

DISTRICT OF COLUMBIA COURT OF APPEALS

No. 18-AA-0364

SMITH PROPERTY HOLDINGS)	
VAN NESS, L.P.,)	
)	
Petitioner,)	Agency No. RH-TP-16-30,842
)	
v.)	
)	
D.C. RENTAL HOUSING COMMISSION,)	
)	
Respondent,)	
)	
and)	
)	
GABRIEL FINEMAN,)	
)	
Intervenor.)	

PETITIONER’S OPPOSITION TO MOTION TO DISMISS PETITION FOR REVIEW

The Motion To Dismiss The Petition For Review should be denied because review is appropriate under the “ministerial act” exception to the finality requirement. Intervenor Gabriel Fineman’s (“Fineman”) Motion To Dismiss is based solely upon the non-final character of the Rental Housing Commission (“RHC”) Decision And Order of January 18, 2018 and the Order Denying Reconsideration of March 13, 2018. Smith Property Holdings Van Ness, L.P. (“Smith”) does not dispute that ordinarily an order remanding a case to an administrative agency for further action is not a final order. Smith also does not dispute that the Court of Appeals typically lacks jurisdiction to review non-final agency orders or decisions. However, review is appropriate in this case under the “ministerial act” exception to the finality requirement.

Republic Natural Gas Co. v. Oklahoma, 334 U.S. 62, 68 (1948); District of Columbia v. Trustees of Amherst College, 499 A.2d 918, 920 (DCCA 1985).

Fineman's Tenant Petition/Complaint dated July 12, 2016 (copy attached as Exhibit 1) is based solely upon a RAD Form 8 sent to him on September 18, 2015 and sought only the following forms of relief:

- Correction of the 2015 RAD Form 8 for apartment W-1131 at 3003 Van Ness St., N.W. to show rent charged as \$2,169.00. (Id. at 4.)
- Proper computation of the RAD Form 8 in the future for Fineman's unit and all other units. (Id.)
- A fine for \$5,000.00 for Smith's willful violation for DC Code §42-3509.01(b)(2). (Id.)

No individual monetary relief was sought. Fineman vacated the apartment on December 8, 2016 and moved to Florida. (1/18/18 Decision And Order, p. 4) By reason of Fineman's move, the 2015 RAD Form 8 was the last one he received that addressed his rent for apartment W-1131. He has no standing to challenge other RAD Form 8's for apartment W-1131, or, as explained below, any other apartment.

In the final order of Administrative Law Judge Yahner dated March 16, 2017 (copy attached as Exhibit 2), Fineman's attempt to pursue claims for other tenants was rejected, and a finding was made that the Housing Provider did not intentionally file a false RAD Form 8. (Exhibit 2, pp. 15-16). Fineman did not appeal these decisions, and they were not considered by the RHC. (*See* Fineman Notice of Appeal dated March 30, 2017, copy attached as Exhibit 3). Accordingly, the only relief at stake in Fineman's appeal to the RHC was the "correction" of the RAD Form 8 he received on or about September 18, 2015.

Based upon the foregoing record in this case, and in light of the RHC's remandment of the case for further proceedings in its January 18, 2018 Decision And Order, all that remains to be done at the administrative level is the entry of an order directing Smith to correct the September 18, 2015 RAD Form 8 for apartment W-1131 at 3003 Van Ness St., N.W. to reflect

the “current rent charged” as \$2,329.00 instead of \$3,114.00. This is a “ministerial” act which does not affect the finality of the RHC orders that are the subject of the Petition For Review.

“Thus, a ‘practical rather than a technical construction’ standard has been adopted for the purpose of identifying those judgments which are final and those which are not.” District of Columbia v. Tschudin, 390 A. 2d 986, 988 (DCCA 1978), quoting Cohen v. Beneficial Industrial Loan Corp., 337 U.S. 541, 546 69 S.Ct. 1221, 1226, 93 L. Ed. 1528 (1949) (order of expunction of arrest records becomes final on the date stay expires rather than date of subsequent order directing exact method of carrying out expunction).

Because the only act remaining to be performed by the administrative law judge in this case is the entry of an order directing the correction of a 2015 RAD form, the January 18, 2018 Decision And Order and the March 13, 2018 Order Denying Reconsideration should be treated as final and appealable. Accordingly, the Motion To Dismiss should be denied.



One of the attorneys for Petitioner,
Smith Property Holdings Van Ness, L.P.

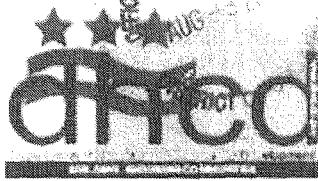
Carey S. Busen
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1050 Connecticut Ave., N.W., Suite 100
Washington, D.C. 20036
202-261-1568
cbusen@bakerlaw.com

CERTIFICATE OF SERVICE

I, CAREY S. BUSEN, certify that on the 14th of May 2018, the foregoing *Petitioner's Opposition To Motion To Dismiss Petition For Review* was electronically filed with the Clerk of Court using the Appellate E-Filing System, which will automatically send email notification of such filing to the attorneys of record. A copy of the foregoing will be sent to Intervenor Gabriel Fineman via electronic mail.


CAREY S. BUSEN (DC Bar No. 982217)

EXHIBIT 1



District of Columbia
 Department of Housing and Community Development
 Rental Accommodations Division (RAD)
 1800 Martin Luther King Jr. Avenue SE, 2nd Floor
 Washington, DC 20020
 (202) 442-9505

RAD Date Stamp

2010 JUL 12 PM 2 55

RAD Form 23 (rev 09/10)

Tenant Petition / Complaint

This petition is filed under provisions of D.C. OFFICIAL CODE §§ 42-3501.01 et seq. (Supp. 2008) (DC Law 6-10 § 216).
 Please type or print clearly, complete all areas, and make sure to sign the form.
 ATTACH ADDITIONAL PAGES FOR RESPONSES, IF NEEDED.

