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

ORDER GRANTING IN PART AND DENYING IN PART HOUSING PROVIDER'S MOTION FOR SUMMARY JUDGMENT; DENYING TENANT'S MOTION FOR PARTIAL SUMMARY JUDGMENT; AND GRANTING TENANT'S REQUEST TO WITHDRAW ONE CLAIM IN HIS TENANT PETITION

This matter is before this administrative court on Equity Residential Management and Smith Property Holdings Van Ness LP's (collectively referred to as Housing Provider) motion for summary judgment and Tenant Harry Gural's motion for partial summary judgment. For the reasons stated below, Housing Provider's motion is granted in part and denied in part, and Tenant's motion is denied. In a separate Case Management Order, an evidentiary hearing on the claim of retaliation is scheduled for Monday, May 22, 2017 at 9:30 a.m.

I. INTRODUCTION AND PROCEDURAL HISTORY

On August 30, 2016, Tenant filed Tenant Petition 30,855. In his petition, Tenant alleges that Housing Provider violated various provisions of the Rental Housing Act of 1985 at 3003 Van Ness Street, NW. In particular, Tenant alleges (1) that the rent increase was larger than the

increase allowed by any applicable provision of the Act (Box B on the Tenant Petition); (2) that Housing Provider did not file the correct rent increase forms with the Rental Accommodations Division (the RAD) (Box D on the Tenant Petition); (3) that the Housing Provider, property manager, or other agent of the Housing Provider have taken retaliatory action against Tenant (Box L on the Tenant Petition); and (4) that a Notice to Vacate has been served on Tenant in violation of D.C. Code § 42-3505.01 (Supp. 2008) (Box M on the Tenant Petition).

By order dated October 13, 2016, this matter was scheduled for mediation on November 7, 2016. On October 25, 2016, Housing Provider filed a motion for summary judgment. Tenant filed a response to Housing Provider's motion for summary judgment on November 4, 2017. Mediation was rescheduled at the request of Tenant and was held on November 16, 2016. It was unsuccessful. By order dated December 6, 2016, oral argument on the motion for summary judgment was scheduled for January 13, 2017.

At the January 13, 2017 hearing, Tenant withdrew his claim that a Notice to Vacate had been served on him in violation of D.C. Code § 42-3505.01 (Supp. 2008). At the conclusion of oral argument, the parties were invited to brief the issue of whether the doctrine of laches applies. Housing Provider submitted a brief on January 26, 2017 and Tenant submitted a brief on February 13, 2017. Tenant also filed a motion for partial summary judgment on March 3, 2017.[1] Housing Provider filed a response to that motion on March 17, 2017. Having considered the motions, briefs, attendant exhibits, and arguments of the parties and counsel, this administrative court finds as follows.

[1] In his motion, Tenant filed extensive documentation related to, and seeks relief on behalf of, other tenants both at the same complex and at other residences owned and/or managed by Housing Provider. Tenant is the only party named as Petitioner in this administrative action. As such, I will address the arguments and relief requested only as they relate to him. Additionally, insofar as Tenant requests that I issue an order requiring the Superior Court to take specific action, this administrative court has neither the authority nor the jurisdiction to do so.

II. JURISDICTION

This matter is governed by the Rental Housing Act of 1985 (D.C. Code §§ 42-3501.01 *et seq.*) (the Act or the Rental Housing Act), Chapters 38-43 of 14 District of Columbia Municipal Regulations (DCMR), the District of Columbia Administrative Procedures Act (D.C. Code §§ 2-501 *et seq.*), and OAH Rules (1 DCMR 2800 *et seq.* and 1 DCMR 2920 *et seq.*).

III. MATERIAL FACTS NOT IN DISPUTE

Solely for the purposes of deciding the motions for summary judgment, I conclude that the following facts are not in dispute:

1. The Housing Accommodation located at 3003 Van Ness is owned by Smith Property Holdings Van Ness LP and managed by Equity Residential Management.
2. The Housing Accommodation is subject to the rent stabilization provisions of the Act.
3. Tenant has resided in unit S707 (the Unit) since at least April 1, 2014.[2]
4. Tenant signed a one-year lease on March 19, 2014 for the Unit for the period April 1, 2014 through March 31, 2015. The "term sheet" of the lease identified two "monthly recurring charges:" "Monthly Apartment Rent" of $2,048 per month and "Monthly Reserved Parking" of $100.[3]
5. The term sheet also identified a "Monthly Recurring Concession" of $278 per month.[4] The term sheet stated: "The Total Monthly Rent shown above will be adjusted by these lease concession amounts." The concession reduced the amount Tenant was obligated to pay to Housing Provider during the term of the lease from $2,048 to $1,870 per month.

