[1]

However, the Rental Housing Commission, not DC Superior Court, has jurisdiction over rental housing law. This Court already affirmed this in its Order Denying Housing Provider's Motion for Partial Summary Judgment (May 2, 2023), rejecting the Housing Provider's argument and stating that "the Commission - not the Superior Court - has appellate authority to review Final Orders issued by OAH ALJs regarding matters brought under the RHA.

Housing Provider rejects RHC ruling that "rent charged" means rent that is charged

The Housing Provider continues to claim that it can calculate a rent increase based on a "rent charged" or "pre-concession" rent that substantially exceeds the rent charged. However, the RHC found in both *Gural* and *Fineman* that the words "rent charged" in the Rental Housing

[1] *District of Columbia v. Equity Residential Management, 2017-CA-008334-B*

Act mean rent that actually is charged, not a maximum legal limit. The RHC wrote in *Fineman* that it "is not that preservation of a maximum legal rent level is consistent with the language, structure, or remedial purposes the Act generally and the purposes of the abolition of rent ceilings specifically," and in *Gural* that "the Act does not permit a housing provider to use the RAD forms to preserve a maximum, legal rent in excess of what is actually charged."

The Housing Provider objects to the RHC ruling on calculating rent increases

The Housing Provider continues to argue that it did not act illegally when it attempted to calculate the Tenant's rent increase based on an amount that substantially exceeded the rent that he actually been paying. However, the Commission wrote in *Fineman* that the actual "'rent charged' that must be used as the basis for calculating and reporting rent adjustments on the RAD Forms, in accordance with the statutory meaning of the term "rent" in the Act."

Housing Provider rejects RHC ruling about "retroactivity"

The Housing Provider claims that the 2018 *Fineman* decision does not apply retroactively. However, the RHC in *Gural* found that "judicial decisions interpreting statutes are 'given full retroactive effect in all cases still open on direct review and as to all events, regardless of whether such events predate or postdate our announcement of the rule.'" Furthermore, the RHC writes that "the Clarification Act does not result in any change in the legal standards that applied to the Housing Provider from 2006 to 2019."

II. TREBLE REMEDIES FOR OVERCHARGES

The Housing Provider overcharged the Tenant in bad faith

If the Housing Provider had made a good faith mistake in overcharging the Tenant, it would have stopped overcharging him after losing *Gural, Fineman,* and *District of Columbia v. Equity Residential.* However, it continued overcharging his account, and refusing to lift the protective order in the Landlord and Tenant Branch of DC Superior Court, under which the Tenant has been forced to $28,474 to date.

Furthermore, the Housing Provider even continued to overcharge the Tenant *after* it stopped overcharging its other customers. (If the Housing Provider wishes to argue that it continues to overcharge other customers, it should notify the Attorney General.)

The Housing Provider misstates the basis for penalties for overcharges

The Housing Provider states that it is not liable for rent increases charged to the Tenant in 2017, 2018, 2019 and 2022. However, D.C. Code §42–3509.01 states the remedies are calculated not on the one-time rent increases as the Housing Provider claims, but on "the amount by which the rent exceeds the applicable rent charged or for *treble that amount* (in the event of bad faith)."[2] The Housing Provider claims that he currently owes more than $50,000.

III. RETALIATION

The Housing Provider provides no evidence to disprove retaliation

The law requires that a court presume that retaliation has occurred if the tenant has participated in a protected action – including participating in a tenant association. The Housing Provider must provide "clear and convincing evidence" that retaliation did not occur.

The Tenant is the president of his tenant association, and he helped dozens of residents fight the Housing Provider's demands for rent increases that sometimes exceed $1,000 per month. Moreover, he reported the illegal rent increases to the DC Attorney General, prompting a lawsuit that resulted in $2 million in penalties against the Housing Provider. There is no question that a "rebuttable presumption" of the Housing Provider's culpability applies.

However, the Housing Provider fails to provide "clear and convincing evidence" that it did not retaliate against the Tenant to meet that high bar. First, the Tenant has provided emails showing that the Housing Provider threatened to raise his rent by $362 per month if he did not sign a lease with an incorrect, inflated amount listed as the "rent," the Housing Provider has given no evidence that such pressure tactics did not take place. Second, concerning the Tenant's

[2] D.C. Official Code §42–3509.01. Penalties

claim that the Housing Provider retaliated against him by filing a lawsuit against him in Superior Court for a supposed underpayment of $297, Avis DuVall in her testimony could not name another tenant who was sued for such a paltry amount. The Housing Provider gives no evidence of a non-retaliatory reason for the suit, let alone for forcing the Tenant to pay $28,474 under a protective order.

IV. HOUSING PROVIDER CALLS FOR ENDLESS LITIGATION

The Housing Provider claims that it cannot be held liable for overcharges that occurred after the filing of the tenant petition in August 2016. However, as the Tenant has argued in his Closing Arguments, the RHC has issued several decisions finding that awards for rent overcharges by a housing provider should be calculated on the basis of the overcharges to date as of the evidentiary hearing. If the Housing Provider prevails on this issue, the Tenant will be justified in filing new litigation to cover the overcharges since August 2016, and then file further new litigation for the period after the filing of that litigation, and so on.

Respectfully submitted,

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