RAD Use Only

Case number 301812	Intake Representative Lance Bradley	Date Filed 7/12/10
<input checked="" type="checkbox"/> Walk-in <input type="checkbox"/> Mail	Approved For Filing By	Date Approved For Filing

TO FILE THIS PETITION, TENANT(S) MUST PROVIDE:

- Proof of tenancy, including rent receipts, cancelled checks, or a copy of a lease.
- Copy of any Notice to Vacate and/or Notice of Increase in the Rent Charged
- Original & 4 copies of this Petition/Complaint and all documents submitted in support of this Petition/Complaint

Part 1 – Tenant Information

Who is filing this petition? <input checked="" type="checkbox"/> Tenant <input type="checkbox"/> Tenant Representative <input type="checkbox"/> Tenant Association <input type="checkbox"/> Group of Unassociated Tenants			
Name of tenant(s), tenant association, or representative Gabriel Fineman		Email Address gabe@gfineman.com	
Cell phone 202-290-7460	Home phone 202-290-7460	Work phone	
Date when you became a tenant of the property for which this petition is being filed: 12/22/2013		Current monthly rent you are charged \$2,215	
Street address of property that is subject of petition/complaint			
Street Address (No P.O. Box) 3003 Van Ness Street, NW			
Unit(s) W-1131	City Washington	State DC	Zip Code 20008
Current Address of Tenant(s) (if different than above)			
Street Address (No P.O. Box)			
Unit	City	State	Zip Code
Petitioner(s)' Representative (Attorney or Other) information (if applicable)			
Name of Representative		Email Address	
Cell phone	Home phone	Work phone	
Street Address (No P.O. Box)			
Unit	City	State	Zip Code

Part 2 – Housing Provider Information

Name of Owner of Housing Accommodation
 Smith Property Holdings Van Ness L.P. Email Address

Cell phone Home phone Work phone

Owner's Street Address (No P.O. Box)
 3003 Van Ness Street, NW

Unit City State Zip Code
Washington DC 20008

Title/Name of Agent of Owner (check the appropriate box for Title):
 Avis Duvall, Agent Property Manager Real Estate Agent
 Other: agent Email Address

Cell phone Home phone Work phone

Agent's Street Address (No P.O. Box)
 3003 Van Ness St, NW

Unit City State Zip Code
Washington DC 20008

Part 3 – Previously Filed Tenant Petitions for this Housing Accommodation or Rental Unit (1985 to present) (ATTACH ADDITIONAL PAGES, IF NEEDED)

Petition Number	Filing Date	Current Status (check the box)	Date of Decision/Order
		<input type="checkbox"/> Open or <input type="checkbox"/> Closed	
		<input type="checkbox"/> Open or <input type="checkbox"/> Closed	
		<input type="checkbox"/> Open or <input type="checkbox"/> Closed	
		<input type="checkbox"/> Open or <input type="checkbox"/> Closed	
		<input type="checkbox"/> Open or <input type="checkbox"/> Closed	

Part 4 – Tenant Complaint

I/We believe that the following violation(s) of the Rental Housing Act of 1985, as amended, (the Act) at D.C. OFFICIAL CODE §§ 42-3501.01 et seq. (Supp. 2008) has/have occurred (check below):

Rent Increase

- A. The building where my/our Rental Unit(s) is/are located is not properly registered with the RAD.
- B. The rent increase was larger than the increase allowed by any applicable provision of the Act.
- C. There was no proper 30-day notice of rent increase within 30 days of the effective date of the increase.
- D. The Housing Provider did not file the correct rent increase forms with the RAD. (RAD form 9)
- E. (See N.)
- F. The rent was increased while my/our Rental Units was/were not in substantial compliance with the D.C. Housing Regulations.
- G. The rent ceiling exceeds the legally-calculated rent for my/our units.
- H. The rent charged is in excess of the rent ceiling for my Rental Unit.
- I. Improper notice of RAD form 8 to tenant (Notice in adjustment of rent charged)

Part 4 – Tenant Complaint (continued)

Services and Facilities

- I. Services and/or facilities provided as part of my/our rent have been permanently eliminated.
- J. Services and/or facilities provided as part of my/our rent have been substantially reduced.
- K. Services and/or facilities, as set forth in the Voluntary Agreement filed with and approved by the Rent Administrator have not been provided as specified.

Retaliation/Notice to Vacate

- L. The Housing Provider, property manager, or other agent of the Housing provider has taken retaliatory action against me/us in violation of D.C. OFFICIAL CODE § 42-3505.02 (Supp. 2008).
- M. A Notice to Vacate has been served on me/us, which violates D.C. OFFICIAL CODE § 42-3505.01(Supp. 2008).

Security Deposit

- N. A security deposit was demanded of me/us by the Housing Provider, property manager, or other agent of the Housing Provider after the date when I/we moved in. No security deposit was demanded before I/we moved in by the Housing Provider, property manager, or other agent of the Housing Provider.
- O. The Housing Provider, property manager, or other agent of the Housing Provider has improperly withheld my security deposit after the date when I/we moved out.
- P. The Housing Provider, property manager, or other agent of the Housing provider failed to return the interest on my security deposit after the date when I/we moved out.

