DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION

TP 28,530

In re: 755 Hobart Pl., N.W.

Ward Four (4)

GEORGE P. WILLIAMS
Housing Provider/Appellant

v.

WALLACIA TRICIA THOMAS
Tenant/Appellee

DECISION AND ORDER AFTER REMAND

December 24, 2015

PER CURIAM. This case is on appeal to the Rental Housing Commission (Commission) from a final order issued by the Rental Accommodations Division (RAD) of the Department of Housing and Community Development (DHCD), based on a petition filed with the Rental Accommodations and Conversion Division (RACD) of the Department of Consumer and Regulatory Affairs (DCRA).[1] 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 (2001), the District of Columbia Administrative Procedures Act (DCAPA), D.C. OFFICIAL CODE §§ 2-501 - 510 (2001), and the District of Columbia Municipal Regulations (DCMR), 14 DCMR §§ 3800-4399 govern these proceedings.

[1] The functions and duties of the former RACD were transferred to the RAD pursuant to § 2003 of the Rental Housing Operations Transfer Amendment Act of 2007, D.C. Law 17-20, D.C. OFFICIAL CODE § 42-3502.04b (2010 Repl.). An evidentiary hearing on the petition was held by the RACD before the Office of Administrative Hearings (OAH) assumed jurisdiction over rental housing cases pursuant to the OAH Establishment Act, D.C. Law 14-76, D.C. OFFICIAL CODE § 2-1831.03(b-1)(1) (2007 Repl.).

I. PROCEDURAL HISTORY

The full procedural history of this case is set forth in the Commission's decision and order issued September 27, 2013 (First Decision and Order): Williams v. Thomas, TP 28,530 (RHC Sept. 27, 2013). In brief, on February 8, 2006, Tenant/Appellee Wallacia Tricia Thomas (Tenant), a former resident of a single-family dwelling located at 755 Hobart Place, N.W. (Housing Accommodation), filed tenant petition 28,530 (Tenant Petition) with the RACD. Record for TP 28,530 (R.) at 22-28. The Tenant claimed that the Housing Provider/Appellant, George P. Williams (Housing Provider), violated the Act as follows: (1) the Housing Provider failed to properly register the Housing Accommodation with RACD; and (2) services and/or facilities provided in connection with the Housing Accommodation have been substantially reduced. Tenant Petition at 3; R. at 26.

A hearing was held before an RACD hearing examiner on May 16, 2006, at which the Housing Provider did not appear either in person or through counsel. R. at 35. A final order was issued on May 27, 2008, by Hearing Examiner Keith A. Anderson (Hearing Examiner), awarding the Tenant a trebled rent refund and interest. Williams v. Thomas, TP 28,530 (RAD May 27, 2008) (First Final Order); R. at 36-51.

The Housing Provider filed a notice of appeal from the First Final Order with the Commission on July 3, 2008 (First Notice of Appeal). In its First Decision and Order, the Commission denied the Housing Provider's appeal because he lacked standing to appeal after failing to appear at the RACD hearing. First Decision and Order at 11-12 (citing DeLavy v. D.C. Rental Accommodations Comm'n, 411 A.2d 354, 360 (D.C. 1980); Prosper v. Pinnacle Mgmt., TP 27,783 (RHC Sept. 18, 2012) at 9). The Commission noted that a default judgment, based on one party's failure to appear, may be set aside based on four (4) factors set forth by the D.C. Court of Appeals (DCCA) in Radwan v. D.C. Rental Hous. Comm'n, 683 A.2d 478, 481 (D.C.

1996), which weigh: "(1) whether the movant had actual notice of the proceeding; (2) whether he acted in good faith; (3) whether the moving party acted promptly; and (4) whether *a prima facie* adequate defense was presented[,]" as well as whether (5) vacating the default judgment would be prejudicial to the Tenant. Prosper, TP 27,783 at 9. Applying each factor, the Commission determined that the Housing Provider did not meet the requirements to excuse a party's non-appearance at a hearing, and he therefore lacked standing to appeal. First Decision and Order at 22.

Nonetheless, the Commission noted plain error in the Hearing Examiner's calculations of the rent refund, the trebling of damages, and award of interest. First Decision and Order at 22-27; see 14 DCMR § 3807.4 (2004).[2] The Commission remanded the case to the RAD with instructions to do the following, based on the evidentiary record established at the RACD hearing:

1. Make findings of fact and conclusions of law regarding the date on which the rodent infestation began;

2. Recalculate the rent refund for reductions in services to reflect the uncontested dates between which the Tenant resided in the Housing Accommodation, October 1, 2004, through December 10, 2005;

3. Recalculate the award of interest from the date of each violation through the date of the issuance of the decision; and

4. Recalculate the amount of the trebled damages clearly.

First Decision and Order at 24-27.

On February 11, 2015, Interim Rent Administrator Keith Anderson (Rent Administrator) issued a proposed decision and order, which became final on March 3, 2015, after no exceptions

[2] The Commission's rules at 14 DCMR § 3807.4 provide as follows:

> Review by the Commission shall he limited to the issues raised in the notice of appeal; provided, that the Commission may correct plain error.

or objections were filed. Thomas v. Williams, TP 28,530 (RAD Feb. 11, 2015) (Final Order after Remand); R. at 84-102. Other than the addition of procedural history with respect to the Commission's First Decision and Order, the Final Order after Remand recites, nearly entirely verbatim, the "Description of the Property," "Evidence and Pleadings Considered," "Findings of Fact," and "Conclusions of Law" contained in the First Final Order. Compare First Final Order at 1-19; R. at 36-51, with Final Order after Remand at 1-21; R. at 82-102.

