DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION

RH-TP-16-30,842

In re: 3003 Van Ness Street, N.W., Unit W-1131

Ward Three (3)

GABRIEL FINEMAN
Tenant/Appellant

v.

SMITH PROPERTY HOLDINGS VAN NESS LP
Housing Provider/Appellee

DECISION AND ORDER

January 18, 2018

SPENCER, CHAIRMAN: This case is on appeal to the Rental Housing Commission ("Commission") from a decision and order issued by the Office of Administrative Hearings ("OAH")[1] based on a petition filed in the Rental Accommodations Division ("RAD") of the District of Columbia Department of Housing and Community Development ("DHCD"). 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 Procedure 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 §§ 2920-2941 (2016), 14 DCMR §§ 3800-4399 (2004) govern these proceedings.

[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 OAH Establishment Act, D.C. OFFICIAL CODE § 2-1831.01 - 1831.03(b-1)(1) (2012 Repl.). The functions and duties of RACD were transferred to 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 July 12, 2016, tenant/appellant Gabriel Fineman ("Tenant"), residing in the housing accommodation at 3003 Van Ness Street, N.W. ("Housing Accommodation") Unit W-1131, filed tenant petition 2016-DHCD-TP 30,842 ("Tenant Petition") against Smith Property Holdings Van Ness LP ("Housing Provider"). The Tenant Petition raised the following claims against the Housing Provider:

1. The Housing Provider did not file the correct rent increase forms with the RAD (RAD form 9); and

2. Improper notice of RAD form 8 to tenant (Notice in adjustment of rent charged).

Tenant Petition at 2; Record ("R.") at Tab 1.

On December 9, 2016, the Tenant filed, *pro se*, a Motion for Summary Judgment "to affirm the definition of 'rent' . . . and to require the Housing Provider to correct its incorrect and false filings with the RAD and to make future filings correctly and provide other relief as requested." Motion for Summary Judgment at 1-2; R. at Tab 10. On January 17, 2017, the Housing Provider filed an Opposition to Tenant's Motion for Summary Judgment and Housing Provider's Cross-Motion for Summary Judgment ("Housing Provider's Cross-Motion"), asserting that the Tenant's Motion for Summary Judgment should be denied and "judgment should instead be entered in favor of the Housing Provider." Housing Provider's Cross-Motion at 1-6; R. at Tab 11. On February 16, 2017, the Tenant filed a Reply and Opposition to the Housing Provider's Cross-Motion. Tenant's Response at 1-5; R. at Tab 14.

On March 16, 2017, Administrative Law Judge Ann C. Yahner ("ALJ") issued a final order, denying the Tenant's Motion for Summary Judgment, granting the Housing Provider's Cross-Motion, and dismissing the Tenant Petition with prejudice, which was captioned as:

Fineman v. Smith Property Holdings Van Ness LP, 2016-DHCD-TP 30,842 (OAH Mar. 16, 2017) ("Final Order"); R. at Tab 16.

In the Final Order, the ALJ noted that the following material facts were not in dispute:[2]

1. Housing Provider Smith Property Holdings Van Ness LP is the owner of the residential rental accommodation at 3003 Van Ness Street, NW (Housing Accommodation). Motion, Exh. A.

2. The Housing Accommodation is subject to the rent stabilization provisions of the Rental Housing Act.

3. Equity Residential Management, LLC, manages the Housing Accommodation. Motion, Exh. A.

4. Tenant has lived at the Housing Accommodation since December 22, 2013. Tenant Petition.

5. Tenant leased unit W-1131 from Housing Provider pursuant to a lease agreement which began on December 22, 2014, and expired on December 21, 2015 (the 2014 Lease). Opposition, Exh. 1.

6. The Term Sheet for the 2014 Lease includes the following provisions:

   - "Total monthly rent" is $3,274, which includes $3,114 as the apartment rent and $160 for reserved parking. *Id.*

   - "Total monthly rent" is modified by a "monthly recurring concession" of $945 per month. *Id.*

7. The 2014 Lease contains a Concession Addendum, Opposition, Exh.2, which provides:

   - The monthly recurring concession expires at the end of the lease.

   - Housing Provider reserves the right to increase the rent once each year and provide a "Housing Provider's Notice to Tenants of Adjustment in Rent Charged," which will reflect the "new rent charged."

   - If a tenant becomes a month-to-month tenant at the end of the lease, the monthly rent will be the "new rent charged" amount that is reflected on the Housing Provider's Notice.

[2] The material facts not in dispute are recited here using the language and numbering used by the ALJ in the Final Order.

- All parties agree that the month recurring concession is being given as an inducement to Tenant to enter into the lease[.]

8. Through an electronic transfer, Tenant paid Housing Provider rent of $2,329 monthly during the term of the 2014 Lease, from December 2014, through December 2015. That amount included $2,169 for the apartment and $160 for a reserved parking space.

9. On September 18, 2015, Housing Provider sent Tenant RAD Form 8, a notice that his rent would be increased from $3,114 to $3,161, effective December 22, 2015. Motion, Exh. B. The increase was $47%, or 1.5%. *Id.*

10. On September 22, 2015, Housing Provider filed a RAD Form 9, a Certificate of Notice to RAD of Adjustment in Rent Charged. Motion, Exh. C. Among other rents adjusted, it stated that Tenant's rent was being increased from $3,114 to $3,161. *Id.*

11. On or about October 7, 2015, Tenant sent Housing Provider a letter stating that the "current rent" he paid was $2,329, consisting of $2,169 for the apartment and $160 for the reserved parking space. Motion, Exh. D. Tenant asked Housing Provider to correct the RAD Form 8 and re-issue it. *Id.* Housing Provider neither replied nor changed the form. Motion, Exh. A.

12. Tenant signed a second lease with Housing Provider that covered the period December 22, 2015, through December 21, 2016 (2015 Lease). Opposition, Exh. 3.

13. The Term Sheet for the 2015 lease includes the following provisions:

- "Total monthly rent" is $3,321, which includes $3,161 as the apartment rent and $160 for reserved parking. *Id.*

- "Total monthly rent" is modified by a "monthly recurring concession" of $946 per month. *Id.*

14. The 2015 Lease contains a Concession Addendum which is identical to that included with the 2014 Lease. Opposition, Exhs. 2, 4.

15. Tenant relocated to Florida on or about December 8, 2016. Tenant's Notice of Change of Address.

Final Order at 3-6; R. at Tab 16.

In the Final Order, the ALJ made the following conclusions of law:[3]

A. Housing Provider Filed Accurate RAD Forms 8 and 9 with Respect to Tenant

1. Introduction

1. There is no dispute over the facts in this case. The documents say what they say and, other than Tenant's letter of October 7, 2016, to Housing Provider, there apparently was little contact between the parties on these issues. Tenant and Housing Provider agree that, for the year covered by the 2014 Lease, Tenant paid Housing Provider $2,329 a month. There is no allegation from Housing Provider that Tenant was behind in his rent payments. There is no allegation from Tenant that facilities or services were reduced. Tenant contends that the September 2015 RAD Forms 8 and 9 filed by Housing Provider with respect to him and all tenants were incorrect and must be changed. Because Tenant put Housing Provider on notice of the alleged errors and Housing Provider did not re-file corrected forms, Tenant also contends Housing Provider should be fined for intentional misstatements and perjury.

2. The dispute here focuses on the dollar amount that a housing provider must report to its tenants and to the RAD as "your current rent charged" on RAD Form 8 and "prior rent" on RAD Form 9. Tenant contends the number recorded should be the amount of rent he actually paid each month, which was $2,329 under the 2014 Lease. Housing Provider does not explicitly address the RAD form in its Opposition. Housing Provider contends that it can legally enter into concessions from the maximum legal rent in its leases with tenants.

2. The Regulatory Schema

3. 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. 14 DCMR [§] 4200. The Act defines "rent" as "the entire amount of money, money's worth, benefit, 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." D.C. Official Code § 42-3501.03(28).

4. 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

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

adjustment of general applicability or a "CPI-W" increase. The Rental Housing Commission (RHC) determines the amount of the adjustment annually. 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. 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. D.C. Official Code § 42-3502.06(b). If a housing provider does not "perfect" a rent increase, the increase cannot be imposed.

5. 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 the 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[.]

6. Under the pre-August 2006 Rental Housing Act, there were 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 provider could, however, choose not to implement the increase and hold it in reserve for the future. 14 DCMR [§] 4205.9.

7. The August 2006 amendments abolished rent ceilings.[footnote 3][4] D.C. Official Code § 42-3502.06([a]). 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 any time in the CPI-W year.