[2] Lease attached to Housing Provider's motion as Exhibit D.
[3] *Id.*
[4] *Id.*

6. The lease included a "Concession Addendum."[5] That addendum states in pertinent part:

> You have been granted a monthly recurring concession as reflected on the Term Sheet. The monthly recurring concession will expire and be of no further force and effect as of the Expiration Date shown on the Term Sheet.
>
> Consistent with the provisions of the Rental Housing Act of 1985 (DC Law 6-10) as amended (the Act), we reserve the right to increase your rent once each year. In doing so, we will deliver to you a "Housing Provider's Notice to Tenants of Adjustment in Rent Charged," which will reflect the "new rent charged." If you allow your Lease to roll on a month to month basis after the Expiration Date, your monthly rent will be the "new rent charged" amount that is reflected on the Housing Provider's Notice.
>
> It is understood and agreed by all parties that the monthly recurring concession is being given to you as an inducement to enter into the Lease. You acknowledge and agree that you have read and understand the Lease Concessions provision contained in the Terms and Conditions of your Lease.

7. Through the term of the written lease, Tenant paid $1,870 per month to Housing Provider.[6] This sum equals the "Monthly Apartment Rent" and the "Monthly Reserved Parking" combined, less the "Monthly Concession."

8. Tenant continued to reside in the Unit after the written lease expired on March 31, 2015.

9. On January 15, 2015, Housing Provider provided Tenant with RAD Form 8, "Housing Provider's Notice to Tenants of Adjustment in Rent Charged" which stated that "your current rent charged" for the Unit would increase from $2,048 to $2,118 (a 3.4% increase), effective April 1, 2015.[7]

10. On January 27, 2015, Housing Provider filed RAD Form 9, "Certificate of Notice to RAD of adjustments in rent charged," with the RAD. The appendix attached to the Certificate listed the Unit and stated that the "prior rent" was $2,048, the increase was

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[5] *Id.*
[6] *Id.*
[7] Notice attached to Housing Provider's motion as Exhibit F.

$70, the new "rent charged" was $2,118, the percentage increase was 3.4%, and the effective date was April 1, 2015.[8]

11. For the months April 2015 through March 2016, Tenant paid to Housing Provider $1,930 each month, which amount included $100 for reserved parking.

12. On January 15, 2016, Housing Provider gave Tenant another RAD Form 8. This one stated that "rent charged" for the Unit would increase from $2,118 to $2,192 (a 3.5% increase), effective April 1, 2016.[9]

13. On February 2, 2016, Housing Provider filed RAD Form 9 with the RAD. The appendix attached to that Certificate listed the Unit and noted that the "rent charged" was $2,118, the increase was $74, the new "rent charged" was $2,192, the percentage increase was 3.5%, and the effective date was April 1, 2016.[10]

14. Housing Provider agreed to accept $1,895 for monthly apartment rent starting April 1, 2016, provided Tenant sign a one-year lease which identified "Monthly Apartment Rent" as $2,192 and provided for a "Monthly Recurring Concession" of $297.[11]

15. Tenant refused to sign the offered lease.[12]

16. On March 25, 2016, Tenant paid Housing Provider $1,995, which amount included $100 for reserved parking, for the month of April, 2016.[13]

17. On April 27, 2016, Housing Provider filed a complaint for non-payment of rent in the Landlord-Tenant Branch of D.C. Superior Court (the LTB Case). It was assigned case

[8] Certificate attached to Housing Provider's motion as Exhibit G.
[9] Notice attached to Housing Provider's motion as Exhibit H.
[10] Certificate attached to Housing Provider's motion as Exhibit I.
[11] Tenant's motion, memorandum of points and authorities, page 4, paragraph 8.
[12] *Id.*, paragraph 9.
[13] *Id.*

number 2016 LTB 010863.[14]

18. Tenant filed Tenant Petition 30,818 on May 12, 2016 alleging that Smith Properties Holdings Van Ness LP and Equity Property Management violated various provisions of the Act.[15]

19. At the initial hearing in the LTB Case on May 19, 2016, a *Drayton* stay was entered by consent. Additionally, a protective order was signed requiring Tenant to pay $297 per month into the court registry during the pendency of the case.[16]

20. In TP 30,818, Housing Provider filed a motion for summary judgment on June 28, 2016. In his response to that motion, Tenant stated that he wished to voluntarily dismiss the Petition without prejudice. Presiding Administrative Law Judge Vergeer granted that request and on July 28, 2016, TP 30,818 was dismissed without prejudice.