The Commission notes the following substantive changes made by the Rent Administrator after remand:[3]

A. Evidence and Pleadings Considered

1. At the conclusion of the discussion section titled "Whether the Property [W]as Properly Registered with RACD[,]" the Rent Administrator added the following paragraph:

> On appeal, Respondent argued that he did, in fact, file a registration form and received an exemption number from RAD. Respondent, however, did claim that he had given Petitioner a copy of the registration or otherwise informed Petitioner of the registration status of the property. Accordingly, the Commission rejected Respondent's argument and determined that the property was not properly registered because Respondent failed to notify Petitioner of registration form [sic]. RAD determination that the property was not properly registered at that time was affirmed.

2. At the beginning of the discussion section titled "Substantial Reduction of Services or Facilities," item number 1 on the list of the Tenant's claims of reductions in services was modified as underlined:

> Failure of the Respondent to eradicate rodent infestation in the property for a six (6) month period beginning on July 1, 2005;

3. At the end of the discussion section titled "Substantial Reduction of Services or Facilities," prior to the tables calculating rent refunds, the conclusion paragraph was modified as underlined:

[3] The Commission notes that several of insubstantial changes were also made that do not merit discussion, such as references to RAD, versus RACD, and phrasing of several sentences. The Commission has organized the substantial changes made by the Rent Administrator using the general headings found in the Final Order after Remand and has numbered the changes for ease of reference.

Accordingly, based on existence, duration, and severity of the violations as set forth more fully in the Findings of Fact section below, the Examiner determined the amount or value of each of the various reductions. On appeal, the Commission determined that RAD incorrectly calculated the duration of some of the violations, the interest and trebled damages. In accordance with the Commission's instructions on remand, and, as set forth in the Findings of Fact section below, the recalculations are set forth in the charts below.

4. At the end of the discussion section titled "Substantial Reduction of Services or Facilities," the following rows of "Table One: Rent Refund for Reduction of Services" were modified as follows:

   a. June 2005: removed $125.00 reduction in rent ceiling for rodents and reduced refund for month to $175.00;[4] and

   b. Total of "Rent Over-charged per month:" changed to $3,375.00.

5. At the end of the discussion section titled "Substantial Reduction of Services or Facilities," removed "Table Two – Interest owed to the Tenant/Petitioner" and relabeled "Table Three: Rent Overcharge Refund Plus Trebled Damage[s]" as "Table Two: Trebled Rent Overcharge Refund Plus Interest."

6. The table now-labeled "Substantial Reduction of Services or Facilities," "Table Two: Trebled Rent Overcharge Refund Plus Interest," was modified as follows:

   a. For each month, increased the "Months held for over-charge" column from 28-15 to 125-111, and adjusted the "Interest Factor" column (*i.e.*, monthly interest rate multiplied by months held) accordingly;

   b. For the June 2005 entry, reduced the "Rent overcharged (see above)" column to $175.00 and "Trebled (3X) damages" column to $525.00;

   c. Added a row for December 2005 with an overcharge of $300.00 held for 111 months, trebled to $900, at a monthly interest rate of .004, for an interest factor of .444, and interest award of $399.60; and

   d. Recalculated the total trebled damages as $10,125.00 and total interest award as $4,730.60.

[4] The Commission notes that the $200 "Legal Rent Ceiling" column was not increased to $325 to correspond to the elimination of the "rodent" reduction, but the Commission is satisfied that this error is harmless because the refund amount was adjusted with the mathematically correct figure. See, e.g., Barac Co. v. Tenants of 809 Kennedy St., N.W., VA 02-107 (RHC Sept. 27, 2013) (defining "harmless error" as "[a]n error which is trivial . . . and was not prejudicial to the substantial rights of the party assigning it, and in no way affected the final outcome of the case . . . .") (quoting BLACK'S LAW DICTIONARY 646 (5th ed. 1975)).

B. Findings of Fact[5]

7. Finding of fact number 2 was modified as underlined:

> Wallacia Tricia Thomas occupied the property at all relevant times beginning on October 1, 2004 and is the Petitioner in this matter. Petitioner vacated the subject property on December 10, 2005.

8. Finding of fact number 4 was modified as underlined:

> Respondent did not file an RA[C]D Registration/Claim of Exemption Form for the subject property and/or did not provide Petitioner with notice of the registration form. The subject property is not properly registered as a rental property in the District based on Respondent's failure to notify Petitioner of the registration status for the property.

9. Finding of fact number 9 was modified to add the following at the end (alterations original):

> As stated on page 5 of the Tenant Petition, "... [Petitioner] informed [Respondent] that the habitation was infested with rodents in July 2005 and [Respondent] refused to get professional services to eradicate the problem."

10. Finding of fact number 11, item a., "Rodent Infestation," was modified as underlined:

Beginning Date	Duration	Housing Provider Notified
7/1/2005-12/10/2005	5 months, 10 days	July 1, 2005

11. Finding of fact number 17 was modified as underlined:

> Petitioner provided testimonial evidence that, in response to Petitioner's concerns about the rodent infestation at the subject property, Respondent stated that if she ["]didn't like it there" she "could move[."] Petitioner also provided evidence that Respondent had knowledge of the holes in the ceiling and walls, the unsecured windows and the rodent infestation, and that Respondent persistently failed to remedy these conditions at the subject property in spite of previous promises to do so and the deficiency notices by Inspector Booth, conditions which had not been abated at the time Petitioner vacated the subject property. Petitioner also provided

[5] The Commission observes that many of the determinations made under the section heading "Findings of Fact" in the First Final Order and Final Order after Remand are in the nature of legal conclusions, including, for example, the determination in finding of fact number 4 that the property was not properly registered and the determination in finding of fact number 17 that the Housing Provider knowingly and in bad faith violated the Act. Nonetheless, the Commission is satisfied that the erroneous form of the Order after Remand is harmless error that does not prejudice the rights of any party. See, e.g., Tenants of 809 Kennedy St., VA 02-107.

testimonial and documentary proof (hearing, Tenant Petition, deficiency notices) that Respondent was given timely notice of the holes in the ceiling and walls, and the unsecured windows at the beginning of the tenancy, on October 1, 2004; and documentary proof (Tenant Petition) that Respondent was given timely notice of the rodent infestation on July 1, 2005. Petitioner also provided testimonial and documentary evidence that Respondent (a) acknowledged that the holes in the ceiling and walls, and the unsecured window were in need of repair at the outset of the lease term, on October 1, 2004, and that rodent infestation existed as of July 1, 2005; (b) received a copy of Inspector Booth's Inspection Report; (c) failed to remedy each of the conditions, of which he was aware, which rendered Petitioner's unit substantially uninhabitable; and (d) offered remedies so woefully inadequate as to not constitute "remedies" at all. Thus RAD finds that the Petitioner provided substantial record evidence that Respondent knowingly violated the Act, and did so in bad faith.