3. RAD Forms and Leases

8. The amount recorded on the RAD forms as "current rent charged" or "prior rent" is significant for several reasons. It is notice to the tenant of the maximum legal rent for the unit. It is the basis for the calculation of a rent increase. The form itself is notice of a possible rent increase. Using Tenant's situation as an example, in 2015 the rent for the unit was increased by 1.5 percent, effective December 22, 2015. If applied to the

[4] Footnote 3 of the Final Order states, "[a]lthough rent ceilings were abolished in 2006, they live on because the rent ceilings regulations have not been amended." *See* Final Order at 8 n.3; R. at Tab 16.

rent Tenant was actually paying, the rent would have increased by $34 to $2,363. If applied to the then-maximum legal rent, the rent would have been increased by $47 to $3,161. In addition, in each succeeding year, any increase is based on the prior year's rent.

9. Tenant here argues that, in parsing the term "your current rent charged," the term "rent" must be interpreted independently of any lease between the parties. Motion at 4. As used in the 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." *Id.* at 5. 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 $2,329 each month, under this agreement, the figure called for as "your current rent charged" and "prior rent" on RAD Forms 8 and 9 must be $2,329.

10. Leases are to be construed as contracts. *Sobelsohn v. Am. Rental Mgmt. Co.*, 926 A.2d 713 (D.C. 2007). 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. *Id.* at 718. A contract should "generally be enforced as written, absent a showing of good cause to set it aside, such as fraud, duress, or mistake." *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)).

11. In *Double H Housing Corp. v. David*, 947 A.2d 38, 46 (D.C. 2008), the Court of Appeals found, albeit outside the rent control 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." A tenant and a housing provider are free to contract to rental terms as long as those terms are not contrary to the law. In this case, Tenant knowingly signed a contract agreeing to pay a rent amount lowered by a concession for the one-year term of the lease.

12. The terms on the RAD Forms cannot be interpreted independently of the Lease. Both leases signed by Tenant identify the "total monthly rent" as the maximum legal rent, from which a "monthly recurring concession" is subtracted. 2014 Lease; 2015 Lease. Tenant himself identifies "current rent charged" by looking to the amount of rent paid after the concession provided in the lease is applied. But for the concession, Housing Provider could be demanding the total monthly rent identified in the lease. But for a 12-month lease, Housing Provider could also be demanding the total monthly rent, as explained in the Concession Addendum. *Id.*

13. 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. Reply at 15. And the statutory definition of "rent" must be strictly applied to the terms used in the RAD forms.

14. The RAD Forms in the District of Columbia exist in the context of the Rental Housing Act and its implementing regulations. 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. There are no statutory or regulatory provisions that define the terms on the RAD forms to preclude using the maximum legal rent as the "current rent charged" and "prior rent."

15. 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. Statutory Construction of "Current Rent Charged" at 2-3. I disagree. Tenant's lease and RAD Form 8 are consistent in identifying the maximum legal rent that could be charged for the unit. The lease is a permissible private agreement between tenant and housing provider that decrease the rent that a housing provider will charge tenant over the term of the lease.

16. 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 discussed below, 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.

4. Concessions

17. Here, Housing Provider implemented the CPI-W increase (starting December 22, 2015) by notifying Tenant of the increase through RAD Form 8 and informing the RAD of it and other unit increase by filing RAD Form 9. Housing Provider apparently was responding to market pressures when it leased the unit to Tenant at a lower rent. In Tenant's leases, 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. 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. To argue, as Tenant does, that the lease is irrelevant is simply wrong. The rent that Tenant insists should be on the RAD Forms is the rent that the parties agreed to in the Lease. But

the Lease 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 rent returns to the maximum legal rent. Although Tenant argues his Tenant Petition does not raise any questions about concessions, the broader question is whether such concessions violate the policies in the Rental Housing Act.

18. The five statutory purposes of the Act are:

(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 investment.

D.C. Official Code § 42-3501.02. On their face, rent concessions do not contradict these purposes. Rent concessions benefit tenants most obviously by reducing, in some cases, substantially, the rent for an apartment.[footnote 7][5] 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

[5] Footnote 7 of the Final Order states:

> There are no cases in the District of Columbia directly discussing the validity of rent concessions. In New York State, which also has a rent control scheme, the courts have concluded that specific lease terms take precedence over general provisions of the rent control law. The courts in the State of New York have approved and interpreted the use of "rent preferences" or concessions based on the New York State Rent Stabilization Law. *See* 9 NYCR 2501.2. In 2003, that law was amended to allow a housing provider to raise the "preferential rent" to the previously established legal rent when receiving a lease with the same tenant. *See* Les Filles Quartre, LLC v. McNeur, 798 N.Y.S. 2d 899, 902 (2005). The New York courts have interpreted the amendment to mean that if a housing provider and tenant agree in a lease to a longer term for a rent preference, e.g., "for the life of the tenancy," they do not thereby run afoul of the amendment. As the Les Filles Quartre court put it: "specific lease terms take precedence over the more general 'default' rent stabilization provisions governing renewal lease terms and preferential rents." 798 N.Y.S. at 902.

Final Order at 13 n.7; R. at Tab 16.

market also benefits housing providers because they can retain past increases to use if and when the market changes.

19. 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 principal 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.

20. 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. B21-0880. 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. In this case, the 2015 adjustment of general applicability for Tenant's unit increased the rent of $3,114 by $47, to $3,161. Motion, Exh. B. If the rent concession expired and tenant remained as a monthly tenant, $945 would be added to the rent of $2,169, bringing the total to $3,114. Opposition, Exh. 1.

21. 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. D.C. Official Code § 42-3502.08(g).

22. 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 the 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 changed 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."

23. 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 forth the "current rent charged," the "temporarily

reduced rent," the amount of the "rent concession," the date it expires and that the concession is unconditional and cannot be rescinded. A housing provider would also have to file with the Rent Administrator the same information.

24. 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.

5. Conclusions

25. I conclude that a housing provider can interpret the term "current rent charged" and "prior rent" on the RAD Forms to refer to the amount a housing provider can charge that is the maximum legally authorized rent. However, there appears to be no impediment to a housing provider interpreting the term to mean the amount a tenant is actually paying each month. In this case, the Term Sheets and Leases revealed the maximum legal rent to Tenant and set forth the concession granted to Tenant to induce him to rent the unit. Opposition, Exhs. 2, 4. There was no "bait and switch" that somehow worked to Tenant's detriment. Nor as Tenant been harmed by the RAD Forms as filed.

26. I also conclude that Housing Provider did not intentionally file false documents after notice from Tenant of their alleged falsity. Housing Provider, in fact, did not file false documents.

27. Tenant's request for summary judgment is denied and Housing Provider's motion for summary judgment is granted.

B. Tenant Cannot Pursue Claims for Other Tenants

28. In his Tenant Petition, Tenant requests that I order Housing Provider to properly compute the Form 8 for his unit and all other units. Tenant Petition at 4. He also asks that a fine of $5,000 be imposed for allegedly false statements made on Form 8 and 9 to other tenants as well as for the allegedly false statements made on his documents. Id.

29. Tenant is basically seeking to be the representative of a class of all tenants in the building. However, to the extent that a tenant petition is filed for more than one person, the petition must individually name each person. OAH Rule 2922.1. A tenant association may act on behalf of its named members, but no tenant association has been identified. OAH Rule 2922.2. Further, as someone who has not entered his appearance as an attorney, Tenant is not authorized to represent other tenants. OAH Rule

2835. I dismiss Tenant's claims as they relate to other tenants of the Housing Accommodation.

Final Order at 6-16 (footnotes omitted except as shown); R. at Tab 18.

On March 30, 2017, the Tenant timely filed, *pro se*, a notice of appeal ("Notice of Appeal"). Notice of Appeal at 1-4. The Tenant raises the following issue in the Notice of Appeal:

1. The Decision was based on findings of fact unsupported by substantial evidence on the record, including, as a statement of fact, the claim that the term "rent charged" has become a term of art in the rent-controlled housing industry and means the maximum rent that could be charged and not the actual rent charged each month.

2. The Decision was based on an abuse of discretion in refusing to follow the clear requirements of statutory construction when interpreting the phrase "rent charged" and by ignoring the statutory definition of the term "rent[."]

3. The Decision was based on conclusions of law not in accordance with the provisions of the Rental Housing Act (the "**Act**") and a misstatement of fact that was unsupported by any evidence, when the Decision erroneously states that when the August 2006 amendments abolished rent ceilings, the current rent charged became the base rent and the maximum allowable rent for all units subject to rent control. This is important because it is part of the basis of the ruling that the proper number to report to the RAD as the current rent was the maximum possible rent for the unit even if that amount was not charged.

4. The Decision was based on conclusions of law not in accordance with the provisions of the Act and findings of fact unsupported by substantial evidence on the record when the Decision erroneously claims both as a fact and as a conclusion of law "The terms on the RAD forms cannot be interpreted independently of the lease[."] Introducing the Lease into the analysis of the Housing Provider's obligations under the Act is a fundamental mistake made by the Decision and an abuse of its discretion.

5. The Decision was based on arbitrary actions including choosing only the facts not in dispute that favored the Housing Provider.