Establishment or Operation of a Tenant Organization

- Q. The owner interfered with (1) distribution of literature in common areas, including lobby areas, (2) placing of literature at or under tenants' doors, (3) posting of information on all building bulletin boards, (4) assistance to tenants to participate in tenant organization activities, (5) convening of tenant or tenant organization meetings, (6) formulation of responses to owner actions, (7) that the owner or management company modify services and facilities, and/or (8) any other activity reasonably related to the establishment or operation of a tenant organization, in violation of the provisions of D.C. OFFICIAL CODE §§ 42-3505.08(d)(1)-(8) (Supp. 2008).

Part 5 - Complaint Details

Use this space to describe in detail the events, dates, experiences, and observations that cause(d) you to file this Tenant Petition/Complaint.

THIS SECTION MUST BE COMPLETED IN ORDER TO FILE THIS TENANT PETITION/COMPLAINT.

ATTACH ADDITIONAL PAGES, IF NEEDED.

The Housing Provider filed an incorrect RAD form 9 with the RAD and has failed to correct the filing despite notice. This form 9 is a summary of form 8 notices to tenants that is a simple form containing only two numbers that are not computed: 'Your current rent charged' and 'the dollar adjustment to your rent charged'. The Housing Provider incorrectly stated the rent charged in my case by almost \$1,000.

This petition is only to correct the line entitled "Your current rent charged" on my RAD form 8. It does not deal with the lease, how the rent is calculated, flex-leases, concession leases, rent ceilings or other items often decided in a civil court.

The term "Your current rent charged" is four words. The word 'your' clearly refers to the petitioner who received the notice. 'Current' mean now, or in this case, October 2015. Rent is a term defined as follows in DC Code section §42-3501.03 (28) that applies to all of chapter 35, including the filing of RAD form 8.

RAD Form 23 (rev 09/10)

Part 5 - Complaint Details (continued)

>"Rent" means 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. [DC Code section §42-3501.03 (28)]

Note that this definition is independent of any methods of calculation to derive the amount of the rent. It is not dependant on any contract between the Housing Provider and the tenant, or related to any rent ceiling or concession or previous RAD form 8 filing.

Finally the word "charged" seems redundant since it presumed in the definition of "rent". However, since the amount demanded or received might differ from what is charged, that definition is important. It means 'the price demanded for something' (Webster) or 'an amount of money that you have to pay' (McMillan) or 'demand (an amount) as a price from someone for a service rendered or goods supplied' (Oxford). In all cases, it is the amount of money the housing provider asked for each month and expected to receive or else he could go to Landlord Tenant Court to have me evicted.

In my case, I allowed the housing provider to debit my bank account each month and thus the three amounts were always the same. The amount that the Housing Provider demand from my bank, receive by ACH transfer and charged to my account each month was \$2,329. That is clearly the then current rent for my unit plus related garage space (that had a separate charge of \$160 per month). This means that my actual rent charged, demanded and received for my unit was \$2,169. However, the amount of current rent charged shown on RAD form 8 was falsely stated as \$3,114.

Please require the Housing Provider to correct this form to show the rent charged as \$2,169 and recompute the other numbers. Please order the Housing Provider to correctly state the current rent charged and properly compute this form in the future both for my unit and for all other units.


Please fine the Housing Provider the amount listed below (\$5,000) for willfully making a false statement in a document filed under this Act [DC Code § 42-3509.01(b)(2)] and a similar amount for any other false filing of a RAD form 9 or false presentation of a RAD for 8 for other tenants of this Housing Accommodation.

Part 6 - Certification

I/we understand that:

- It is my/our responsibility to report any substantive changes in the information provided here, while this Complaint is pending.
- Any Tenant Petition/Complaint filed with the RAD must result from a true and valid impression that a violation of the Act or the Security Deposit Act has occurred.
- A Tenant Petition/Complaint must contain a description or explanation of the alleged violation of the Act.
- Any person who willfully makes a false statement in any document filed under the Act shall be subject to a fine of not more than \$5,000 for each violation.

I/We hereby certify that the information that I/we will give on this form, according to the best of my knowledge and belief, is correct.

Signature of Tenant/Tenant Representative (check box that applies) <input type="checkbox"/> President <input type="checkbox"/> Officer <input type="checkbox"/> Agent <input type="checkbox"/> Other	Date
	7/12/2016
Signature of Tenant Association (check box that applies) <input type="checkbox"/> President <input type="checkbox"/> Officer <input type="checkbox"/> Agent <input type="checkbox"/> Other	Date

RESIDENTIAL LEASE – TER. SHEET



Lessor: Equity Residential Management, L.L.C.,
as agent for the Owner

Community: 3003 Van Ness

Premises: W-1131

Address: 3003 Van Ness St. NW

Premises Address: 3003 Van Ness St NW #W1131
Washington, DC, 20008

Washington, DC, 20008
(202) 244-3100

Residents: Gabriel Fineman

Guarantor:

Occupants:

LEASE TERM

Commencement Date: 12/22/2015 **Expiration Date:** 12/21/2016 **Renters' Insurance Required:** Yes

Lease Term Expiration: You must provide us with a written notice of your intent to vacate at least 60 days prior to your move-out date. If you fail to give the required notice and move out anyway, you will be charged insufficient notice rent for the number of days your notice is short. The insufficient notice rent shall be charged at the per diem rental rate that is in effect on your move-out date.

Total Deposits Required: \$200.00

Total Monthly Rent: \$3321.00

(Includes all monthly recurring charges listed below)

Charge Description	Amount	Charge Description	Amount	Charge Description	Amount
Monthly Apartment Rent	3161.00				
Monthly Reserved Parking	160.00				

Assigned Item Description
Garage

Concessions: Monthly Recurring Concession: \$946.00 /per month. Total Amount of One-Time/ Non-Recurring Concession: \$0.00 . Total Amount of Other Recurring Concessions: \$0.00 . The Total Monthly Rent shown above will be adjusted by these lease concession amounts. If this Lease is terminated early, you may be required to pay us a portion of your concession as set forth in the Lease Concession paragraph of the Terms and Conditions.