12. Findings of fact number 18 and 19 were both modified to specify that the refunds for reductions in services for holes in the walls and ceiling and unsecured windows, respectively, run from October 1, 2004, and December 10, 2005, rather than October 2004 and December 2005 generally.

13. Finding of fact number 20 was modified to state that the refund for reductions in services for the rodent infestation runs from July 1, 2005, rather than June 2005.

14. Finding of fact number 21 was modified as underlined:

> The judgment interest in effect on the date of the May 27, 2008 decision and order, which is the interest rate currently in use by the D.C. Superior Court, pursuant to D.C. Code Section 28-3302(c), is five percent (5%) per annum.

15. Finding of fact number 22 was rewritten entirely to read as follows:

> On remand, Petitioner is entitled to interest, for 10 years and 5 months interest, from October 1, 2004 (beginning of violation) to February 11, 2015 (the date of this remand Order) on the refund due and owed for the holes in the ceiling and the walls, and the unsecured windows reduction in service violation[s]. Petitioner is entitled to interest, for 9 years and 9 months, from July 1, 2005 (beginning of violation) to February 11, 2015 (date of remand order), on the refund due and owed for unabated rodent infestation reduction in service violation.

16. Finding of fact number 23 was rewritten entirely to read as follows:

> Petitioner is awarded treble refund for the reductions in services in her unit from October 1, 2004 to December 10, 2005, for the holes in the ceiling

and walls violations, and the unsecured windows; and from July 1, 2005 to December 2005 for the rodent infestation violation.

C. Conclusions of Law

17. Conclusion of law number 2 was modified as underlined:

> Although Respondent owns four or fewer rental units in the District of Columbia, no exemption is valid under DC Official Code Sect. 42-3502.05(a)(3) (2001) for the property located at 755 Hobart Place, NW because an exemption was never perfected for lack of notice to Petitioner as required by Sect. 42-3502.05.

18. Conclusion of law number 3 was modified as underlined:

> The conditions referenced in Findings of Fact 9 and 11 through 17 existed as noted, in violation of District of Columbia Code [sic] Section 42 [sic] DCMR 4216.2, and thereby constituted a substantial reduction in Petitioner's related repair and maintenance service, pursuant to Section 103(26), (27) and Section 211 of the Act, DC Code Sects. 42-3501(26), (27) and 42-3502.11 (2001).

19. Conclusion of law number 5 was modified as underlined:

> Petitioner proved by a preponderance of evidence that Respondent knowingly violated the Act. The evidence in the record is sufficient to establish that Respondent had knowledge of the reduced and/or eliminated services/facilities referenced above. The record contains substantial evidence establishing Respondent's knowledge of the holes in the ceiling and walls, the unsecured windows, and the rodent infestation, conditions that constitute reduced repair and maintenance services under the Act. The evidence included written statements in the Tenant Petition, receipt of housing violation notices, complaints from Petitioner, and Respondent's own admission that he acknowledged the need for repairs at the time Petitioner signed the lease because the subject property contained the above-referenced conditions.

20. Conclusion of law number 6 was modified as underlined:

> Petitioner proved by a preponderance of evidence that Respondent's conduct was sufficiently egregious to warrant an additional finding of bad faith on the part of Respondent, supporting an award of treble damages to Petitioner, pursuant to D.C. Official Code Sect. 42-3509.01(a)(2) [sic] (2001) with respect to the reduced services endured, as established and noted in Findings of Fact 17.

21. Conclusion of law number 8 was rewritten entirely to read as follows:

Petitioner is entitled to monthly rent refunds in the amount of $100.00 for the holes in the ceiling and walls; $75.00 for the unsecured windows; and $125.00 for the rodent infestation, pursuant to Sect. 42-3509.01(a)(2), for a total of $3,375.00 as set forth in Findings of Fact 11 and 18 through 20, for the substantial reduction in related services violation.

22. Conclusion of law number 9 was rewritten entirely to read as follows:

Petitioner is entitled to trebled rent refund damages in the amount of $10,125.00 ($3,375 x 3) for Respondent's bad faith violation, in reference to Findings of Fact 23 and pursuant to Sect. 42-3509.01(a)(2).

23. Conclusion of law number 10 was rewritten entirely to read as follows:

Petitioner is entitled to interest on the trebled rent refund in the amount of $4,737.00,[6] from the date of the violations to the date of this RAD remand decision and order, in reference to Findings of Facts 21-22 and pursuant to 14 DCMR Sects. 3826.1 – 3826.4 (2004).

24. Conclusion of law number 11 was rewritten entirely to read as follows:

Petitioner is entitled to a trebled rent refund plus interest in the total amount of $14,862.00, pursuant to Sect. 42-3509.01(a)(2).

25. The concluding "ORDER" section was modified to reflect the dollar amounts stated in conclusions of law numbers 9 through 11 (changes numbered 22-24).

Compare First Final Order at 1-19; R. at 36-51, with Final Order after Remand at 1-21; R. at 82-102.