21. On August 23, 2016, Housing Provider filed a motion to vacate the *Drayton* stay in the LTB Case.[17]

22. On August 30, 2016, Tenant filed the Tenant Petition in this matter.

23. On September 1, 2016, Housing Provider's motion to vacate the *Drayton* stay was denied and the stay remains in place as of the date of this order.[18]

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[14] http://www.dccourts.gov/cco/maincase.jsf. I take official notice of the on-line docket sheets for D.C. Superior Court cases. The dockets are public records available on the internet and therefore "not subject to reasonable dispute [and] capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned." Fed. R. Evid. 201(b)(2). Courts may take official notice of proceedings in other courts. *U.S. ex rel Robinson Racheria Citizens Council v. Borneo, Inc.*, 971 F.2d 244, 248 (9th Cir. 1992) (citing *St. Louis Baptist Temple, Inc. v. FDIC*, 605 F.2d 1169 (10th Cir. 1979)).

[15] An administrative court may take official notice of its own records. *See Sherman v. Comm'n on Licensure*, 407 A.2d 595, 598 (D.C. 1979); D.C. Code § 2-509(b).

[16] http://www.dccourts.gov/cco/maincase.jsf.

[17] *Id.*

[18] *Id.*

IV. STANDARD OF REVIEW

The rules of this administrative court provide that a party may request that an Administrative Law Judge decide a case summarily, without an evidentiary hearing, so long as the motion includes sufficient evidence.[19] The summary judgment standard set forth in the Super. Ct. Civ. R. 56(c) provides:

> The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.

The District of Columbia Court of Appeals described the substantive standard for entry of summary judgment in *Behradrezaee v. Dashtara*, 910 A.2d 349, 364 (D.C. 2006):

> Summary judgment is appropriate only if no genuine issue of material fact exists and the movant is entitled to judgment as a matter of law. *GLM Partnership v. Hartford Cas. Ins. Co.*, 753 A.2d 995, 997-998 (D.C. 2000) (*citing Colbert v. Georgetown Univ.*, 641 A.2d 469, 472 (D.C. 1994) (*en banc*)). 'A motion for summary judgment is properly granted if (1) taking all reasonable inferences in the light most favorable to the nonmoving party, (2) a reasonable juror, acting reasonably, could not find for the non-moving party, (3) under the appropriate burden of proof.' *Kendrick v. Fox Television*, 659 A.2d 814, 818 (D.C. 1995) (quoting *Nader v. de Toledano,* 408 A.2d 31, 42 (D.C. 1979)).

Although the moving party has the burden of demonstrating the absence of a genuine issue of material fact, "[o]nce the movant has made such a *prima facie* showing, the nonmoving party has the burden of producing evidence that shows there is 'sufficient evidence supporting the claimed

[19] 1 DCMR 2819.

factual dispute ... to require a jury or judge to resolve the parties' differing versions of the truth at trial.'"[20]

V. ANALYSIS AND CONCLUSIONS

A. Rent increases

In his petition, Tenant alleges that the rent increase was larger than the increase allowed by any applicable provision of the Act. In seeking dismissal of that claim, Housing Provider argues that the use of a concession does not invalidate the higher, legal rent for a unit, and that therefore the rent increases were not greater than that permitted by law. In seeking summary judgment in his favor, Tenant argues that (1) rent concessions are not permitted under the Act, and (2) because he paid to Housing Provider an amount lower than what Housing Provider identifies as "rent charged," the lower amounts should constitute what is defined as "rent" under the Act, and, therefore, those lower amounts should be used in calculating the percentage of rent increase. Because Housing Provider used the higher amounts of rent in calculating the percentage of rent increase, the increases were greater than were permitted by law. The parties therefore raise two issues that must be addressed in determining whether the rent increases exceeded the amounts permitted by the Act: (1) whether rent concessions are permitted under the Act, and (2) what "rent" means.