6. The Decision was based on other conclusions of law not in accordance with the provisions of the Rental Housing Act (the "Act")[,] including the following:

a. The Decision incorrectly summarizes the law required to increase a tenant's rent. The difference is significant. Giving notice of the amount filed with the RAD (as claimed by the Decision) is only useful if that amount is the correct amount. The Act, on the other hand, requires notice of the current rent and not the amount filed with the RAD.

b. The Decision repeatedly confuses requirements in the regulations to give notice increases (the RAD Form 8's and Form 9's) with the old and no longer applicable requirements to give notice of increased rent ceilings.

c. The Decision finds that the purpose of showing the "current rent charged" is to tell the tenant of the maximum legal rent for the unit. This is not at all the intent of the Act as shown by its legislative history.

d. The Decision erroneously finds that: "Partial histories of others' experiences are not relevant to the interpretation of the terms on the RAD forms." However, any attempt to understand the meaning of these terms and of disclosures required by the Act of all rent controlled units in the [c]ity would require examining how they apply to all such units and not just the one unit rented by the Tenant.

e. The Decision erroneously finds and holds that there are no statutory provisions that preclude using the maximum legal rent as the current rent charged. This is not correct.

f. The Decision erroneously claims that using the lease to define the term "rent" would not lead to multiple definitions of the term "rent" and a distortion of the statutory definition of the term. This ignores substantial evidence to the contrary introduced by Tenant.

g. The Decision erroneously held that the lease is essential to determine the amount of current rent shown on the RAD forms. The obligation to report the current rent to the RAD is based on requirements of the Act and of [r]egulations and is not an obligation that arises under the lease. This ignores substantial evidence to the contrary introduced by the Tenant.

7. The Decision was based on findings of fact unsupported by substantial evidence on the record, including the following:

a. The Decision erroneously claims that "Tenant's lease and RAD Form 8 are consistent in identifying the maximum legal rent that

should be charged for the unit." This is incorrect and not supported by the record.

b. The Decision finds that the Housing Provider apparently was responding to market pressures when it leased the unit to Tenant at a lower rent. There is no basis in the evidence for this statement. This ignores substantial evidence to the contrary introduced by the Tenant.

c. The Decision found that the failure of the Housing Provider to correct its filings after years of notices that they were incorrect did not create intentional misstatements and perjury. This ignores substantial evidence on the record, including affidavits.

Notice of Appeal at 1-4.

On July 21, 2017, the Tenant filed, *pro se*, a brief on appeal ("Tenant's Brief"). The Housing Provider, through counsel, filed its brief on August 2, 2017 ("Housing Provider's Brief"). On August 8, 2017, the Commission held a hearing, at which both parties appeared. *See* Notice of Scheduled Hearing at 1; Hearing CD (RHC Sept. 8, 2017) at 11:04.

II. ISSUE ON APPEAL[6]

Whether the Housing Provider Was Required to List the Post-concession Amount of Rent Owed by the Tenant under the Lease Agreements as the "Rent Charged" on the RAD Forms

III. DISCUSSION

In the Final Order, the ALJ determined the Housing Provider could interpret the term "current rent charged" to mean the maximum, legally-authorized amount of rent the Housing Provider could charge the Tenant to occupy or use the rental unit, its related services, and its related facilities, even if the Housing Provider actually charged the Tenant a lower amount of

[6] Although the Tenant makes seven enumerated assertions of error in the Notice of Appeal, the Commission is satisfied that the overlapping legal and factual issues are appropriately summarized in the opening of the "Argument" portion of the Tenant's Brief, which frames the "narrow" issue before OAH as: "[d]id the [Housing Provider] correctly complete the required notices . . . when it listed the unadjusted Maximum Legal Rent for the rental unit as the 'Current Rent Charged,' or should it have used the Actual Rent that was paid by the Tenant each month?" Tenant's Brief at 5.

rent. Final Order at 15; R. at Tab 16. The Tenant asserts the ALJ's determination is fatally flawed, and asserts the ALJ failed to employ the appropriate canons of statutory interpretation when interpreting "current rent charged." Notice of Appeal at 1. The Housing Provider asserts the amount it actually charges the Tenant each month is irrelevant in determining the amount of the legal "current rent charged" as long as the actual amount does not exceed the maximum, legally-authorized rent that could be charged. Housing Provider's Brief at 9. Further, the Housing Provider contends that the terms of its contract with the Tenant are determinative of what the "rent charged" is for the rental unit. *Id.*

The Commission's standard of review is contained 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].[7]

The Commission will sustain an ALJ's finding of fact so long as it is supported by substantial evidence. *See* D.C. OFFICIAL CODE § 42-3502.16(h) (2012 Repl.); Majerle Mgmt. v. D.C. Rental Hous. Comm'n, 866 A.2d 41, 46 (D.C. 2004); Dep't. of Hous. & Cmty. Dev. v. 1433 T St. Assocs. LLC, RH-SC-06-002 (RHC May 21, 2015); Bower v. Chaselton Assocs., TP 27,838 (RHC March 27, 2014); *see also* Munchison v. D.C. Dep't. of Pub. Works, 813 A.2d 203, 205 (D.C. 2002). 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; Eastern Savings Bank v.

[7] *See supra* n.1 regarding the transfer of jurisdiction over hearings from the RAD to OAH.

Mitchell, RH-TP-08-29,397 (RHC Oct. 31, 2012); Marguerite Corsetti Trust v. Segreti, RH-TP-06-28,207 (RHC Sept. 18, 2012); Jackson v. Peters, RH-TP-12-28,898 (RHC Feb. 3, 2012).

The Commission will review legal questions raised by an ALJ's interpretation of the Act *de novo*. *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). Where no material facts are in dispute, a grant of summary judgment is reviewed *de novo* as a question of law. Parcel One Phase One Assocs., LLP v. Museum Square Tenants Ass'n, 146 A.3d 394, 398 (D.C. 2016).

In order to resolve the Tenant's issue on appeal, the Commission must determine: first, whether the Act permits a housing provider to preserve a maximum, legal amount of rent on file with the RAD and in notice forms given to a tenant, notwithstanding the amount of rent actually paid by the tenant; and second, if not, what the Tenant's actual "rent charged" was, under the circumstances, for purposes of the Act's rent stabilization provisions and the implementing forms published by the RAD to be used by a housing provider in complying with the Act ("RAD Forms").[8]

[8] RAD Forms 8 and 9, which appear in the record and are available directly from DHCD at https://dhcd.dc.gov/service/rent-control, are used to implement rent adjustments for rent-stabilized units and require a housing provider to state, *inter alia*, the "current rent charged," the "new rent charged," the "percentage adjustment in your rent charged," and the section of the Act on which the "adjustment in rent charged" is based. The Commission is satisfied that, and the parties do not appear to dispute that, the phrase "rent charged" has, implicitly, the same meaning on the RAD Forms as it does in the Act itself.

A. Statutory Meaning and Use of "Rent Charged"

In reviewing the ALJ's interpretation of the Act, the Commission must first examine whether the plain language of the Act clearly and unambiguously reveals and reflects the legislature's intentions. *See* District of Columbia v. Edison Place, LLC, 892 A.2d 1108, 1111 (D.C. 2006) (quoting Peoples Drug Stores, Inc. v. District of Columbia, 479 A.2d 751, 753 (D.C. 1983) ("The primary and general rule of statutory construction is that the intent of the lawmaker is to be found in the language that [s]he has used.")); *see also* District of Columbia v. Gallagher, 734 A.2d 1087, 1091 (D.C. 1999) ("[W]hen the plain meaning of the statutory language is unambiguous, the intent of the legislature is clear, and judicial inquiry need go no further."); Novak v. Sedova, RH-TP-15-30,653 (RHC Nov. 20, 2015) ("The [District of Columbia Court of Appeals ("DCCA")] has explained that a court must look at the 'plain meaning' of the words of a statute or regulation when the words are clear and unambiguous, and construe the words according to their ordinary sense and with the meaning commonly attributed to them.").

The DCCA has noted, however, that it is appropriate to look beyond the plain language of a statute in four situations:

> First, even where the words of a statute have a "superficial clarity," a review of the legislative history or an in-depth discussion of alternative constructions that could be ascribed to statutory language may reveal ambiguities that the court must resolve. Second, "the literal meaning of a statute will not be followed when it produces absurd results." Third, whenever possible, the words of a statute are to be construed to avoid "obvious injustice." Finally, a court may refuse to adhere strictly to the plain wording of a statute in order "to effectuate the legislative purpose," as determined by a reading of the legislative history or an examination of the statute as a whole.