As date-stamped by the Rent Administrator, the Final Order after Remand became final on March 3, 2015, ten (10) days after it was issued. Final Order after Remand at 19; R. at 84. On March 24, 2015, the Housing Provider filed a notice of appeal with the Commission (Second Notice of Appeal). Because of an intervening holiday and days of District government closure due to inclement weather, the Commission is satisfied that the Second Notice of Appeal was timely filed. See 14 DCMR § 3816.

[6] The Commission notes that the calculations in "Table Two" of the Final Order after Remand reflect an interest award of $4,730.60. For the reasons discussed infra at 16-20, the Commission determines that the interest calculations must be vacated on other grounds, and therefore will not address this discrepancy.

In the Second Notice of Appeal, the Housing Provider raised the following issues:[7]

1. The record is still bare in respect of evidence supporting the amount of the adjustment of rent based as a deduction which reduces the rent level below that of "bare shelter" when there is no allegation of uninhabitability.

2. The fact is that the Hearing Examiner's calculation of rent reduction fails to provide any basis for these reductions, other than an arbitrary amount.

3. Treble damages should never have been awarded in this case.

4. Any "additional finding" of bad faith required closer scrutiny than given by the examiner.

5. The Commission remanded this without disturbing the treble damages which had been appealed by Mr. Williams.

6. The delay of the [R]ental [H]ousing Commission in responding to Mr. Williams' [sic] was altogether unreasonable.

Second Notice of Appeal at 1-3.

Neither party filed a brief. The Commission held its hearing on this matter on October 21, 2015.

II. PRELIMINARY ISSUES ON APPEAL

A. Whether the Rent Administrator Committed Plain Error on Remand

The Commission's review of the record indicates that the Rent Administrator committed plain error in the Final Order after Remand by: (1) exceeding the scope of the Commission's remand order; (2) awarding damages for the entire month of December 2005; and (3) applying an incorrect interest rate to the total award. The Commission's rules provide as follows: "Review by the Commission shall he limited to the issues raised in the notice of appeal; provided, that the Commission may correct plain error." 14 DCMR § 3807.4; see Lenkin Co. Mgmt. v. D.C. Rental Hous. Comm'n, 642 A.2d 1282, 1286 (D.C. 1994). The Commission has

[7] The Commission recites the issues on appeal using the same numbering as the Housing Provider, but recites only the first sentence of each issue so as to only summarize the issues and omit the Housing Provider's supporting arguments.

applied the plain error standard to correct procedural and technical errors in final orders. See, e.g., Doyle v. Pinnacle Realty Mgmt., TP 27,067 (RHC Mar. 10, 2015); Munonye v. Hercules Real Estate Servs., RH-TP-07-29,164 (RHC July 7, 2011) at 8; Ford v. Dudley, TP 23,973 (RHC June 3, 1999) at 9. Where a final order contains plain error in the calculation of rent refunds or interest, the Commission may correct the calculations. See, e.g., Heidary v. Gomez, TP 27,179 (RHC Oct. 24, 2003) (recalculating rent refund as limited to date hearing record closed and recalculating interest); Rittenhouse, LLC v. Campbell, TP 25,093 (RHC Dec. 17, 2002) (recalculating monthly rent overcharge, total refund for period of overcharges, and interest based on correct rate); Morris v. Cole, TP 22,542 (RHC Aug. 19, 1993) (recalculating award for reduced services and interest).

1. The Rent Administrator Erred by Revising Findings of Fact and Conclusions of Law That Were Outside the Scope of the Remand

When an appellate tribunal remands a case after its review, "the scope of the trial court's authority on remand is necessarily limited by our jurisdiction and instructions." Jung v. Jung, 844 A.2d 1099, 1106 n.7 (D.C. 2004); see, e.g., Hagner Mgmt. Co. v. Brookens, TP 3,788 (RHC Aug. 9, 1988). As described supra at 3, the Commission remanded this case to RAD with the following instructions, based on plain error in the First Final Order:

> 1. Make findings of fact and conclusions of law regarding the date on which the rodent infestation began;
>
> 2. Recalculate the rent refund for reductions in services to reflect the uncontested dates between which the Tenant resided in the Housing Accommodation, October 1, 2004, through December 10, 2005;
>
> 3. Recalculate the award of interest from the date of each violation through the date of the issuance of the decision; and
>
> 4. Recalculate the amount of the trebled damages clearly.

First Decision and Order at 24-27.

The Commission observes that the Final Order after Remand, nonetheless, contains substantive revisions to the discussion, findings of fact, and conclusions of law regarding the Housing Provider's possible exemption from the rent stabilization provisions of the Act. See changes numbered 1, 8, and 17, supra at 4, 6, and 7. To summarize, these portions of the First Final Order concluded that the Housing Provider's claimed exemption was invalid because it was not filed with RACD, but, as revised, the Final Order after Remand now concludes that the exemption was invalid because the Tenant did not receive notice of the claimed exemption. See id.; see also D.C. OFFICIAL CODE § 42-3502.05(a)(3)(C) (2001); 14 DCMR § 4106.8 (2004).[8] In addition, the Final Order after Remand states that, in the First Decision and Order, "the Commission . . . determined that the property was not properly registered because [the Housing Provider] failed to notify [the Tenant] of registration form [sic]." Final Order after Remand at 7; R. at 96.

In the First Notice of Appeal, the Housing Provider argued that the First Final Order was erroneous with regard to its conclusion that the Housing Accommodation was not properly

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[8] D.C. OFFICIAL CODE § 42-3502.05(a)(3) provides an exemption from rent stabilization for:

> Any rental unit in any housing accommodation of 4 or fewer rental units, including any aggregate of 4 rental units whether within the same structure or not, provided:
>
> . . .
>
> (C) The housing provider of the housing accommodation files with the Rent Administrator a claim of exemption statement which consists of an oath or affirmation by the housing provider of the valid claim to the exemption. The claim of exemption statement shall also contain the signatures of each person having an interest, direct or indirect, in the housing accommodation. Any change in the ownership of the exempted housing accommodation or change in the housing provider's interest in any other housing accommodation which would invalidate the exemption claim must be reported in writing to the Rent Administrator within 30 days of the change[.]