1. Rent concessions are not contrary to the Act

The Rental Housing Act regulates the rent for each rental unit under the Rent Stabilization Program by setting terms and conditions for every increase or decrease in rent for covered units.[21] The Act defines "rent" as "the entire amount of money, money's worth, benefit,

[20] *Kendrick v. Fox Television*, 659 A.2d at 818 (*quoting Nader v. de Toledano*, 408 A.2d at 48).
[21] 14 DCMR 4200.

bonus, or gratuity demanded, received, or charged by a housing provider as a condition of occupancy or use of a rental unit, its related services, and its related facilities."[22]

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 Rental Housing Commission (RHC) determines the amount of the adjustment annually.[23] The adjustment of general applicability allows housing providers to increase rents annually in order to keep up with inflation. For most tenants, the maximum amount their rent can be increased is the CPI-W percentage plus 2%, but not more than 10% of the current rent charged.[24] If a housing provider does not "perfect" a rent increase, the increase cannot be imposed.

To perfect a rent increase, 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.[25]

The pre-August 2006 Rental Housing Act provided for rent ceilings, which placed an upper limit on the rent for each apartment. A housing provider had to take and perfect (by filing with the RAD) a CPI-W increase within 30 days of first being eligible to do so. The housing

[22] D.C. Code § 42-3501.03(28).
[23] D.C. Code § 42-3502.06(b).
[24] *Id.*
[25] D.C. Code § 42-3502.08(f); 14 DCMR 4205.4.

provider could, however, choose not to implement the increase and hold it in reserve for the future.[26]

The August 2006 amendments to the Act abolished rent ceilings.[27] The current rent charged at the effective date of the amendments in rent-controlled buildings became the base rent and the maximum allowable rent for all units subject to rent control. The 2006 Amendments also abolished a housing provider's ability to hold CPI-W increases for future imposition. As long as a CPI-W increase occurs at least 12 months after the last increase, a housing provider can implement it at any time in the CPI-W year.

Here, Housing Provider perfected a CPI-W increase effective April 1, 2015 by notifying Tenant of the increase through RAD Form 8 and informing the RAD of it and other unit increases by filing RAD Form 9. In Tenant's lease, Housing Provider identified the maximum legal rent as the "total monthly rent" but offered Tenant a lease which was subject to a "monthly recurring concession" in the rent, *i.e.*, a temporary and conditional reduction in the amount Tenant was required to pay as rent. The process was transparent to Tenant as the terms of the pricing are set forth in the Lease and its Concession Addendum. Tenant signed the lease. The lease therefore identifies the maximum legal rent as the total monthly rent and the concession from it. The Concession Addendum explains that if the concession lapses by failing to renew on a 12-month basis, the amount Tenant must pay as rent returns to the maximum legal rent. The rent is not increased. Rather, the temporary, conditional reduction provided for in the 12-month lease ends. For these reasons, the rent concession as described in Tenant's lease does not violate the Act as it relates to rent increases.

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[26] 14 DCMR 4205.9.

[27] D.C. Code § 42-3502.06(1). Although rent ceilings were abolished in 2006, they "live on" because the rent ceiling regulations have not been amended.

In addition to describing the procedure for perfecting a rent increase, the Act provides five statutory purposes for its enactment:

> (1) To protect low- and moderate-income tenants from the erosion of their income from increased housing costs;
> (2) To provide incentives for the construction of new rental units and the rehabilitation of vacant rental units in the District;
> (3) To continue to improve the administrative machinery for the resolution of disputes and controversies between housing providers and tenants;
> (4) To protect the existing supply of rental housing from conversion to other uses; and
> (5) To prevent the erosion of moderately priced rental housing while providing housing providers and developers with a reasonable rate of return on their investments.[28]

On their face, rent concessions do not contradict these purposes. Rent concessions benefit both parties: tenants most obviously by reducing, in some cases substantially, the rent for an apartment; and housing providers by having the predictability of a lease for a fixed term.[29] A 12-month lease also protects a tenant from changes in the concession amount. Rent concessions benefit a housing provider because they allow housing providers some ability to respond to fluctuations in the housing market. Using concessions in a slow rental market also benefits housing providers because they can retain past increases to use if and when the market changes.