Peoples Drug Stores, 470 A.2d at 754 (citations omitted); *see also* Dyer v. D.C. Dept. of Hous. & Cmty. Dev., 452 A.2d 968, 969-70 (D.C. 1982) ("the use of legislative history as an aid in interpretation is proper when the literal words of the statute would bring about a result completely at variance with the purpose of the Act."). Moreover, "we do not read statutory

words in isolation; . . . [s]tatutory interpretation is a holistic endeavor." Tippett v. Daly, 10 A.3d 1123, 1127 (D.C. 2010) (en banc). Although a term, such as "rent charged" in this case, may be used repeatedly in a statute, "'the presumption of consistent usage readily yields to context,' and a statutory term may mean different things in different places." King v. Burwell, 135 S.Ct. 2480, 2493 n.3 (2014) (quoting Utility Air Regulatory Grp. v. Envtl. Prot. Agency, 134 S.Ct. 2427, 2441 (2014)); *see* Envtl. Def. v. Duke Energy Corp., 549 U.S. 561, 574 (2007) ("A given term in the same statute may take on distinct characters from association with distinct statutory objects calling for different implementation strategies.").

As the ALJ notes, the Act has five expressly stated purposes:

(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.

Final Order at 12-13; R. at Tab 16; *see* D.C. OFFICIAL CODE § 42-3501.02 (2012 Repl.); Goodman v. D.C. Rental Hous. Comm'n, 573 A.2d 1293, 1299 (D.C. 1990) ("The Act is remedial in character . . . [and] should be liberally construed to achieve its purposes."). These purposes are most substantially, and sometimes controversially, effectuated by the Rent Stabilization Program, commonly referred to as "rent control," found in D.C. OFFICIAL CODE

§§ 42-3502.05(f) - 42-3502.19 (except § 42-3502.17) (2012 Repl.).[9] *See* Tenants of 2301 E St., N.W. v. D.C. Rental Hous. Comm'n, 580 A.2d 622, 628 (D.C. 1990) ("Rent control is controversial – tenants tend to favor it, while most if not all landlords probably detest it – but the basic goal of the legislation is to protect tenants from impermissibly high rents."); James Parreco & Son v. D.C. Rental Hous. Comm'n, 567 A.2d 43, 44 (D.C. 1986) (in order to achieve first enumerated statutory purpose, "rent increases in housing covered by the Act are tightly controlled").

Prior to the Rent Control Reform Amendment Act of 2006 (D.C. Law 16-145; 53 DCR 4889) ("2006 Amendments"), § 206(a) of the Act established "rent ceilings" for each rental unit covered by rent stabilization. D.C. OFFICIAL CODE § 42-3502.06(a) (2001).[10] Rent ceilings "operate[d] as an upper bound on the amount of rent that a housing provider [was] allowed to charge a tenant." *See* Sawyer Prop. Mgmt., 877 A.2d at 110 (citing Winchester Van Buren Tenants Ass'n v. D.C. Rental Hous. Comm'n, 550 A.2d 51, 55 (D.C. 1988)). They were considered "the chief mechanism for rent stabilization in the District of Columbia[,]" and designed to protect tenants against unconscionable rent increases. Winchester Van Buren, 550 A.2d at 55; *see* Redmond v. Majerle Mgmt., Inc., TP 23,146 (RHC Mar. 26, 2002).

---

[9] *See* D.C. OFFICIAL CODE § 42-3502.05(a) (2012 Repl.) (establishing scope of coverage and exemptions from rent stabilization).

[10] At the time, § 206 of the Act read, in relevant part:

> (a) Except to the extent provided in subsections (b) and (c) of this section, no housing provider of any rental unit subject to this act may charge or collect rent for the rental unit in excess of the amount computed by adding to the base rent not more than all rent increases authorized after April 30, 1985, for the rental unit by this act, by prior rent control laws and any administrative decision under those laws, and by a court of competent jurisdiction. . . .
>
> (b) On an annual basis, the Rental Housing Commission shall determine an adjustment of general applicability in the rent ceiling established by subsection (a) of this section.

D.C. OFFICIAL CODE § 42-3502.06 (2001).

At that time, "rent" was, and remains, defined as "the entire amount of money, money's worth, benefit, bonus, or gratuity *demanded, received, or charged* by a housing provider as a condition of occupancy or use of a rental unit," D.C. OFFICIAL CODE §§ 42-3501.03(28) (2001) (emphasis added), and the key legal question under rent stabilization was whether the rent was higher than was allowed by the properly-calculated "rent ceiling." *See* D.C. OFFICIAL CODE §§ 42-3502.06(a), 42-3509.01(a) (2001); *see, e.g.,* Borger Mgmt., Inc. v. Godfrey, TP 20,116 (RHC Sept. 4, 1987). The Commission and DCCA have often noted, nonetheless, that the terms "rent," "rent adjustment," and "rent ceiling" were used inconsistently and interchangeably in the contexts of calculating and implementing adjustments to both the rent actually being charged to a tenant and the legal rent ceiling for the unit. *See, e.g.,* United Dominion Mgmt., 101 A.3d at 431; Kennedy v. D.C. Rental Hous. Comm'n, 709 A.2d 94, 99 (in Act's statute of limitations, "rent adjustment" referred to both rent charged and rent ceilings);[11] Dorchester House Assocs., LP v. D.C. Rental Hous. Comm'n, 38 A.2d 696, 705 (D.C. 2007) ("Although the statute did not unambiguously require that a housing accommodation be in substantial compliance with the housing code before a petition to raise the rent *ceiling* could be approved, the RHC undoubtedly had the power to impose such a requirement[.]"); Winchester Van Buren, 550 A.2d at 54 (then-effective 180-day limit on "adjustments in rent" referred only to rent actually charged);[12] Miller

[11] *See also* United Dominion Mgmt. Co. v. Hinman, RH-TP-06-28,728 (RHC June 5, 2013) at n. 15 (noting that 2006 Amendments eliminated ambiguity between "rent charged" and "rent ceiling" adjustments in § 206(e) of the Act, the statute of limitations, by abolishing rent ceilings).

[12] The DCCA noted in Winchester Van Buren, shortly after the Act went into effect that:

> The Commission began its analysis by the observation, with which we agree, that ["]the meaning of ['adjustments in rent' in § 208(g) of the Act] is not apparent on its face, although both parties have dogmatically asserted that it is.["] Explaining that the 1985 Act is one of a series of enactments going back to 1973, each building upon its predecessors, and each the subject of political controversy and compromise, the Commission found that ["]such a law necessarily contains serious inconsistencies and ambiguities in language and meaning which generate disputes raising difficult questions of statutory interpretation. This case is one of them.["]

v. Tenants of 2869 28th St., N.W., HP 20,605 (RHC Sept. 20, 1991) (determining that "maximum possible rental income," defined as "sum of the rents for all rental units in the housing accommodation, whether occupied or not," referred to rent ceilings).

On August 5, 2006, the 2006 Amendments took effect, which abolished rent ceilings and rent ceiling adjustments by generally "striking out the phrase 'rent ceiling' wherever it appear[ed] and inserting the phrase 'rent charged' in its place," but which enacted few changes to the context surrounding each use of the phrase. *See* D.C. Law 16-145 § 2. The ALJ's determination in the Final Order, which the Housing Provider supports on appeal, is, essentially, that the basic mechanism of rent stabilization was not changed by this substitution: the phrase "rent charged," as used now in the Act, is claimed to consistently represent a maximum legal limit on the monetary value that a housing provider may demand or receive for a particular rental unit. *See* Final Order at 8 ("The current rent charged at the effective date of the amendments became the base rent and the maximum allowable rent for all units subject to rent control.");[13] R. at Tab 16; Housing Provider's Brief at 4-11. The Tenant, on the other hand, maintains that the phrase refers to the actual rent that is charged in the course of dealings between a tenant and housing provider and not to a maximum legal limit on rent. Tenant's Brief at 12-13.

---

550 A.2d at 54 (paragraph breaks removed). Over 30 years later, after further legislative "controversy and compromise," the Commission again finds itself in a strikingly similar statutory ambiguity.

[13] The ALJ also states in a footnote that rent ceilings "live on" because the Commission has not yet promulgated new implementing rules to reflect the statutory changes. Final Order at 8 n.3; R. at Tab 16; *see* 14 DCMR § 4200 *et seq.* However, administrative rules that are inconsistent with their enabling statute are not enforceable. *See, e.g.,* Hanson v. D.C. Rental Hous. Comm'n, 584 A.2d 592, 595 (D.C. 1991) ("if an agency's regulation is invalid – *i.e.* in conflict with the statutes . . . the agency is not bound by its regulations"). Nonetheless, to the extent not inconsistent with the abolition of rent ceilings or other recent legislative enactments, the implementing rules regulating adjustments to the "rent" or "rent charged" remain in place and, the Commission observes, generally reference the actual amount demanded or received from a tenant, as opposed to the maximum legal rent, formerly established as the rent ceiling. *See* 14 DCMR § 4205.

The Commission also notes that, despite the ALJ's usage, the term "base rent" is a defined term under the Act meaning "that rent legally charged or chargeable on April 30, 1985," and that definition was not changed by the 2006 Amendments. D.C. OFFICIAL CODE § 42-3501.03(4) (2012 Repl.).

1. Plain Language of the Act

Reviewing the plan language and context surrounding the Act's various uses of the phrase "rent charged," the Commission finds the statute to be ambiguous: some uses of the phrase lend themselves to the Housing Provider's view that it refers to a maximum legal limit; some uses are mixed, appearing to refer, even within a single sentence, to both the actual rent and a maximum legal limit; and some uses provide no immediate, contextual suggestion that the phrase refers to a maximum legal limit, rather than the actual rent.