The Commission's regulation at 14 DCMR § 4106.8 provides:

> Prior to the execution of a lease or other rental agreement, a prospective tenant of any unit exempted under § 205(a) of the Act [D.C. OFFICIAL CODE § 42-3502.05(a)] shall receive from the housing provider a written notice advising the prospective tenant that rent increases for the housing accommodation are not regulated by the rent stabilization program.

registered as exempt. See First Notice of Appeal at 1-2. The Commission's First Decision and Order declined to address this claim, however, because the Housing Provider, having failed to appear at the RACD hearing, lacked standing to appeal the determinations made in the First Final Order. First Decision and Order at 22.

Because the issue of the Housing Accommodation's registration and exemption status was outside the scope of the Commission's instructions on remand, the Commission determines that the Rent Administrator erred by issuing findings of fact and conclusions of law that substantively revised the previously-issued determinations of First Final Order. Jung, 844 A.2d at 1106 n.7. The Commission observes, however that because the Final Order after Remand reaches the same result as the First Final Order, *i.e.*, that the Housing Accommodation was subject to rent stabilization under the Act, the Rent Administrator's error is harmless. See, e.g., United Dominion Mgmt. Co. v. D.C. Rental Hous. Comm'n, 101 A.3d 426, 430 (D.C. 2014) (erroneous statement of deferential standard of review was immaterial where review was in fact thorough and *de novo*); LCP, Inc. v. D.C. Alcoholic Beverage Control Bd., 499 A.2d 897, 903 (D.C. 1985) ("[R]eversal and remand is required only if substantial doubt exists whether the agency would have made the same ultimate finding with the error removed.") (quoting Arthur v. D.C. Nurses' Examining Bd., 459 A.2d 141, 146 (D.C. 1983)); Barac Co. v. Tenants of 809 Kennedy St., N.W., VA 02-107 (RHC Sept. 27, 2013) (defining "harmless error" as "[a]n error which is trivial . . . and was not prejudicial to the substantial rights of the party assigning it, and in no way affected the final outcome of the case . . . .") (quoting BLACK'S LAW DICTIONARY 646 (5th ed. 1975)).

The Commission accordingly vacates and strikes the following portions of the Final Order after Remand to the extent they reach a determination that the Housing Accommodation

was not exempt from rent stabilization for any reasons not discussed in the First Final Order: changes numbered 1 ("Evaluation and Analysis of the Evidence"), 8 ("Finding of Fact" number 4), and 17 ("Conclusion of Law" number 2). The Commission does not otherwise disturb the conclusion, as reached in the First Final Order, that the Housing Accommodation was not exempt.

2. The Rent Administrator Erred by Calculating the Rent Refund Past December 10, 2005, the End of the Tenancy

In its First Decision and Order, the Commission found plain error in the First Final Order's calculation of the rent refund owed to the Tenant for unlawful reductions in related services. First Decision and Order at 24-26. The Commission's review of the record revealed undisputed, substantial evidence in the record that the Tenant's tenancy ended on December 10, 2005, but the calculations of the refund did not award any refund beyond November 2005. First Decision and Order at 25; see First Final Order at 10-11 ("Table Three: Rent Overcharge Refund Plus Trebled Damage[s]"); R. at 44-45. The Commission instructed the Rent Administrator on remand to issue "a recalculation of the time period for the award of damages due the Tenant, based on the substantial evidence found in the record of the duration of her tenancy." First Decision and Order at 26.

Under the Act, a rent refund may only be awarded to a person who meets the definition of "tenant," that is, a "person entitled to the possession, occupancy, or the benefits of any rental unit[.]" D.C. OFFICIAL CODE § 42-3501.03(36); Terry v. Gaben Mgmt., LLC, RH-TP-30,206 (RHC Dec. 8, 2014); Dias v. Perry, TP 24,379 (RHC July 30, 2004) ("In order to affirm the hearing examiner's award of a rent refund through the date of the hearing, the record must show that the tenant produced evidence that she occupied the rental unit or that the housing provider demanded rent through [the hearing date]."). In this case, the parties do not dispute that the

Tenant no longer possessed or occupied the rental unit after December 10, 2005. First Decision and Order at 25. Where substantial evidence only supports a finding that a rent overcharge lasted less than a whole month, a corresponding refund must be prorated. See, e.g., 1773 Lanier Pl. N.W. Tenants' Ass'n v. Drell, TP 27,344 (RHC Aug. 31, 2009) ("[T]he Commission remands this issue to the Rent Administrator for calculation of the rent refund only through the last hearing date for this matter on August 2, 2002 (rather than August 31, 2002), with appropriate pro rata calculations for the month of August 2002.").

The Commission's review of the Final Order after Remand reveals, however, that, contrary to the instructions given on remand and to the scope of authority under the Act to award rent refunds, the Rent Administrator calculated an award of damages for the entire month of December 2005, rather than the portion of that moth in which the Tenant actually resided in the Housing Accommodation. See Final Order after Remand at 11-12 ("Table One: Rent Refund for Reduction of Services" and "Table Two: Trebled Rent Overcharge Refund Plus Interest"); R. at 91-92. Specifically, although the Rent Administrator revised the calculations of damages, as instructed, the changes that the Commission has numbered 3, 6c, 6d, 16, 21, 22, and 23 in this decision and order, supra at 5-9, all reflect that the revised refund is in the amount of one (1) full month's overcharge, at the rate of $300 per month, rather than a prorated amount to reflect the ten (10) of thirty-one (31) days of December for which the Tenant may be awarded a refund. See supra at 3-9.