Total Other Fees and Charges: \$0.00

(Includes all charges listed below)

Charge Description	Amount	Charge Description	Amount	Charge Description	Amount

Approved Pets	Type	Breed	Weight	License/Tag

For additional information regarding our pet policy, please refer to the Resident Handbook and Community Policies.

Resident Account Number: 29819-W-1131-2

LESSOR PAYS UNCHECKED UTILITIES / RESIDENT PAYS CHECKED UTILITIES

- Electricity:
- Gas/Heating Oil:
- Water:
- Sewer:
- Central Boiler:
- Cable: Direct billed by the provider. You pay the provider
- Garbage Removal:
- Internet: Direct billed by the provider. You pay the provider

Late Fees: Your rent is due on the 1st of each month. If we do not receive your rent and other recurring charges, in person before the close of business, or electronically by 11:59 pm local time*, on day 5, you will be charged a late fee as follows:

15% on the 6th

*Credit card or other payments made through our telephone service must be received by 4:59 pm central time.

Returned Item Fees: If your payment fails to clear the bank for any reason, you will be charged a returned item fee of \$40.00 per item.

Additional Lease Addenda
Residential Lease - Terms and Conditions Requirements and Disclosures Addendum Construction and Rehab Addendum Concession Addendum

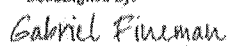
By signing this Term Sheet, you acknowledge that each of the Additional Lease Addenda are attached to this term sheet and are therefore made a part of the Lease. You further acknowledge that you have read and that you agree to all of the provisions set forth in this Term Sheet and the Additional Lease Addenda.

You also acknowledge that you have received, or will receive, (separate from this Lease) a copy of the Resident Handbook and Community Policies and a copy of the Move-In/Move-Out Inspection Form. You acknowledge and agree that the provisions contained in these two documents are incorporated into this Lease and that you will abide by the policies and procedures set forth in these documents.


You specifically acknowledge that this Lease contains provisions extending the Lease Term if you stay beyond the Expiration Date set forth on the first page of this Term Sheet or if you fail to provide timely written notice of your intent to vacate the Premises at least 60 days prior to the Expiration Date.

READ THIS TERM SHEET BEFORE SIGNING

Residents (ALL Residents must sign and date):

DocuSigned by:

 10/21/2015 Date _____ Date _____ Date _____
 Gabriel Fineman
 _____ Date _____ Date _____ Date _____
 _____ Date _____ Date _____ Date _____

Lessor: Equity Residential Management, L.L.C.,
as agent for the Owner

By:  10/21/2015
It's: Authorized Representative Date

Resident Account Number: 29819-W-1131-2

RESIDENTIAL LEASE – TERMS AND CONDITIONS (District of Columbia – Rent Controlled Properties)

These Terms and Conditions are attached to and incorporated by reference into the Residential Lease - Term Sheet signed by Resident ("you") and Lessor ("us") with respect to your rental of the Premises identified on the Term Sheet. The Term Sheet, these Terms and Conditions, the Resident Handbook and Community Policies, the Move-In/Move-Out Inspection Form, and all Lease addenda or other agreements that may be referenced on the Term Sheet or attached hereto, make up the Lease. The party executing this Lease as the Lessor is Equity Residential Management, L.L.C., which is acting as the managing agent for the owner of the Community. Each person living in the Premises that is 18 years of age or older must sign the Lease as a resident. All others living in the Premises must be designated as occupants. Each person signing the Lease is jointly and severally liable for all of the various resident obligations under the Lease. That means that every individual resident, including all co-residents, is responsible for the entire rental amount and other obligations, even if, as roommates, you have made arrangements among yourselves to allocate the rent or other payments among yourselves.

1. Lease Term/Month-to-Month Tenancy: The term of this Lease is set forth in the Lease Term section of the Term Sheet. At the end of your Lease term, if you do not move out or, your Lease will automatically renew on a month-to-month basis. If you stay in the Premises on a month-to-month basis following the term of the Lease, you agree that we have the right to increase your rental rate once each year, on the anniversary of your Lease start date.

2. Notice to Vacate/Early Termination:

a. If you plan to move out of the Premises at any time during your Lease term, you must provide us with a written notice of your intent to vacate at least 60 days prior to your move-out date. Once you are in a month-to-month status, you must give 30 days' written notice prior to your move-out date. If you submit your notice to vacate and fail to move out on or before the notice date you provide to us, then, for each day you hold over, you will be charged holdover rent equal to two times your then-current per diem rental rate. If you fail to give the required notice and move out anyway, you will be charged insufficient notice rent for the number of days your notice is short. The insufficient notice rent shall be charged at the per diem rental rate that is in effect on your move-out date. If you move out without providing any notice at all, then, for the purposes of this paragraph, your move-out date will be considered to be your notice date.

b. You have no right to terminate your Lease prior to the end of your Lease term. If you terminate your Lease early, you will be in default under the Lease, and you will be responsible for paying early termination rent at the per diem rental rate that is in effect on your move-out date until the earlier of (i) the end of your Lease term; or (ii) the date a new resident moves into the Premises. If we offer you an early termination settlement as an alternative to paying early termination rent, you must make the election to enter into the settlement at the time you are planning to move out early and pay the early termination settlement amount before you vacate the Premises.

c. If you move out within the last 30 days of your Lease term, you will first be charged early termination rent through your Lease end date, with the balance of your notice requirement, if any, being charged as insufficient notice rent. In all cases where you are charged early termination rent or insufficient notice rent, if a new resident moves into the Premises during the charge period, we will issue a credit to you for the number of days that the new resident was in possession of the Premises.