In one instance, the Housing Provider's view that "rent charged" refers to a maximum legal limit is supported by the plain language and context of § 213(a) of the Act, which provides that a housing provider is entitled to an increase in the "rent charged" for a rental unit when it becomes vacant. D.C. OFFICIAL CODE § 42-3502.13(a) (2012 Repl.).[14] Inherently, no rent is actually, presently charged, demanded, or received as a condition of occupancy of a rental unit while it is vacant. *See, e.g.,* Guerra v. D.C. Rental Hous. Comm'n, 501 A.2d 786, 789 (D.C. 1985) (because "the sublessee . . . never moved out or gave up possession of the apartment [and] it never became empty or unoccupied[,] . . . there could be no vacancy increase under [§ 213(a) of the Act]"). The plain text of § 213(a) of the Act appears to acknowledge this contradiction, albeit imprecisely: it states not only that "the *amount of rent charged* [for the vacant unit] may

[14] D.C. OFFICIAL CODE § 42-3502.13(a) (2012 Repl.) provides as follows:

> When a tenant vacates a rental unit on the tenant's own initiative or as a result of a notice to vacate for nonpayment of rent, violation of an obligation of the tenant's tenancy, or use of the rental unit for illegal purpose or purposes as determined by a court of competent jurisdiction, the amount of rent charged may, at the election of the housing provider, be increased:
>
> (1) By 10% of the current allowable amount of rent charged for the vacant unit; or
>
> (2) To the amount of rent charged for a substantially identical rental unit in the same housing accommodation; provided, that the increase shall not exceed 30% of the current lawful amount of rent charged for the vacant unit, except that no increase under this section shall be permitted unless the housing accommodation has been registered under § 42-3502.05(d).

. . . be increased," but it also refers to "the current *allowable* amount of rent charged for the vacant unit" and "the current *lawful* amount of rent charged for the vacant unit." D.C. OFFICIAL CODE § 42-3502.13(a) (2012 Repl.) (emphasis added). Nonetheless, that section is ambiguous in at least one relevant respect: it goes on to reference "*the amount of rent charged* for a substantially identical rental unit," without any indication of whether a housing provider may utilize the rent currently paid by a tenant of the other unit or its (purported) maximum legal rent, if different, as the basis for calculating a vacancy adjustment. D.C. OFFICIAL CODE § 42-3502.13(a)(2) (2012 Repl.) (emphasis added). Prior to the 2006 Amendments, each reference in § 213(a) was to the respective rent ceilings of the vacant and comparable rental units. D.C. OFFICIAL CODE § 42-3502.13(a) (2001).

Similarly, § 206 of the Act, which formerly established and now abolishes rent ceilings, is also suggestive, though not explicit, that rent stabilization operates by establishing an maximum legal limit and authorizing periodic adjustments to that limit. *See* D.C. OFFICIAL CODE § 42-3502.06(a)-(c) (2012 Repl.). In fact, the precise language which formerly calculated rent ceilings was unchanged by the 2006 Amendments:

> Except to the extent provided in subsections (b) and (c) of this section, no housing provider of any rental unit subject to this chapter may charge or collect rent for the rental unit in excess of the amount computed by adding to the base rent not more than all rent increases authorized after April 30, 1985, for the rental unit by this chapter, by prior rent control laws and any administrative decision under those laws, and by a court of competent jurisdiction.

D.C. OFFICIAL CODE § 42-3502.06(a) (2012 Repl.); *compare supra* n.10 (prior text of § 206(a)). That language is immediately followed by the provision authorizing the annual, inflation-based adjustment of general applicability ("CPI adjustment"), which is described as "an adjustment . . . in *the rent charged established* by subsection (a)." D.C. OFFICIAL CODE § 42-3502.06(b) (2012 Repl.) (emphasis added). Subsection (c) further provides that a hardship petition, under the rules

provided in § 212, may be elected instead of the CPI adjustment. D.C. OFFICIAL CODE § 42-3502.06(c) (2012 Repl.). However, the Commission recognizes that, while a maximum legal limit on rent appears to be established by subsection (a),[15] the plain language does not provide guidance on what must be filed with RAD if the actual rent is below the legal limit, and begs the question of whether each "rent increase[] authorized after April 30, 1985," must be based on the actual rent paid by a tenant or the maximum legal rent that could have been charged.

On the other hand, § 901(a) of the Act, which provides for the award of rent refunds and rent rollbacks, is mixed in its use of the phrases "rent" and "rent charged." D.C. OFFICIAL CODE § 42-3509.01(a) (2012 Repl.). That section provides:

> 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 charged 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.

Id. (emphasis added). It is unclear why this provision refers to both a "maximum allowable rent applicable" and an "applicable rent charged." Moreover, given that the term "rent" is itself defined as money or value "demanded, received, or charged," interpreting the plain language is further complicated by attempting to read the terms literally. *See* D.C. OFFICIAL CODE § 42-3501.03(28) (2012 Repl.).[16] Prior to the 2006 Amendments, this section provided that the

---

[15] The ambiguity of apparently establishing a legal limit in § 206(a) is further compounded by the fact that the 2006 Amendments did not alter the statutory definition of "rent ceiling" as "that amount defined in or computed under § 206," D.C. OFFICIAL CODE § 42-3501.03(29) (2012 Repl.), notwithstanding that the first sentence of § 206(a) was amended to state that "[r]ent ceilings are abolished," *id.* § 42-3502.06(a).

[16] Inserting the definition of rent into § 901(a) would appear to read:

> Any person who knowingly (1) demands or receives any [amount of money demanded, received, or charged] for a rental unit in excess of the maximum allowable [amount of money demanded, received, or charged] applicable to that rental unit under the provisions of subchapter II of this

measure of damages under the Act was the amount by which the rent demanded or received exceeded the "applicable rent ceiling." *See* D.C. OFFICIAL CODE § 42-3509.01(a) (2001); Smith Prop. Holdings Five (DC), LP v. Morris, RH-TP-06-28,794 (RHC Dec. 23, 2013) (remanding for recalculation of refund up to effective date of 2006 Amendments because rent ceiling limited available remedies). Thus, it appears that this section uses the term "applicable rent" in reference to a maximum legal limit, but uses "rent" alone in reference to the amount of money actually demanded or received, for the purpose of calculating rent refunds.

Section 210(c)(3) of the Act, which provides that capital improvement-based rent adjustments shall be temporary and abate upon a housing provider's recovery of all costs, is similarly mixed in its use of the phrase "rent charged" after the 2006 Amendments. That section provides that, while a temporary, capital improvement increase is in place, "[t]he rent increase shall not be calculated as part of either the base rent or rent charged of a tenant when determining the amount of rent charged." D.C. OFFICIAL CODE § 42-3502.10(c)(3) (2012 Repl.). The literal language thus seems to provide, nonsensically, that an amount of money charged shall not be calculated as part of the money charged when determining the amount of money charged. In context, however, the provision can be understood to mean that, as long as a capital improvement increase is in effect and has not expired, any other rent increase must be calculated without including the amount of additional rent actually paid pursuant to the capital improvement petition. Thus, the use of the phrase "rent charged" in § 210(c)(3) appears to have a mixed meaning as both a legal limit and an actual amount of rent may exceed the otherwise-legal limit.

---

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 [amount of money demanded, received, or charged] exceeds the applicable [amount of money demanded, received, or charged] charged 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.

Several other provisions for rent adjustments within the Act do not contain any suggestion or require any inference that the term "rent charged" refers to a maximum legal limit, rather than the amount of rent that is actually demanded or received. Section 208(g), for example, which was rewritten by the 2006 Amendments, simply imposes a 12-month restriction on the frequency of increases in "the amount of rent charged." D.C. OFFICIAL CODE § 42-3502.08(g) (2012 Repl.).[17] Section 211, governing increases and reductions in related services and facilities, also only refers to proportionate changes in "the rent charged" for a rental unit. D.C. OFFICIAL CODE § 42-3502.11 (2012 Repl.). Section 215 of the Act, governing voluntary agreements, also provides simply that tenants and a housing provider may agree to "establish the rent charged." D.C. OFFICIAL CODE § 42-3502.15(a)(1), (c) (automatic approval for agreements "to have the rent charged for all rental units in the housing accommodation adjusted by a specified percentage") (2012 Repl.). Both §§ 211 and 215, notably, were subject to one-for-one substitutions of the word "charged" for "ceiling" by the 2006 Amendments with no other contextual or grammatical alterations.

In sum, the Commission's review of the plain language of the Act, as amended, does not reveal a consistent use or meaning of the term "rent charged." Accordingly, the Commission turns to the legislative history of the 2006 Amendments to determine whether the Council intended the Act to operate as the ALJ found that it does. *See* Peoples Drug Stores, 470 A.2d at 754; Dyer, 452 A.2d at 969-70.