Accordingly, the Commission makes the following determinations, based on the undisputed findings of facts in the record, the conclusions of law made by the Rent Administrator that are not plain error, and applying the correct legal standard as stated:[9]

[9] See Heidary, TP 27,179; Campbell, TP 25,093; Cole, TP 22,542.

1. The correct, base rent refund for December 1-10, 2005, is $96.77 ($300 monthly refund × 10 days of tenancy ÷ 31 days in December);

2. The correct, total base rent refund owed to the Tenant is therefore $3,171.77 ($3,375 original total base refund - $300 incorrect December refund + $97 prorated December refund); and

3. The correct, total trebled rent refund owed to the Tenants is therefore $9,515.31 ($3,171.77 total base rent refund × 3);

Accordingly, the Commission vacates the award of a trebled rent refund in the Final Order after Remand to the extent it exceeds $9,515.31.

3. The Rent Administrator Erred in Calculating Interest by Using an Incorrect Interest Rate

In its First Decision and Order, the Commission found plain error in the First Final Order's calculation of interest as being only through December 2005, not the date of the First Final Order, as required by the Commission's rules governing interest awards. First Decision and Order at 26; see 14 DCMR § 3826.2 (2004); Marshall v. D.C. Rental Hous. Comm'n, 533 A.2d 1271, 1278 (D.C. 1987). In the Final Order after Remand, the Rent Administrator made the changes that the Commission has numbered 6a, c, and d, 14, 15, and 23-25, supra at 5-9, based on the Commission's instructions on remand to recalculate the interest owed.

Although these changes did recalculate the interest period, the Rent Administrator amended finding of fact number 21 to read as follows:

> The judgment interest in effect on the date of the May 27, 2008 decision and order, which is the interest rate currently in use by the D.C. Superior Court, pursuant to D.C. Code Section 28-3302(c), is five percent (5%) per annum.

Final Order after Remand at 16; R. at 87; see supra at 7 (change numbered 14). For the following reasons, the Commission determines that this finding as to the applicable interest rate, and the interest calculations that follow from it, constitute plain error.

The Commission's rules governing awards of interest provide as follows:

3826.1 The Rent Administrator or the Rental Housing Commission may impose simple interest on rent refunds, or treble that amount under § 901(a) or § 901(f) of the Act.

3826.2 Interest is calculated from the date of the violation (or when service was interrupted) to the date of the issuance of the decision.

3826.3 The interest rate imposed on rent refunds or treble that amount, if any, shall be the judgment interest rate used by the Superior Court of the District of Columbia pursuant to D.C. Official Code § 28-3302(c) (2001), on the date of the decision.

3826.4 Post judgment interest shall continue to accrue until full payment, or an intervening decision, order, or judgment, modifies or amends the judgment or accrual of interest.

14 DCMR § 3826 (2004). The Superior Court of the District of Columbia (Superior Court) provides a listing of the current and past judgment interest rates on its website. See D.C. Super. Ct. "Judgment Interest Rates," http://www.dccourts.gov/internet/documents/InterestRateSchedule.pdf (accessed Oct. 27, 2015) (Superior Court Interest Rate Schedule). In relevant part, the Superior Court Interest Rate Schedule provides the following:

October 1, 2005 to June 30, 2006	5% Per Annum
. . .	
January 1, 2008 to March 31, 2009	4% Per Annum
. . .	
January 1, 2012 to present	2% Per Annum

Id.

Based on its review of the Record, the Commission observes that the First Final Order awarded interest based on the five percent (5%) Superior Court Rate that was in effect on the date through which it actually awarded interest, *i.e.*, November 2005, rather than the date of the decision, *i.e.*, May 2008. See First Final Order at 11, 14; R. at 44, 41. On remand, the Rent Administrator calculated interest through the date of the Final Order after Remand, *i.e.*, February 2015, but used the same, erroneous interest rate as in the First Final Order. Final Order after

Remand at 11-12, 16; R. at 91-92, 87. As a result, the Rent Administrator ordered the Housing Provider to pay the Tenant $4,737 in interest on the trebled rent refund. Id. at 17; R. at 86.

In applying its regulations, "the Commission is guided by well-established rules of statutory construction." Bower v. Chastleton Assocs., TP 27,838 (RHC Mar. 27, 2014). The plain language of 14 DCMR § 3826.2 and .3 makes it clear that interest must be calculated based on the date of the issuance of a decision for both the period and rate of the award. See, e.g., Cook v. Edgewood Mgmt. Corp., 825 A.2d 939, 944 (D.C. 2003) ("In interpreting statutory or regulatory provisions, we look first to the plain meaning."). Further, 14 DCMR § 3826.4 makes clear that an intervening decision, order, or judgment may modify or amend a previously-issued interest award. Interpreting the "plain meaning" of the language of § 3826.4 in conjunction with the language of § 3826.2 and .3, see Cook, 825 A.2d at 946 ("Statutory interpretation is a holistic endeavor, and, at a minimum, must account for a statute's full text, language as well as punctuation, structure, and subject matter.") (quoting U.S. Nat'l Bank of Ore. v. Indep. Ins. Agents of Am., Inc., 508 U.S. 439, 455 (1993)); Thomas v. District of Columbia Dep't of Employment Services, 547 A.2d 1034, 1037 (D.C. 1988) ("A basic principle is that each provision of the statute should be construed so as to give effect to all of the statute's provisions, not rendering any provision superfluous."); In re: 70% Voluntary Agreement, 4707 Conn. Ave., N.W., VA 20,772 & VA 20,773 (RHC July 9, 1993) (Commission and RACD rules on *ex parte* communications must be read together), the Commission determines that its rules on interest awards provide for and permit the use of only one date in making interest calculations, and that date shall be the date of the latest-issued order.[10]