3. Move-Out Obligations: You will not be considered as having moved out, vacated and surrendered possession of the Premises until you have removed all of your personal belongings from the Premises and returned all keys, access cards and remotes to us by the date indicated in your Notice to Vacate. If you move out and fail to return all keys, access cards and remotes to us, you agree that your move-out date will be determined by us in our reasonable judgment, and that you will be charged for any keys, access cards and remotes that are not returned to us. When you move out, you must leave the Premises in substantially the same clean, undamaged, and ready-to-rent condition as existed when you took occupancy of the Premises, less ordinary wear and tear. You will be charged for replacement of any damaged or missing items, as well as all costs to clean or repair any portion of the Premises, carpeting, flooring, wall coverings, paint, counters, trim, window treatments, doors, windows, or appliances which are damaged, dirty, or unsanitary, and the removal of all trash and personal property from the Premises. Cleaning and repair of damage due to smoking of any kind are not considered ordinary wear and tear. In order to avoid being charged for cleaning carpets in the Premises after you move out, you must have the carpets professionally cleaned, as documented by a receipt you provide to us.

4. Rent: You agree to pay the amount shown in the Total Monthly Rent section of the Term Sheet and all additional rent (described below), in advance and without demand, on or before the first day of each calendar month. All fees and charges described on the Term Sheet or in this Lease, including, but not limited to, late charges, returned item fees and utility bills that are payable to us or to our utilities billing vendor, are "additional rent." Total Monthly Rent and additional rent are, together, referred to in this Lease as "rent." All rent must be paid in U.S. dollars and we reserve the right to require that payments be made in one lump sum, even if there are multiple residents listed on the Lease. We strongly encourage residents to use on-line or electronic payment methods. We may elect to centralize the collection sites for non-electronic payments and/or require that all payments be made electronically. If we do so, we will notify you in writing of the requirement, and, in the case of centralized collections, the address to which you should send your payments, as well as the effective date for such change. If we designate an off-site receivables location, you agree that all rent and other payments directed to that location must be received at the designated location on or before the due date. We do not accept cash, third party personal checks, or checks without a preprinted name and address of the account holder. If you pay by personal check, you are authorizing us to scan the check and convert it into a one-time electronic debit from the bank account against which the check was written. Unless prohibited by law, we reserve the right to refuse payments by personal check, automatic debit or other form of electronic payment if, for example, you have submitted previous checks or other payments to us that have failed to clear the bank. We are not required to re-deposit a dishonored check.

5. Late Charges and Returned Item Fees: You acknowledge that if we do not receive your rent or other lease related charges on time, we will incur costs, the exact dollar amount of which is difficult or impracticable to determine. Such costs may include, among other things, lost use of funds, bank or other charges, costs incurred in connection with accounting for and attempting to collect late payments; collection expenses; and other administrative and accounting costs. As a result, if we do not receive your rent when it is due, we will assess late fees as described in the Late Fees section of the Term Sheet. Similarly, if any payment to us (electronic or otherwise) is returned or otherwise rejected by your financial institution for any reason, we will assess a returned item fee as described in the Returned Item Fees section of the Term Sheet, as well as all applicable late fees. The fees described in this paragraph are in addition to any other remedies we may have in the event of your default under the terms of this Lease.

6. Application and Acceptance of Payments: Unless we are prohibited from doing so by law, we will apply the payments you make to us in the order of priority we determine, regardless of any notations that you make on checks, money orders or other forms of payment. We reserve the right to accept any amount less than the balance due at any given time and, if we do accept a lesser amount, such acceptance will not represent a waiver of

any right we have to pursue you for the outstanding balance. If you are consistently late with your rent payments, we reserve the right to terminate this Lease.

7. Security Deposit: Upon signing this Lease, you have agreed to give us deposits as set forth in the Total Deposits section of the Term Sheet. These Total Deposits are not prepaid rent, but, rather are a good faith deposit for your fulfillment of your Lease obligations, as well as a contingency against damages to the Premises. The Total Deposits will be deposited in an interest bearing account in a financial institution in the District of Columbia established for the sole purpose of holding such deposits. We will pay interest on the Total Deposits as required by the law of the District of Columbia. You are not entitled to apply any part of your Total Deposits against rent or other Lease obligations during the time you are occupying the Premises, nor will we use any part of the Total Deposits during your Lease Term to offset charges incurred during such timeframe. Consistent with the requirements of state law, after you move out, we will inspect the condition of the Premises, and charge, against your Total Deposits, for any damages, beyond ordinary wear and tear, excessive cleaning or trash removal charges, as well as any outstanding balances you owe us. If any balance remains after applying all such charges, we will refund it to you within 45 days from the date you vacate the Premises. If the move-out charges and/or other unpaid amounts remaining on your resident account at the time you move out exceed the amount of the Total Deposits, you agree to pay us the difference. We reserve the right to charge pre-judgment interest on any balance owing after you move out. Such interest will begin to accrue when the balance, if any, shown on the Statement of Deposit Account we issue to you is not paid within 30 days following the date set forth on the Statement of Deposit Account. The interest charged on the outstanding balance will not exceed the rate of 18% per annum or the highest rate allowed by law, whichever is less, and will be reflected on the Statement of Deposit Account that will be issued to you after you move out. We may inspect the Premises within three days (excluding Saturdays, Sundays and holidays) before or after the termination of your tenancy. If we conduct the inspection, we will notify you in writing of the time and date of the inspection at least ten days prior to the scheduled inspection. If there are multiple co-residents on this Lease, you agree that, at the time you provide notice to move out, you will (i) provide a forwarding address to us for receipt of the Statement of Deposit Account; and (ii) select one co-resident, who resides at the forwarding address, to receive the refund of any Total Deposits paid. You may also have the opportunity, upon providing an account number to us, to select to have your refund, if any, directly deposited into the bank account of the selected co-resident. If you fail to provide us with a forwarding address and co-resident designation, we will, within the timeframe required by state law, (i) make the refund check payable to all residents listed in the Lease, and (ii) mail the refund check to the address provided or, if no forwarding address is provided, we will mail the refund check to the Premises address for forwarding by the U.S. Postal Service.