If a housing provider were required to report the rent a tenant was paying as the "current rent charged" and "prior rent" on RAD Forms 8 and 9, the practical consequence is that a housing provider would lose past authorized increases in the legal rent. When a CPI-W increase became available, there would be pressure to add it to the rent amount in order not to lose it. A housing provider would be less likely to agree to a concession in the relatively short run because it would control the long run.

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[28] D.C. Code § 42-3501.02.
[29] *Double H Housing Corp. v. David*, 947 A.2d 38, 42 n. 9 (D.C. 2008).

In 2016, three members of the Council of the District of Columbia introduced the Rent Concession and Rent Ceiling Abolition Clarification Amendment Act of 2016.[30] It was intended to address concerns that rent concessions were a way to avoid rent control. For example, once a rent concession expired, the additional amount would simply become part of the rent, independent of any approved rent increase. The bill would have prohibited a housing provider from preserving all or part of a rent adjustment for future implementation, unless the housing provider was not permitted to immediately implement an approved rent increase. In that situation, the housing provider could preserve the rent increase, but would have to implement it within 30 days of the housing provider's first opportunity to do so.[31]

In the bill, two terms related to rent concessions were defined: "rent charged" and "temporarily reduced rent." "Rent charged" was defined as the "maximum amount of monthly rent that the landlord may demand or receive, which shall be no greater than the amount of rent that the tenant is currently obligated to pay," with one exception. "Temporarily reduced rent" was an "amount of monthly rent that is less than the rent charged that the housing provider and tenant agree shall be the maximum amount of rent that the housing provider is entitled to demand or receive for a certain period of time."

Under the bill, a housing provider could not calculate an increase in "rent charged" on any basis other than the "rent charged" or the "temporarily reduced rent" (whichever is lower). The bill did not define "rent concession." But, a housing provider could increase the rent by the amount of a "rent concession" when it expired. A housing provider would lose that right unless the housing provider had a written agreement with the tenant stating the "current rent charged," the "temporarily reduced rent," the amount of the "rent concession," the date it expires and that

[30] B21-0880.
[31] D.C. Code § 42-3502.08(g).

the concession is unconditional and cannot be rescinded. A housing provider would also have to file with the Rent Administrator the same information.

Thus, the bill would not have prohibited a housing provider from using rent concessions. It would, however, have established procedural limitations to doing so. The bill died in the Committee on Housing and Community Development, the committee to which it was referred. There is nothing in the bill as drafted that would cause me to think that rent concessions used by Housing Provider in its leases with Tenant are illegal.

Although there are no cases in the District of Columbia that directly discuss the validity of rent concessions within the regulatory scheme of rent stabilization, the District of Columbia Court of Appeals has stated, in a case not involving rent control, that a housing provider is not

> precluded from offering to charge [a tenant] a discounted rent amount if he signed a new lease but charging him a higher monthly rent if he continued his month-to-month tenancy. To hold otherwise would, we think, encroach on the [housing provider's] - and tenant's - basic freedom to contract as he will, which we have said remains one of the rather basic rights incident to the ownership of property [that] ought not to be summarily dismissed as obsolete even under our modern statutory rental housing law.[32]

The Court of Appeals found that, absent the situation in which the disparity between the monthly rent charged for a month-to-month tenant and the monthly rent charged if a new lease is signed is so large as to effectively force a tenant to sign a new lease and therefore deny a tenant a meaningful opportunity to remain as a month-to-month tenant, such negotiations are not prohibited. In this case, Housing Provider offered Tenant two options: a lower monthly payment with a one-year lease, or a higher monthly payment with no lease. There is no evidence in the record, and Tenant does not argue, that the difference in rental charges for continuing month-to-month ($2,192 per month starting April 1, 2016) versus signing a lease ($1,895 per

[32] *Double H Housing Corp.*, 947 A.2d at 42 (internal quotations, footnote, and citation omitted).

month, or $297 per month less, starting April 1, 2016) was so substantial as to deny him a meaningful opportunity to remain on a month-to-month basis.