[10] The Commission notes that this interpretation of 14 DCMR § 3826.4 has the advantage of simplifying calculations by avoiding variations in rates over the period of an interest award. Although the primary purpose of an interest award is to compensate a person who "has been deprived of the use of the money withheld," and it therefore might be reasonable to calculate interest at a variable rate or at the rate on the date damages are incurred, see District

Accordingly, the Commission determines that the Rent Administrator's use of a five percent (5%) interest rate was plain error. Pursuant to 14 DCMR § 3826.1, the Commission is authorized to issue an award of interest. Based on the undisputed findings of facts in the record, the Commission's determination of the correct, trebled rent refund under Plain Error Issue 1, supra at 11-13, and the conclusions of law made by the Rent Administrator that are not plain error, see Final Order after Remand at 1-21; R. at 82-102, the Commission makes the following determinations and calculates that the appropriate award of interest to the Tenant is as follows:[11]

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of Columbia v. Pierce Assocs., Inc., 527 A.2d 306, 311 (D.C. 1987), the Commission is satisfied that the "plain meaning of the language of its rules, requiring the use of the decision date, is not so "plainly at variance with the policy" of the rule that the Commission can ignore the literal words. See James Parreco & Son v. D.C. Rental Hous. Comm'n, 567 A.2d 43, 46, 49 & n.9-10 (D.C. 1989) ("Frequently, . . . even when the plain meaning did not produce absurd results but merely an unreasonable one 'plainly at variance with the policy of the legislation as a whole' this Court has followed that purpose, rather than the literal words.") (quoting Perry v. Commerce Loan Co., 383 U.S. 392, 400 (1966)); see also Cook, 825 A.2d at 944; Thomas, 547 A.2d at 1037; Bower, TP 27,838.

Additionally, the Commission notes that in this case the current Superior Court Interest Rate is substantially lower now than at the time of the First Final Order. However, the Commission is satisfied that a rule requiring the use of the most recent interest rate "is neutral in application and neither favors one party nor disfavors another." Burke v. Groover, Christie & Merritt, P.C., 26 A.3d 292, 300 (D.C. 2011) ("Here, for example, the . . . applicable rate was 3% at the time judgment was entered, but had risen to 6% by the time the judgment was satisfied.").

[11] See Heidary, TP 27,179; Campbell, TP 25,093; Cole, TP 22,542.

Months between first rent overcharge and this decision and order: 133.
Current Superior Court Interest Rate: 2% per year, 0.167% per month.

Date of Overcharge	Base Refund	Trebled Refund	Months Held	Monthly Interest Rate	Interest Factor	Interest Due
October-04	$175.00	$525.00	133	0.00167	0.22211	$116.61
November-04	$175.00	$525.00	132	0.00167	0.22044	$115.73
December-04	$175.00	$525.00	131	0.00167	0.21877	$114.85
January-05	$175.00	$525.00	130	0.00167	0.2171	$113.98
February-05	$175.00	$525.00	129	0.00167	0.21543	$113.10
March-05	$175.00	$525.00	128	0.00167	0.21376	$112.22
April-05	$175.00	$525.00	127	0.00167	0.21209	$111.35
May-05	$175.00	$525.00	126	0.00167	0.21042	$110.47
June-05	$175.00	$525.00	125	0.00167	0.20875	$109.59
July-05	$300.00	$900.00	124	0.00167	0.20708	$186.37
August-05	$300.00	$900.00	123	0.00167	0.20541	$184.87
September-05	$300.00	$900.00	122	0.00167	0.20374	$183.37
October-05	$300.00	$900.00	121	0.00167	0.20207	$181.86
November-05	$300.00	$900.00	120	0.00167	0.2004	$180.36
December-05*	$96.77	$290.31	119	0.00167	0.19873	$57.69
SUBTOTAL		**$9,515.31***				**$1,992.43**
TOTAL						**$11,507.74**

*see Plain Error Issue 2, supra at 14-16.

Accordingly, the Commission vacates the award of interest in the Final Order after Remand and awards the Tenant interest in the amount of $1,992.43.

B. Whether, after Remand, the Housing Provider Lacks Standing to Appeal the Determinations Made in the First Final Order

The Housing Provider raises five (5) issues in the Second Notice of Appeal that relate to the determinations in the First Final Order that: (1) the Tenant is entitled to rent refunds due to reductions in related services in the amount of $100 per month for holes in the ceilings and walls, $75 per month for windows that were not securely fastened, and $125 per month, for certain months, for a rodent infestation; and (2) that the Housing Provider acted in bad faith in reducing and failing to restore the related services and the Tenant is therefore entitled to a trebled rent refund. See Second Notice of Appeal at 1-2; compare First Notice of Appeal at 2-3. The

Commission's review of the record shows that neither of these determinations was substantively revised in the Final Order after Remand. See supra at 4-9. The Housing Provider's sixth issue on appeal is the only one that does not relate to the merits of the First Final Order but, instead, argues that the Commission should reverse itself and "restore[] full hearing rights based on excusable neglect." Second Notice of Appeal at 3.[12]

In its First Decision and Order, the Commission declined to address these same issues, or any issues, raised by the Housing Provider, because the Commission determined, as a preliminary matter, that the Housing Provider lacked standing to appeal the First Final Order. First Decision and Order at 22 (citing DeLavy, 411 A.2d at 360; Radwan, 683 A.2d at 481). The Commission determines that the "law of the case" doctrine applies to its previous determination that the Housing Provider does not have standing to appeal the determinations made in the First Final Order. See, e.g., Klingle Corp. v. Tenants of 3133 Conn. Ave., N.W., CI 20,794 (RHC Sept. 1, 2015); Smith Prop. Holdings Five (D.C.) L.P. v. Morris, RH-TP-06-28,794 (RHC July 2, 2014); King v. McKinney, TP 27,264 (RHC June 17, 2005) (citing Lynn v. Lynn, 617 A.2d 963 (D.C. 1992)) ("The law of the case doctrine prohibits the Commission from reopening issues that the Commission resolved in an earlier appeal.").