2. Legislative History and Purpose

The Commission finds nothing in the legislative history of the 2006 Amendments to suggest that the Council intended that "rent charged" would, in general, refer to a maximum

[17] *See also infra* at 29-30 & n.21.

legal limit, rather than the actual amount of money or value demanded, received, or charged as a condition of the use and occupancy of a rental unit. *See generally* Council of the District of Columbia, Committee on Consumer & Regulatory Affairs, Addendum to the Committee Report, Bill 16-109 "Rent Control Reform Amendment Act of 2006" (2006) ("2006 Committee Report").[18]

In describing the intended effect of the abolition of rent ceilings, the Council provided the following example:

> If the rent charged comes to $1,000 per month and the rent ceiling comes to $4,000 per month, under the current law, a CPI of even 4% would raise the rent ceiling to $4,160 per month and the rent charged, which can be increased by that same dollar amount, to $1,160 per month. With the 2% + CPI rent charged cap in the reform legislation, the maximum rent charged could not exceed $1,060 per month, a monthly savings of $100.

Id. at 12. Chairperson Jim Graham of the Committee on Consumer and Regulatory Affairs expressed the belief that "[o]nly a very tight across-the-board cap *directly on rent charged increases* would justify the elimination of the rent ceilings." *Id.* at 15 (emphasis added). Witness testimony cited by the Council expressed similar views and reflected a similar understanding of the abolition of rent ceilings. For instance, the Commission observes that

[18] The Commission notes that the Tenant's Brief at 11 relies, in part, on the enactment of a definition of "rent charged" on April 7, 2017, pursuant to the Elderly Tenant and Tenant with a Disability Protection Amendment Act of 2016 (D.C. Law 21-239; 64 DCR 3960), and that the Final Order at 13-15 relies, in part, on bills introduced but never passed by the Council, in order to shed light on the meaning of "rent charged" following the 2006 Amendments. The Commission, in this decision, relies only on the provisions of the Act in effect at the time of the conduct challenged by the Tenant Petition and the legislative history of those provisions. *See* O'Rourke v. D.C. Police & Firefighters' Ret. & Relief Bd., 46 A.3d 378, 387 & n.35 (D.C. 2012) (noting difference between "reconciling many laws enacted over time, and getting them to 'make sense' in combination" and "relying on statements in the legislative history of a later enactment to construe an earlier one"); *see also* Cent. Bank, N.A. v. First Interstate Bank, N.A., 511 U.S. 164, 187 (1994) ("[F]ailed legislative proposals are a particularly dangerous ground on which to rest an interpretation of a prior statute. Congressional inaction lacks persuasive significance because several equally tenable inferences may be drawn from such inaction, including the inference that the existing legislation already incorporated the offered change." (internal quotations and citations omitted)); Twin Towers Plaza Tenants Ass'n v. Capitol Park Assocs., LP, 894 A.2d 1113, 1120 n.14 (D.C. 2006).

Patrick Canavan, Psy.D., then-director of DCRA,[19] and Michael Hodge, of the Office of the Deputy Mayor for Planning and Economic Development, testified as government witnesses before the Council regarding the 2006 Amendments. *Id.* at 26. Dr. Canavan and Mr. Hodge "testified that rent ceilings have been difficult to administer and understand[,] and have failed to protect tenants." *Id.* Further, Dr. Canavan and Mr. Hodge suggested that "eliminating rent ceilings and *calculating caps on rent increases based upon rent charged* would make for a better system." *Id.* (emphasis added). It does not appear, from the Commission's review of the 2006 Committee Report, that the Council intended the statutory use of "rent charged" to function in the same or a similar manner as "rent ceilings." Peoples Drug Stores, Inc., 470 A.2d at 754.

Nonetheless, the ALJ found that "[t]he term 'rent charged' has become a term of art in the rent-controlled housing industry," and that the term refers to the "maximum legal rent that could be charged" for a rental unit. Final Order at 11; R. at Tab 16.[20] The Commission observes that the DCCA has previously stated that "rent" itself is a term of art under the Act: one that refers to the rent demanded, received, or charged by a housing provider from a tenant, and which, prior to the 2006 Amendments, was separately tracked from measured against the

[19] RAD's predecessor was a division with DCRA at the time Dr. Canavan testified before the Council. *See supra* n.1.

[20] The ALJ did not explain when "rent charged" took on this purported meaning in the industry or why the Council, in the 2006 Amendments, might have intended that meaning. The Housing Provider's Brief at 4-7, relies on a number of OAH and RAD decisions to support this position, as well as cases from New York applying that jurisdiction's rent stabilization regulations. *See supra* n.5 (quoting Final Order at 13 n.7; R. at Tab 18). As the Commission has previously noted, decisions of OAH and RAD carry no precedential weight. *See* Tenants of 1754 Lanier Place, N.W. v. 1754 Lanier, LLC, RH-SF-15-20,126 (RHC Dec. 2, 2015); Owner of 1831 Belmont Rd., N.W. (Orfila) v. Tenants of 1831 Belmont Rd., N.W., HP 20,027 (RHC Feb. 20, 1987). The Commission is also satisfied that the proper interpretation of the Act can be determined without reference to cases from another jurisdiction applying different statutes and regulations. The 2006 Committee Report contains only one, passing reference to New York City's rent stabilization system, where a public witness "characterized the bill as less stringent" than New York law, but no further analysis is provided. 2006 Committee Report at 22. Moreover, neither the Act nor its implementing regulations contain a specific provision addressing "rent charged to and paid by [a] tenant [that] is less than the legal regulated rent," as is provided by the New York regulation cited by the ALJ. 9 NYCRR § 2501.2; *see also supra* n.5.

applicable rent ceiling for a rental unit. Kapusta v. D.C. Rental Hous. Comm'n, 704 A.2d 286, 287 (D.C. 1997); *see also* Winchester Van Buren, 550 A.2d at 53 ("In other words, rent is what the tenant actually has to pay.").

Further, before the 2006 Amendments, § 208(g) of the Act was amended by the Unitary Rent Ceiling Adjustment Amendment Act of 1992 (D.C. Law 9-91; 39 DCR 9005) ("Unitary Adjustment Act") to add the requirement, maintained in the 2006 Amendments, that "[a]n increase in the amount of rent charged shall not exceed the amount of any single adjustment pursuant to any one section of this chapter." D.C. OFFICIAL CODE § 42-3502.08(g) (2001). The DCCA has previously noted that the Council's purpose in enacting this requirement was to end a practice referred to as "stacking," *i.e.*, increasing a tenant's rent by the entire amount of multiple, preserved rent ceiling adjustments in one rent charged adjustment. Sawyer Prop. Mgmt., 877 A.2d at 106-07 & n.9; *see* Council of the District of Columbia, Committee on Consumer & Regulatory Affairs, Report on Bill 9-305 "Unitary Rent Ceiling Adjustment Amendment Act of 1992," at 2 (1992) ("Tenants and tenant advocates have argued that such 'stacking' practices are a clear circumvention of the intent of the law, which was to keep rents affordable and to keep tenants from being overwhelmed by dramatic increases.").

The Commission observes that the Housing Provider's and ALJ's interpretation of the Act, in which "rent charged" consistently refers to a maximum legal limit, with no apparent restrictions on rent increases below and up to that limit, would effectively permit the same kind of "stacking" that the Council prohibited in 1992.[21] The Commission's review of the 2006

[21] In this case, for example, the expiration of the Tenant's 2014 Lease, without renewal of the concession, could have resulted in an increase to the tenant of $992; $945 consisting of (presumably more than one) previously-filed rent increases, plus the 2015 CPI adjustment of $47. *See* Motion for Summary Judgement Exh. C (RAD Form 9 dated Sept. 18, 2015) at 5 (stating "prior rent" and "new rent" for Tenant's rental unit were $3,114 and $3,161, respectively, pursuant to § 208(h)(2) of the Act); R. at Tab 10; *see also infra* n.24 Thus, the Tenant's rent would have been increased by more than "the amount of any single adjustment" authorized by the Act. D.C. OFFICIAL

Committee Report does not reveal any intention on the part of the Council to overturn the Unitary Adjustment Act. To the contrary, the reenactment of substantially similar language in § 208(g) in the 2006 Amendments strongly suggests both that the Council intended to continue the prohibition of "stacking" multiple rent adjustments and that the Council accordingly believed that the phrase "rent charged" continued to refer to the actual rent paid by a tenant. *See* D.C. OFFICIAL CODE § 42-3502.08(g)(1) (2012 Repl.);[22] 2006 Committee Report at 16-17 (describing holding of Winchester Van Buren and legislative reaction to prohibit "stacking"); *see also* Marshall v. D.C. Rental Hous. Comm'n, 533 A.2d 1271, 1275 (D.C. 1987) ("'Reenactment of a statute without change in its language indicates approval of interpretations rendered prior to the reenactment.'") (quoting 2A SUTHERLAND ON STATUTORY CONSTRUCTION § 45.12, at 55 (Sands 4th ed. 1985)). It is therefore more plausible, based on the Commission's review of the legislative history, that the Council would have had the original understanding of "rent charged" in mind when drafting the 2006 Amendments, intending to directly regulate increases in the amount of rent actually paid for covered rental units, rather than the purported usage as a maximum legal limit asserted by the Housing Provider and adopted by the ALJ. *See* 2006 Committee Report at 16-17

CODE § 42-3502.08(g)(1) (2012 Repl.); *cf.* Sawyer Prop. Mgmt., 877 A.2d at 103 ("A rent increase may implement only one rent ceiling adjustment at a time; in other words, the amount of any single rent increase is limited to the amount of a single available adjustment.").