2. "Rent charged" is defined by both the lease and the Act

Tenant argues that, in parsing the term "your current rent charged," the term "rent" must be interpreted independently of any contract between the parties,[33] and that as used in the statutory definition of "rent," the words "demanded," "received" and "charged" should be given their plain English meanings. Looking to principles of statutory interpretation and various dictionaries, Tenant defines "charged" as "the price demanded for something," "an amount of money you have to pay," or "demand (an amount) as a price from someone for a service rendered or goods supplied."[34] Therefore, Tenant argues, the "rent charged" must be the rent that Housing Provider hoped or expected to receive each month from Tenant. Since Tenant paid $1,770 per month through March 31, 2015 and $1,830 per month for April 2015 through March 2016, under this argument, the figure called for as "your current rent charged" and "prior rent" on RAD Forms 8 and 9 must be $1,770 for the 2015 forms and $1,830 for the 2016 forms.

Leases are to be construed as contracts.[35] This jurisdiction adheres to an "objective" law of contracts, meaning that the parties' rights and liabilities are governed by the written language unless it is not clear and definite.[36] A contract should "generally be enforced as written, absent a showing of good cause to set it aside, such as fraud, duress, or mistake."[37]

In *Double H Housing Corp.*, the Court of Appeals found, albeit outside the rent control

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[33] Tenant's motion, memorandum of points and authorities at 5.
[34] *Id.* at 6 and exhibit Z.
[35] *Sobelsohn v. Am. Rental Mgmt. Co.*, 926 A.2d 713 (D.C. 2007).
[36] *Id.* at 718.
[37] *Akassy v. William Penn Apts. Ltd. P'ship,* 891 A.2d 291, 298 (D.C. 2006) (*quoting Camalier & Buckley, Inc., v. Sandoz & Lamberton, Inc.,* 667 A.2d 822, 825 (D.C. 1995).

context, that a housing provider can "condition a discount from an otherwise applicable rent increase on a month-to-month tenant's agreement to enter into a new lease."[38] A tenant and a housing provider are free to contract to rental terms as long as those terms are not contrary to the law.[39] In this case, Tenant knowingly signed a contract agreeing to pay a rent amount lowered by a concession applicable for only the one-year term of the lease. The lease signed by Tenant identifies the "total monthly rent" as the maximum legal rent, from which a "monthly recurring concession" is subtracted.

Tenant argues that the definition of rent in a contract between a housing provider and a tenant should not supersede the definition of rent in the Act.[40] The amount debited from Tenant's account for rent exists in the context of the Rental Housing Act and its implementing regulations as well as the lease agreement. There are no statutory or regulatory provisions that constrain a housing provider from offering an apartment for lease at less than the maximum amount possible under the regulatory schema.

Tenant maintains that any reference to the lease between a tenant and housing provider would lead to multiple definitions of the term "rent" and a distortion of the statutory definition of the term.[41] I disagree. Tenant's lease identifies the maximum legal rent that could be charged for the unit. The lease is a permissible private agreement between tenant and housing provider that decreases the rent that a housing provider will charge tenant over the term of the lease.

The term "rent charged" has become a term of art in the rent-controlled housing industry. It is beyond doubt that newly revised regulations or revised forms with definitions of terms, consistent with the amended Act, would be useful to both tenants and housing providers. As

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[38] 947 A.2d at 46.
[39] *Id.*
[40] Tenant's motion, memorandum of points and authorities at 5.
[41] Tenant's motion, exhibit Z at 2-3.

discussed above, the Council of the District of Columbia has considered changes to the Rental Housing Act itself to address some concerns about concessions but has not enacted any changes as of yet.[42]

3. Housing Provider's acceptance of less than "rent charged" between April 1, 2015 to March 31, 2016 does not invalidate the rent increase effective April 1, 2016.

Having established that rent concessions are not prohibited by the Act, and that the definition of "rent" must be considered within the context of both the Act and the written lease, I next turn to Tenant's argument that because Housing Provider accepted an amount of rent lower than what Housing Provider identified as "new rent" in the 2015 RAD forms, this effectively reduced the maximum permissible amount of rent Housing Provider, going forward, could demand to that lower amount. I am not persuaded by this argument.

Housing Provider perfected a rental increase from $2,048 to $2,118 effective April 1, 2015. The written lease had terminated, and with it, the concession. However, Tenant opted to pay a lower amount, $1,830 per month, instead. While there is no evidence in the record regarding whether negotiations continued during this time, it appears that Tenant simply resisted the demand for higher rent made in the January 2015 RAD Form 8. Housing Provider accepted those payments for a year.