8. One-time Fees: If you have paid other fees and charges as set forth in the Total Other Fees and Charges section of the Term Sheet, you acknowledge and understand that such other fees and charges are not refundable, are not considered to be a security deposit or part of the Total Deposits, and will not be applied as a credit toward any amounts owing by you at the time you move out.

9. Lease Concessions: If you received a Lease concession, you must fulfill all of your obligations under this Lease for the entire Lease term. Any concession that is designated on the Term Sheet as a one-time or upfront concession must be applied first toward your rent during the first month of the initial term and to consecutive months thereafter until the balance of the concession credit reaches zero. If this Lease is terminated early, you must repay a prorata portion of the total Lease concessions you received based on the number of days remaining in your Lease term after you move out.

10. Failure to Pay Deposits, Other Fees and Charges and First Month's Rent: If you fail to pay any deposits, other fees and charges and the first month's rent (or a prorated amount if the first month is a partial month) prior to moving in, you will be in default under the Lease and we can refuse to give you possession of the Premises until you pay such amounts.

11. Delay in Delivery of Possession: You are responsible for paying rent effective with the Commencement Date shown in the Lease Term section of the Term Sheet. If we are unable to give you possession of the Premises on the Commencement Date, we will abate the rent until we are able to do so. You agree that you will not seek reimbursement from us for any cost incurred by the delay of possession, including, but not limited to, storage or temporary lodging. Subject to applicable law, if we fail to deliver the Premises to you within 30 days from the date promised, either you or we may terminate the Lease by providing written notice to the other. Requirements for us to make repairs or clean the Premises that do not affect your ability to occupy them will not constitute a delay or entitle you to a rent abatement. If we are unable to deliver the Premises but offer you comparable accommodations at no additional cost, you will not be entitled to a rent abatement.

12. Rental Application and Resident Information Updates: You have provided certain information in your Application for Rental that we have relied on in connection with renting the Premises to you. You agree to promptly notify us if any of the information you provided changes. If any of the information you provided to us on your Application or in any subsequent updates is materially false, incomplete or misleading, or if you fail to notify us of any change or if you fail to update your information, you will be in default of your obligations under this Lease, you will be in default of your obligations under this Lease.

13. Disclosure of Information: To the extent permitted by applicable law, we may provide information about you, your co-residents, or any of your occupants to third parties such as law enforcement personnel, future landlords, mortgagees, attorneys, collection agencies, and consumer reporting agencies for law-enforcement, governmental, credit, rent payment history, or other business purposes. If we provide such information to third parties at your request, we reserve the right to charge an administrative fee for doing so. If you and your co-residents have a guarantor, we may, without notifying you, provide information to the guarantor.

14. Utilities and Utility Cost Adjustments During the Lease Term: You are responsible for paying for all of the utilities identified on the Term Sheet that are checked, and any utilities that we have not specifically agreed to pay. In some cases, the utility service will be provided to you by the utility company and you will pay the utility company directly. In other cases, your utility bill may be calculated based on a submeter reading, an allocation method, or a flat fee (as more fully described in the Utilities Addendum attached to this Lease), in which case you will receive a bill for such utilities from our billing vendor and you will either pay us directly or send your payments to our billing vendor. The Utilities section of the Term Sheet identifies which utility bills are to be billed by and paid directly to the utility company and which utility bills are to be billed by our billing vendor and either paid to us directly or, in some cases, sent to our billing vendor. Amounts due for utility services that are billed by our billing vendor are considered additional rent, irrespective of whether you pay us directly or whether our billing vendor collects such amounts on our behalf. In all cases, your failure to pay the utilities in full when due shall be considered a default under the Lease. You will not allow utilities that are in your name to be disconnected for non-payment or any other reason. If you do not connect the utilities as of your Lease start date or, if you disconnect the utilities early before moving out, and the utilities remain in our name during such timeframes, we will bill you for the utility charges incurred for the days you were in possession of or living in the Premises, along with an administrative fee of \$50.00 for each utility bill we process on your behalf. You agree that this administrative fee is a liquidated damages provision and that such amount is a fair and reasonable estimate of the administrative costs we incur as a result of paying these bills on your behalf. Because many utilities have long billing cycles, we may not have the actual utility bill in hand at the time we process your move out charges. In that circumstance, we reserve the right to estimate the utility charges for you based on typical or average consumption. We make no representation or warranty with respect to the amount of any estimated or actual utility costs associated with the provision of utility services to the Premises or the Community. To the extent we make a request of you in connection with any analysis of overall utility consumption at the Community, you authorize us,

as your agent, to request and receive copies of your utility billing records directly from the utility provider. You acknowledge that we cannot be held responsible for any outages, interruptions or fluctuations in utility service that are provided to the Premises, and that you have no right to claim constructive eviction or to receive any offset or reduction of rent or diminished rental value of the Premises as a result of any such outages, interruptions, or fluctuations.