[22] Prior to the 2006 Amendments, § 208(g) read as follows:

> No adjustments in rent under this chapter may be implemented until a full 180 days have elapsed since any prior adjustment.

D.C. OFFICIAL CODE § 42-3502.08(g) (2001). As amended, § 208(g) now provides, in relevant part:

> The amount of rent charged for any rental unit subject to the subchapter shall not be increased until a full 12 months have elapsed since any prior increase[.]

D.C. OFFICIAL CODE § 42-3502.08(g) (2012 Repl.).

In conclusion, the ambiguous text of the Act and the Commission's review of the legislative history do not support the ALJ's interpretation of "rent charged" as a term of art that consistently refers to a legal limit established independently of the actual course of dealings between a housing provider and tenant. *See* Final Order at 11; R. at Tab 16. The Commission determines, to the contrary, that the meaning of the phrase "rent charged" in the Act's sometimes-conflicting text should, ordinarily, be construed based on the Act's definition of "rent" as the "entire amount of money, money's worth, benefit, bonus, or gratuity" that is *actually* "demanded, received, or charged by a housing provider as a condition of occupancy or use of a rental unit." D.C. OFFICIAL CODE § 42-3501.03(28) (2012 Repl.); *see* Kapusta, 704 A.2d at 287; Winchester Van Buren, 550 A.2d at 53. To the extent the context of a particular statutory or regulatory use of the term "rent" or "rent charged" only makes sense as a legal limit (for example, the vacancy adjustment or the rent refund provisions), the Commission is satisfied that those few circumstances can be addressed individually, in their unique contexts, and in a manner consistent with the overarching "remedial purposes of the Act," Goodman, 573 A.2d at 1301, and with the stated effect of the 2006 Amendments that "[r]ent ceilings are abolished." D.C. OFFICIAL CODE § 42-3502.06(a) (2012 Repl.); Winchester Van Buren, 550 A.2d at 53; *see* King, 135 S.Ct. at 2492-93 ("We cannot interpret . . . statutes to negate their own stated purposes."); Duke Energy Corp., 549 U.S. at 574 (identical words are presumed to have same meaning within same statute, but presumption easily rebuttable).

B. Legally Operative "Rent Charged" to the Tenant

For the reasons just described in Part A, the Commission determines that the "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, is the amount actually demanded, received, or charged as a condition of occupancy of a rental unit,

rather than a maximum legal limit that may be preserved by a housing provider. D.C. OFFICIAL CODE § 42-3501.03(28) (2012 Repl.). In determining what amount of rent has been charged, the Commission looks to the course of dealings between a tenant and a housing provider to determine how much money or value was demanded or received as a "condition of occupancy" of a particular rental unit. *See id.*; *see, e.g.,* Wilson, 159 A.3d at 1215-16 (general "financial stability" for housing provider not a "benefit" that constitutes additional "rent" under the Act); Revithes v. D.C. Rental Hous. Comm'n, 536 A.2d 1007, 1017 n.25 (D.C. 1987) (remanding for Commission to determine if units occupied by relatives of housing provider were "offered for rent," including the exchange of money, goods, or services, or if housing provider offered units for free, in good faith, and not in and attempt to circumvent the Act); Marguerite Corsetti Trust, RH-TP-06-28,207 (reasoning that a property owner's grandson was her tenant because he paid her money and provided her services that constituted rent); Worthington v. Sipper, TP 21,118 (RHC Mar. 23, 1990) ("[W]e find that the rent ceiling for apartment 3-B is the value of the lifeguard/pool manager duties as performed by Mr. Giblin on September 1, 1983, plus $50.00 per month."); *see also* Washington v. A&A Marbury, LLC, RH-TP-11-30,151 (RHC Dec. 27, 2012) (plain error for ALJ to make findings of fact and conclusions of law as to rent levels where, at evidentiary hearing, settlement agreement ostensibly establishing tenant's rent was never moved and admitted into evidence).

The Commission's review of the record shows that the "Term Sheet" for the Tenant's initial lease, *see* Housing Provider's Cross-Motion Exh. 1 ("2014 Lease"); R. at Tab 11, states that the "Monthly Apartment Rent" for the Tenant's rental unit was $3,114, plus a "Monthly

Reserved Parking" fee of $160.[23] The "Term Sheet" for the Tenant's renewed lease the following year, *see* Corrected Exhibit 3 to Housing Provider's Cross-Motion ("2015 Lease"); R. at Tab 12, states that the "Monthly Apartment Rent" was $3,161, plus a "Monthly Reserved Parking" fee of $160.

Both the 2014 Lease and the 2015 Lease (collectively, "Leases") were for terms of 12 months. 2014 Lease Term Sheet at 1; R. at Tab 11; 2015 Lease Term Sheet at 1; R. at Tab 12. The Leases also provide that, in each month of their 12-month terms, the Tenant was to receive a "Monthly Recurring Concession" of $945 and $946, respectively. 2014 Lease Term Sheet at 1; R. at Tab 11; 2015 Lease Term Sheet at 1; R. at Tab 12. The Leases included an identical "Concession Addendum" governing the "monthly recurring concessions." 2014 Lease Concession Addendum at 1; R. at Tab 11; 2015 Lease Concession Addendum at 1; R. at Tab 12 (collectively, "Concession Addendum").[24]

---

[23] The Commission notes that "reserved parking" may in some cases be a related facility in a particular housing accommodation or may be part of a separate agreement between the tenant and the housing provider. *See* D.C. OFFICIAL CODE § 42-3501.3(26) (2012 Repl.) ("'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 . . . parking facility" (emphasis added)); *cf.* Tenants of 738 Longfellow St., N.W. v. Estate of James Vito, SR 10,012 (RHC Feb. 10, 1989) (optional fees for parking were not "rent" within meaning of the Act). In this case, the $160 fee is separately denoted in the Tenant's leases and did not increase between the lease terms, and the Tenant Petition specifically describes it as a "separate charge." Tenant Petition at 4; R. at Tab 1. The Commission therefore excludes the $160 parking fee from its analysis of the "rent charged" for the rental unit.

[24] The Concession Addendum reads, in relevant 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 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 Adjustments 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 the Lease.

The parties do not dispute that, pursuant to the "recurring concession," the Housing Provider consistently debited $2,169 each month (plus the $160 parking fee, totaling $2,329) from the Tenant's bank account during the term of the 2014 Lease. Final Order at 4; R. at Tab 16. Nonetheless, the Housing Provider sent the Tenant a RAD Form 8 on September 19, 2015, which notified the Tenant that his "rent charged" would be increased from $3,114 to $3,161, effective December 22, 2015 (after the expiration of the 2014 Lease), and, on September 22, 2015, the Housing Provider filed a corresponding RAD Form 9 containing the same information. Final Order at 5; R. at Tab 16; *see also supra* n.8 (describing instructions on of RAD Forms).

The Housing Provider contends that the terms of the Leases, including the Concession Addendum, control the question of what the "rent charged" was for the unit for the purposes of the RAD Forms. *See* Housing Provider's Brief at 4-8. The Tenant, on the other hand, contends that the pre-concession amount of "Monthly Apartment Rent" is, essentially, a legal fiction, and that his true "rent charged" was only the amount he was required to regularly pay to avoid breaching the Leases and facing eviction. *See* Tenant's Brief at 12; *see also* Tenant's Motion for Summary Judgment at 5; R. at Tab 10 ("[T]he actual rent charged, demanded, and received . . . was $2,169 [for the 2014 Lease term].").[25]

The Commission determines that the use of the term "rent" in a lease informs, but is not determinative of, the legal conclusion as to what the "rent charged" is for a rental unit for the purposes of the Act's rent stabilization provisions and the relevant RAD Forms. *See* Wilson, 159 A.3d at 1215-16; Washington, RH-TP-11-30,151; Worthington, TP 21,118 (determining that

---

Housing Provider's Cross-Motion Exh 2; R. at Tab 11.