Once Tenant continued residing in the Unit after the written lease had expired, he became a month-to-month tenant.[43] "In tenancies from month-to-month each month is regarded as a new 'periodic tenancy,' – a tenancy for a month certain plus an expectancy or possibility of

[42] Various bills have also proposed revised definitions of the term "rent." *See* The Rental Housing Affordability Stabilization Amendment Act of 2017 (B22-0025).
[43] *See* D.C. Code § 42-3505.01(a); *Administrator of Veterans Affairs v. Valentine*, 490 A.2d 1165, 1170 (D.C. 1985); *Double H Housing Corp.*, 947 A.2d at 40 n. 2.

continuation for one or more similar periods."[44] As such, acceptance by a housing provider of an amount of rent in one month that is lower than the amount demanded may act as an accord and satisfaction of the obligation for that month.[45] But accepting the lower amount of rent does not reduce the maximum amount of rent a housing provider could charge. As discussed above, there is nothing in the current regulatory scheme which requires a housing provider to demand the full amount of rent it could charge under the Act. Interpreting the acceptance of a lower amount of rent as a reformation of the maximum rent allowable would negate any past authorized increases in legal rent, a consequence of which would be that housing providers would be less likely to accept less than the maximum amount allowable for fear of losing the opportunity to charge the maximum amount altogether. Here, Housing Provider had perfected the rent increase, but opted not to enforce it immediately.

Housing Provider eventually did seek to enforce a perfected rent increase. In January 2016, Housing Provider again notified Tenant that the rent it would charge for the Unit would increase effective April 1, 2016. Although the regulatory scheme guarantees a tenant the opportunity to continue his tenancy on a month-to-month basis so long as he pays the rent, with some caveats that do not apply here, that does not preclude a housing provider from demanding, unilaterally, that a tenant pay the maximum amount of rent permitted.[46]

Because Housing Provider properly perfected a rent increase effective in both April 2015 and April 2016, even though it accepted less than the maximum rent it could have demanded from April 2015 through March 2016, Housing Provider was free to condition its continued acceptance of a lower amount of rent on the signing of a one-year lease.

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[44] *Double H Housing Corp.*, 947 A.2d at 44 n. 12, citing *Keuroglian v. Wilkins*, 88 A.2d 581 (D.C. 1952).
[45] *Id.* at 43-44.
[46] *See id.* at 41-42.

4. The amount of rent increases were not more than that permitted under the Act

On January 15, 2015, Housing Provider gave Tenant notice that rent would increase by $70, from $2,048 to $2,118, effective April 1, 2015. That was an increase of 3.4%. On January 15, 2016, Housing Provider gave Tenant notice that rent would increase by $74, from $2,118 to $2,192, effective April 1, 2016. That was an increase of 3.5%. Both increases were identified as annual CPI-W increases pursuant to D.C. Code §§ 42-3502.06(b) and 42-3502.08(h). The applicable CPI-W increase, effective May 1, 2014, was 3.4%.[47] The applicable CPI-W increase, effective May 1, 2015, was 3.5%.[48] For the reasons stated above, neither increase was more than was permitted under the Act. Summary dismissal of this claim is appropriate. Housing Provider's motion is granted and Tenant's motion is denied.

B. Rent increase forms

Tenant alleges in his petition that Housing Provider "did not file the correct rent increase forms" with the RAD (Box D on the Tenant Petition). Housing Provider seeks dismissal of this claim, arguing that it did, in fact, file the correct forms. Tenant argues that the amount listed as "rent charged" on the forms is not correct and seeks summary judgment in his favor. I conclude both that the correct forms were filed and that the information on the forms was accurate.

14 DCMR 4205.4 states in pertinent part:

> A housing provider shall implement a rent adjustment by taking the following actions, and no rent adjustment shall be deemed properly implemented unless the following actions have been taken:
>
> (a) The housing provider shall provide the tenant of the rental unit not less than thirty (30) days written notice…;

[47] 61 D.C. Reg. 1378 (Feb. 14, 2014).
[48] 62 D.C. Reg. 2202 (Feb. 13, 2015).