15. Right to Enter: Subject to notice requirements imposed by applicable law, we and our employees and agents may enter the Premises during reasonable hours for inspections, maintenance, repairs and pest control procedures. We also reserve the right to enter the Premises at any time in the event of an emergency, to check for abandonment, or to abate a nuisance. If you submit a service request to us, such request for service will constitute your permission for us to enter the Premises to do the requested work. You authorize us, in the event of your death or incapacity, to grant access to the Premises and the contents therein to the individual named in the emergency contact section of your Application for Rental or otherwise named by you in connection with updating your resident information. Once we grant access to such person, he/she may remove all personal property from the Premises and dispose of it in accordance with applicable law. You hereby release and discharge us from any liability, claim or damages arising out of or in connection with our granting such access to the person you named. Assuming you have submitted a notice to vacate to us, we may, during the last 30 days of your tenancy and without advance notice to you, show the Premises to prospective new residents during normal business hours. If it is necessary for you to temporarily move out in order for us to exterminate or for other reasons, you agree to do so upon at least seven days' notice or on shorter notice as may be reasonable under the circumstances. If you are forced to temporarily move out for more than one day because of a duty, condition or event that is our responsibility under this Lease or by law and, if we do not make substitute accommodations available to you, we will abate your Total Monthly Rent for the period of time you are unable to occupy the Premises.

16. Right to Exclude: We reserve the right to exclude from the Community you and any of your occupants or guests who violate this Lease or any of the Community's policies. We also reserve the right to exclude anyone who disturbs other residents or our employees and agents, as well as anyone we reasonably believe represents a potential threat to other residents or to our employees and agents. We may also exclude from the Community any person who refuses to show photo identification to us or to identify himself or herself as a resident, occupant or guest. We may deny you or any person access to the Premises, including by changing the locks, if any court or legal order restrains or bars you or such person from the Premises.

17. Liens or Sales by Lessor: This Lease is subject and subordinate to all present or future ground or underlying leases, loans, mortgages, deeds to secure debt or deeds of trust affecting the Premises and the Community which we or any subsequent owner of the Community may enter into. You hereby appoint us as attorney-in-fact to execute and deliver any and all necessary documents to evidence such subordination of the Lease. Foreclosure of any mortgage or any sale of the Community will not constitute a constructive eviction and, in the event of any such action, you will continue to pay your rent and perform your obligations under this Lease. Upon any foreclosure or sale, we will be released from all obligations under this Lease that accrue after the date of the foreclosure or sale and you will look solely to the then-current owner for the performance of Lessor's duties.

18. Criminal Activity: You agree that neither you, nor any of your occupants or guests will (i) engage in any criminal activity of any kind, including, without limitation, drug related criminal activity, prostitution or criminal street gang activity, on or near the Community, (ii) engage in any act intended to facilitate such criminal activity, (iii) use or permit the Premises to be used for, or to facilitate, any criminal activity, or (iv) engage in any acts of violence or intimidation or any threats of violence, verbal or otherwise, including, but not limited to, the discharge or brandishing of firearms or other weapons, on or near the Community or otherwise. For purposes of this section, "drug related criminal activity" includes, but is not limited to, the use of or the manufacture, sale, distribution, dispensation or possession with intent to manufacture, sell distribute, or dispense, marijuana or any other Controlled or Counterfeit Substance, as defined in the Controlled Substances Act (21 U.S.C. 802), as amended from time to time. One or more violations of the provisions of this paragraph will be considered a breach of the Lease and good cause for the immediate termination of your tenancy and your eviction from the Premises. Unless otherwise provided by law, proof of a violation of this paragraph shall not require criminal conviction, but may be based on our reasonable suspicion and a preponderance of the evidence. In addition, if you or any of your occupants have engaged in any criminal activity during the Lease term or otherwise, we may take action to terminate the Lease and pursue eviction-related remedies.

19. Use and Occupancy: The Premises are to be occupied and used solely as a private residence and by only those persons identified on the Term Sheet as residents and occupants. Conducting any kind of business in the Premises, or anywhere in the Community, is prohibited. However, a lawful business conducted "at home" by computer, mail or telephone is permissible if customers, clients, patients or other business associates do not come to the Premises for business purposes. The number of people living in the Premises is subject to applicable local occupancy standards. Only those residents and occupants identified on the Term Sheet, and, subject to the Community's occupancy standards, children born or a dopted during the Lease term, may occupy the Premises without our prior written consent. If someone stays with you for more than fourteen days (consecutive or otherwise) in any one month, we will consider such person to be an unauthorized occupant and, in order to allow such person to continue residing in the Premises, we must consent. If the person is age 18 or older, we may require him/her to complete an Application for Rental and pay an application fee. If we consent to such person's occupancy in the Premises, we also require that such person, unless he/she is a full-time student residing with a parent or guardian, be named on the Lease as resident. You agree to pay an administrative fee associated with the addition or replacement of co-residents. You further agree that this fee is a liquidated damages provision and that such amount is a fair and reasonable estimate of the administrative costs we incur as a result of your election to add or change co-residents. All co-residents who are added as residents to the Lease are accepting the Premises in as-is condition and are agreeing to be jointly and severally liable for the condition of the Premises. You are responsible for your conduct, as well as the conduct of your occupants and guests. You, your occupants and all guests will: (i) show due consideration for neighbors and not interfere with, disturb or threaten the rights, comfort, health, safety, convenience, quiet enjoyment and use of the Community by us, other residents and occupants and any of their guests, agents or invitees; (ii) not engage in abusive, threatening or harassing conduct toward us or any employees, agents or representatives or unreasonably interfere with our management of the Community; (iii) exercise reasonable care in the use of the Premises and maintain the Premises in a clean, safe and undamaged condition, ordinary wear and tear excepted; (iv) comply with all of the policies and procedures contained in the Resident Handbook and Community Policies we delivered to you via My.EquityApartments.com or otherwise; and (v) comply with federal, state and local laws, regulations, statutes and ordinances which are applicable to the Premises and your tenancy. We reserve the right to be the sole judge of acceptable conduct and to determine the appropriate action necessary to deal with unacceptable conduct, including, but not limited to taking action to terminate the Lease and to pursue eviction-related remedies.