[25] Although the Tenant asserts in his Notice of Appeal that "[i]introducing the Lease into the analysis of the Housing Provider's obligations under the Act is a fundamental mistake," Notice of Appeal at 2, the Tenant's Brief takes a narrower position that a lease is "not necessarily dispositive on the question of the amount of 'rent charged.'" Tenant's Brief at 13.

both employer/employee and landlord/tenant relationship existed due, in part, to payment of rent through services by employee/tenant). "Rent" is a defined term in the Act, and the interpretation of the Act is question of law, as is the determination of the legality of rent increases under the rent stabilization provisions of the Act. *See* Wilson, 159 A.3d at 1215-16; United Dominion Mgmt., 101 A.3d at 430; Worthington, TP 21,118; *see also* Akassy v. William Penn Apartments, LP, 891 A.2d 291, 300 (D.C. 2006) (contractual meaning of "rent" interpreted in accordance with governing law in effect). A lease, like any other contract, cannot, by its terms alone, accomplish something not permitted by a statute. Goodman, 573 A.2d at 1297 ("The Act forecloses sophisticated as well as simple-minded modes of nullification or evasion."); *see, e.g,* Waterside Towers Resident Ass'n v. Trilon Plaza Co., 2 A.3d 1084, 1090 (D.C. 2010) (viewing a series of transaction as a whole, DCCA held that ostensible "restructuring" of stock ownership constituted, as a matter of law, "sale" of housing accommodation triggering statutory right of first refusal); 1433 T St. Assocs., RH-SC-06-002 (offering tenants contract titled "Notice to Vacate" after initiating regulated eviction process under D.C. OFFICIAL CODE § 42-3505.01(f) may have violated Act).[26]

The plain language of the Leases, including the Concession Addendum, indicates, and the parties do not appear to contest, that the pre-concession amount of "Monthly Apartment Rent," $3,114, was not at any time an actual "condition of occupancy or use of [the] rental unit." *Compare* 2014 Lease at 1; R. at Tab 11; *and* Concession Addendum; R. at Tab 11; *with* D.C.

[26] The Commission rejects the Housing Provider's argument that OAH "does not have jurisdiction over the terms of the Lease, to which Mr. Fineman agreed." Housing Provider's Brief at 9. No question is more central to the Commission's or OAH's disposition of cases arising under the Act than what the rent is or may be for a rental unit, whether a tenant has agreed to it or not, and a lease is certainly substantial evidence of the "condition[s] of occupancy or use of a rental unit." D.C. OFFICIAL CODE § 42-3501.03(28) (2012 Repl.). "Agreement" by a tenant to the terms of a lease as a defense to a housing provider's implementation of illegal rent adjustments would effectively nullify the provisions of the Act regulating rent increases except for tenants willing to withhold disputed rent and risk eviction proceedings; the Commission has never found such a prerequisite to bringing a claim under the Act.

OFFICIAL CODE § 42-3501.03(28) (2012 Repl.). The Commission notes that the Concession Addendum states that the "monthly recurring concession is being given to [the Tenant] as an inducement to enter the Lease." R. at Tab 11.[27] On appeal, the Housing Provider has stated that the purpose of the concession was to "preserve" a legal rent level it was not able to obtain on the open market. Housing Provider's Brief at 7-9; Hearing CD (RHC Sept. 8, 2017) at 11:30:00-11:35:00; *see* Final Order at 12-13.

For the reasons described *supra* at 17-31, the Commission is not persuaded 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. *See* D.C. OFFICIAL CODE § 42-3501.02 (2012 Repl.); Goodman, 573 A.2d at 1299; James Parreco & Son, 567 A.2d at 44; 2006 Committee Report at 15. Therefore, the Commission cannot affirm the ALJ's determination that the "rent charged" for the Tenant's rental unit, as required to be

---

[27] The ALJ notes that, in Double H Hous. Corp. v. David, 947 A.2d 38, 46 (D.C. 2008), the DCCA held:

> [A]lbeit outside the rent control context, . . . 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." A tenant and housing provider are free to contract to rental terms as long as those terms are not contrary to the law.

Final Order at 10; R. at Tab 16; *see also* Housing Provider's Brief at 7-8. Within the rent control context, the DCCA has affirmed a Commission decision that a rent discount in exchange for a long-term lease was not a violation of the Act. Wilson, 153 A.3d at 1219. In Wilson, the Commission's review of the record showed that all rent options offered to the Tenant were amounts that were permissible under the Act's then-applicable rent ceiling system. *Id.*; *see also* 2006 Committee Report at 26 ("[T]he landlord has as many rent increase options as he has rent ceiling adjustments. Some tenants complained of landlord threats to increase the rent by as much as $800 unless the tenant selected the renewal lease option preferred by the landlord.").

In this case, unlike Double H or Wilson, the crucial issue is not whether the Housing Provider and Tenant were free to enter into a contract below the rent level that could have otherwise legally been charged, but what the effect of such a contract is on the Housing Provider's future obligations to file and serve notice of the "rent charged" as regulated by the Act and, by implication, how much any future rent increases may be. Specifically, the Concession Addendum to the Leases provided that, if the Tenant became a month-to-month tenant after the expiration of the Lease, his rent would increase from the post-concession amount to the "'new rent charged' amount that is reflected in the Housing Provider's" RAD Forms, an increase that would have been $992 from the 2014 Lease to the 2015 Lease. *See* Concession Addendum; R. at Tab 11. Neither Double H nor Wilson directly answer the question of whether or not such a rent increase would be lawful for a rent-stabilized unit following the abolition of rent ceilings, and thus the ALJ's reliance on the "conditioning of a discount" begs the question that must be resolved here.

stated on the RAD Forms by the Act, was the higher, pre-concession dollar amounts stated in the Leases, but which the course of dealing between the Housing Provider and Tenant shows was never demanded or received as a condition of occupancy of the rental unit. *See* D.C. OFFICIAL CODE § 42-3501.03(28); Wilson, 159 A.3d at 1215-16; Washington, RH-TP-11-30,151; Worthington, TP 21,118.

IV. CONCLUSION

For the foregoing reasons, the Commission determines that the Act generally requires a housing provider to file and serve notices of adjustments of the "rent charged" based on the amount of rent actually demanded or received from a tenant as a condition of occupancy of a rent-stabilized unit. *See supra* at 17-31. The Commission determines that substantial evidence in the record does not support the ALJ's determination that the Housing Provider could use the higher amount of rent stated in the Leases, but not actually demanded or received from the Tenant pursuant to the monthly, recurring concession, as the basis for completing, filing, and serving the relevant RAD Forms. *See supra* at 31-37.

Accordingly, the Commission reverses the ALJ's grant of summary judgment to the Housing Provider. This case is remanded to OAH for further proceedings consistent with this decision and order.

SO ORDERED.

MICHAEL T. SPENCER, CHAIRMAN

DIANA HARRIS EPPS, COMMISSIONER

SZEGEDY-MASZAK, COMMISSIONER, concurring: I unreservedly concur in the analysis and determination by the Majority that the "rent charged" upon which any future rent

adjustments in this appeal may be appropriately based under the Act is the rent actually paid by the Tenant, and not any maximum legal limit or pre-concession amount. This legal ground alone supports reversal of the ALJ's grant of summary judgment to the Housing Provider.

In my view, this case also raises a very serious and fundamental policy issue regarding the legality under the Act of any rent concession in a lease agreement offered by a housing provider to a tenant. In the absence of any provisions in the Act or other District laws directly addressing the legal status of (and regulations for) rent concessions in lease agreements, and in light of the serious, competing policy considerations on the legal merits of (and possible liabilities regarding) rent concessions for both tenants and housing providers, it would appear that the ultimate resolution of the legal status and merits of rent concessions under the Act:

> [R]eflects a determination of public policy better suited to consideration by the District of Columbia Council. As an elected legislative body, the Council is in a better position to weigh competing policy considerations[.]

Rousey v. Rousey, 528 A.2d 416, 424 (D.C. 1987) (en banc) (Belson, J., dissenting). *See* Carl v. Children's Hosp., 702 A.2d 159, 164 (D.C. 1997) (en banc) (Terry, J., concurring) ("'Public policy' as a concept is notoriously resistant to precise definition, and [therefore] courts should venture into this area, if at all, with great care and due deference to the judgment of the legislative branch, 'lest they mistake their own predilections for public policy which deserves recognition at law.'") (citation omitted); Harkins v. Win Corp., 771 A.2d 1025, 1029 (D.C. 2001) (the determination of whether a "roomer" in a hotel is a "tenant" under the Act is "probably better suited, and prudently left, to the legislative forum").

In short and in my view, the City Council is the appropriate venue to directly address, and resolve policy disputes regarding, the legal status, merits, and regulation of rent concessions in lease agreements by amendment to the Act.

PETER B. SZEGEDY-MASZAK, 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-16-30,842 was served by first-class mail, postage prepaid, on this **18th day** of **January, 2018,** to:

Richard W. Luchs, Esq.
Debra F. Leege, Esq.
Greenstein, Delorme & Luchs, PC
1620 L Street, N.W.
Suite 900
Washington, DC 20036

Gabriel Fineman
7270 Ashford Pl.
Apt. 206
Delray Beach, FL 33446-2954

LaTonya Miles
Clerk of Court
(202) 442-8949