(c) The housing provider shall advise the tenant with the notice of rent adjustment by petition filed with the Rent Administrator; and

(d) The housing provider shall simultaneously file with the Rent Administrator a sample copy of the notice of rent adjustment along with an affidavit containing the names, unit numbers, date and type of service provided, certifying that the notice was served on all affected tenants in the housing accommodation.

On January 27, 2015, Housing Provider filed Form 9 with the RAD. Included with that form is an appendix listing the current rent, the new rent, the amount of increase, and the percentage of increase, and a sample notice to tenants. On February 2, 2016, Housing Provider filed Form 9 with the RAD, which included the same data for each unit and a sample notice. Thus, Housing Provider filed the correct forms with RAD as required by the Act. In addition, for the reasons stated above, the information on the forms is also accurate. Therefore, there are no genuine issues of material fact in dispute and summary judgment of this claim is appropriate. Housing Provider's motion is granted and Tenant's motion is denied.

C. Retaliation

In his petition, Tenant alleges that Housing Provider retaliated against him. Housing Provider seeks dismissal of this claim. Tenant does not address the relation claim in his motion for partial summary judgment, but argues in his response to Housing Provider's motion that there are genuine issues of material fact in dispute which preclude summary judgment. '"Retaliatory 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 [D.C. Code § 42-3505.02] of the Act."[49]

Protected tenant activities are:

[49] 14 DCMR 4303.1.

> (a) Ma[king] a written request or an oral request in the presence of a witness to the housing provider to make repairs necessary to bring the housing accommodation or the rental unit into compliance with the housing regulations;
> (b) Contact[ing] appropriate officials of the District of Columbia 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;
> (c) Legally with[olding] all or part of the tenant's rent after having given a reasonable notice to the housing provider, either orally in the presence of a witness or in writing, of a violation of the housing regulations;
> (d) Organiz[ing], [being] a member of, or [being] involved in any lawful activities pertaining to a tenant organization;
> (e) Ma[king] an effort to secure or enforce any of the tenant's rights under the tenant's lease or contract with the housing provider; or
> (f) Br[inging] legal action against the housing provider.[50]

Retaliatory acts include:

> seek[ing] 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.[51]

Tenant alleges that Housing Provider retaliated against him because he is president of a tenant association at the accommodation by, among other things: charging late fees despite the fact that he has been paying into the D.C. Superior Court's registry pursuant to a protective order; reporting unpaid rent to a credit agency; filing this motion for summary judgment; and

[50] D.C. Code § 42-3505.02.
[51] D.C. Code § 42-3505.02(a).

filing a motion to lift the *Drayton* stay in the LTB Case. Taking the documentation and exhibits presented by both parties, and all reasonable inferences from that evidence, in a light most favorable to Tenant as the non-moving party, I conclude that there are genuine issues of material fact in dispute which preclude summary dismissal of this claim. Therefore, Housing Provider's motion with respect to the claim for retaliation is denied.

VI. ORDER

Therefore, it is **HEREBY ORDERED** on this **12th day of April, 2017**:

1. Tenant's request to withdraw his claim that a Notice to Vacate was served on him in violation of D.C. Code § 42-3505.01 (Box M on the Tenant Petition) is **GRANTED**;

2. Tenant's claim that a Notice to Vacate was served on him in violation of D.C. Code § 42-3505.01 (Box M on the Tenant Petition) is **DISMISSED WITH PREJUDICE**;

3. Housing Provider's motion for summary judgment is **GRANTED IN PART AND DENIED IN PART**;

4. Tenant's motion for summary judgment is **DENIED**;

5. Tenant's claim that the rent increase was larger than the increase allowed by any applicable provision of the Act (Box B on the Tenant Petition) is **DISMISSED WITH PREJUDICE**;

6. Tenant's claim that Housing Provider did not file the correct rent increase forms with the Rental Accommodations Division (the RAD) (Box D on the Tenant Petition) is **DISMISSED WITH PREJUDICE**; and

7. By separate Case Management Order, an evidentiary hearing on the remaining claim of retaliation is scheduled for Monday, May 22, 2017 at 9:30 a.m.

M. Colleen Currie
Administrative Law Judge

Certificate of Service:

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I hereby certify that on 4/12, 2017 this document was caused to be served upon the parties listed on this page at the addresses listed and by the means stated.

Clerk / Deputy Clerk