Under the law of the case doctrine, a court is precluded from reexamining issues raised in a prior appeal, except under "extraordinary circumstances," including that "the evidence on a subsequent trial was substantially different, controlling authority has since made a contrary decision of the law applicable to such issues, or the decision was clearly erroneous and would work a manifest injustice." Lynn, 617 A.2d at 970 (quoting United States v. Turtle Mountain

[12] The Commission observes that the Housing Provider, under issue 5, conflates his burden to show good faith in failing to appear at the evidentiary hearing, under Radwan, with the Tenant's burden to show bad faith in seeking treble damages. See Second Notice of Appeal at 2; compare First Decision and Order at 15-16 (citing Radwan, 682 A.2d at 481). The Commission is satisfied that the Housing Provider's arguments do not provide any basis for revisiting its prior Radwan analysis.

Band of Chippewa Indians, 612 F.2d 517, 521 (Ct. Cl. 1979)); see also Lenkin Co. Mgmt., Inc. v. D.C. Rental Hous. Comm'n, 677 A.2d 46, 48 (D.C. 1996); Tenants of 3133 Conn. Ave., CI 20,794. In his sixth issue on appeal, the Housing Provider asserts that he is entitled to relief because:

> It took the Commission more than five years, until September 27, 2013 to render a decision and order and reject [the Housing Provider's] grounds for appeal. Another 17 months went by before the [Final Order after Remand] was issued. This delay has been very prejudicial to the parties. Mr. Williams should have been restored to full hearing rights based upon excusable neglect; instead the Commission is simply asserting its own solution to a years-old case.

Second Notice of Appeal at 3.

The Commission is satisfied that the Housing Provider's complaint of delay does not constitute extraordinary circumstances to reopen the law of the case that he lacks standing to appeal the merits of the First Final Order. The Commission's review of the record shows that (1) no new evidence was admitted or considered on remand; (2) the Housing Provider has not cited, nor is the Commission aware of, any controlling authority that contradicts or overturns the Commission's First Decision and Order; and (3) the Housing Provider's bare assertion that the delay was "prejudicial" offers no basis on which the Commission could conclude that the First Decision and Order itself was "clearly erroneous and would work a manifest injustice." See Final Order after Remand at 2-3 ("Evidence and Pleadings Considered"); R. at 52-53; Lenkin Co. Mgmt., 677 A.2d at 48; Lynn, 617 A.2d at 970; Tenants of 3133 Conn. Ave., CI 20,794.[13]

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[13] The Commission notes, nonetheless, that the Housing Provider may be implying that the delay in the handling of this case has resulted in several additional years of interest awards. See also supra at 16-20. However, the DCCA has upheld awards of interest by the Commission despite substantial administrative delay. See, e.g., Jerome Mgmt. v. D.C. Rental Hous. Comm'n, 682 A.2d 178, 185 (D.C. 1996).

In Jerome Mgmt., the DCCA rejected the argument that "it would be inequitable to award interest for any period later than the date of the hearing examiner's decision, since the significant delay was the fault of the agency." Id. The Court noted that the award of interest was consistent with precedent that "a rent refund was in the nature of a debt and that interest should be applied . . . 'until the present[.]'" Id. (quoting Marshall, 533 A.2d at 1278); see District of Columbia v. Potomac Elec. Power Co., 402 A.2d 430, 441 (D.C. 1979) ("Interest is not imposed on a debtor's obligation in order to exact a penalty. It is imposed to compensate the creditor for the loss of the use of its

Accordingly, the Commission denies the Housing Provider's issues on appeal and affirms the Final Order after Remand, except to the extent the Commission determines that it contains plain error.

III. CONCLUSION

For the foregoing reasons, the Rent Administrator's Final Order after Remand is vacated in part. Specifically, the Commission vacates and strikes those portions of the Final Order after Remand identified in this decision and order, to the extent they reach a determination that the Housing Accommodation was not exempt from rent stabilization for any reasons not discussed in the First Final Order. See supra at 14. The Commission nonetheless determines that the error is harmless and does not disturb the conclusion that the Housing Accommodation was not exempt. The Commission further vacates the award of a trebled rent refund in the Final Order after Remand to the extent it exceeds $9,515.31. See supra at 16. Finally, the Commission vacates the award of interest in the Final Order after Remand and awards the Tenant interest in the amount of $1,992.43. See supra at 20. The Final Order after Remand is affirmed in all other respects.

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money.") (citing United States v. United Drill & Tool Corp., 183 F.2d 998, 999 (D.C. Cir. 1950)); Hinton v. Moser, TP 2774 (RHC Apr. 2, 1986); Guerra v. Shannon & Luchs Co., TP 10,939 (RHC Apr. 2, 1986). Accordingly, the Commission is satisfied that an award of interest in the circumstances of this appeal is both lawful and serves to compensate the Tenant for harm she has incurred from the delay in the administrative handling of the Tenant Petition. Jerome Mgmt., 682 A.2d at 185; see also Burke, 26 A.3d at 301-03.

Accordingly, the Housing Provider is ordered to pay the Tenant a trebled rent refund in the amount of **$9,515.31** and accrued interest in the amount of **$1,992.43**, for a total payment of **$11,507.74.**

SO ORDERED

PETER B. SZEGEDY-MASZAK, CHAIRMAN

RONALD A. YOUNG, 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 (2001), "[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 TP 28,530 was mailed, postage prepaid, by first class U.S. mail on this **24th day** of **December, 2015,** to:

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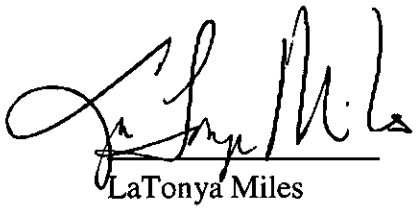

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