20. Restrictions on Assignment and Subletting/Prohibition Against Short-Term Rentals:

a. You may not assign this Lease or sublet the Premises without our prior written consent. If we do consent to any assignment or sublease, you will remain fully responsible and liable for the payment of the rent throughout the remainder of the Lease term.

b. The Premises are not to be used or occupied as a hotel. Under no circumstances are you to rent space in the Premises to occupants on a short-term basis (for a period of time less than 30 days), or for any short-term occupancy that may be governed by or prohibited by state or local laws, including, but not limited to, those applicable to transient housing, code violations or hotel taxes. You are specifically prohibited from advertising the Premises for rental by short-term or transient occupants on sites such as Airbnb, craigslist, Expedia, Hotels.com or any other similar locator sites.

Should we become aware of any violation of these short-term stay provisions or incur any loss as a result of your violation of this provision, in addition to all other remedies we have under this Lease, you will indemnify us and assume full responsibility for any and all losses that we incur.

21. Repair and Maintenance: You confirm that you have inspected the Premises, found them in a clean, rentable, and undamaged condition (other than items listed in the Move-In/Move-Out Inspection Form that you completed or will complete), and that you accept the Premises in "as is" condition. If any part of the Premises is in need of maintenance or repair, you agree to notify us immediately. Damages and defects not itemized will be presumed to have first occurred during your occupancy of the Premises. You understand that you are responsible for keeping the Premises in a clean, sanitary and undamaged condition, ordinary wear and tear excepted. You are responsible for properly performing routine cleaning of all interior portions of the Premises. If you fail to keep the Premises clean (including, but not limited to eliminating dirt, filth, scum, grease, oil, mud, scuffs, holes, gouges, burns, stains, tears, cuts, rips, fleas, pests, foul scents or odors (including those relating to smoking), surface mold on caulking at the sinks, tub, shower and other locations, and other conditions which could have been avoided by careful use and routine cleaning), or if you, your occupants or any animals cause damage to the Premises in excess of ordinary wear and tear, you will be responsible for the costs to clean and/or repair such damage. Any such charges incurred during the Lease term will be considered additional rent.

22. Fair Housing Accommodations/Modifications: We are firmly committed to the principles of Fair Housing. If you or any person residing in the Premises, as a result of a disability, requires accommodations to our rules, policies, practices or services, or a physical modification to the Premises and/or the common areas of the Community in order to provide you or your occupants with equal opportunity to use and enjoy the Premises, you will notify us. If you require physical modifications to the Premises, we may require you to enter into a modification agreement identifying the modifications to be made and any restoration obligations you may have.

23. Military Clause:

a. If you become an active duty member of the United States Armed Forces during the Lease term, then, pursuant to the provisions of the Servicemembers Civil Relief Act ("SCRA") and other applicable laws, you may be released from your obligations under the Lease, without penalty, so long as you: (i) provide a copy of your official orders; (ii) provide at least 30 days' prior written notice of your anticipated move-out date; (iii) pay all outstanding balances and rent through your move-out date; and (iv) make satisfactory arrangements to pay all costs incurred by us to repair the damages caused by you, your occupants or guests, and pets, consistent with the Security Deposit paragraph above.

b. If you are an active duty member of the United States Armed Forces at the time you are signing this Lease, you affirm that the Lease end date does not extend beyond your anticipated discharge, retirement or release from the United States Armed Forces. Pursuant to the provisions of the SCRA and other applicable laws, you may be released from your obligations under the Lease, without penalty, so long as you: (i) provide a copy of your official permanent change-of-station orders or your official orders to deploy for a period of not less than 90 days; (ii) provide at least 30 days' written notice of your anticipated move-out date; (iii) pay all outstanding balances and rent through your move-out date; and (iv) make satisfactory arrangements to pay all costs incurred by us to repair the damages caused by you, your occupants or guests, and pets, consistent with the provisions of the Security Deposit paragraph above.

c. Notwithstanding the provisions of the Lease Concessions paragraph above, if you are exercising your right to terminate the Lease pursuant to the SCRA and this Military Clause paragraph, you will not be required to repay any portion of Lease concessions set forth on the Term Sheet. The release of any resident under this provision will not release any other resident or roommate unless the other resident is your spouse or dependent, as defined under the SCRA.

24. Resident Insurance. We strongly recommend that you secure a renters insurance policy covering your personal belongings, which also includes personal liability insurance covering your actions. Unless there is a prohibition imposed by affordability covenants or other restrictions applicable to the Premises, we require all residents to maintain a policy of liability insurance issued by an authorized insurance company that provides limits of liability in an amount of at least \$100,000 per occurrence. Unless the box labeled "Renters Insurance Required" on the Term Sheet is unchecked, you must furnish proof of insurance to us on or before the commencement date of the Lease and, assuming you enter into renewal leases with us, you must continue to provide evidence of coverage for all subsequent renewal terms. You can obtain such insurance through Residential Insurance Agency, LLC or through the insurance agent of your choice. If you select an insurance company other than Residential Insurance Agency, LLC, you must name the Community as an interested party under your policy. If you fail to pay for the liability insurance and/or you allow the expiration or cancellation of any liability insurance policy during your tenancy, without substitute insurance being put in place, this will be considered a default under the Lease.

25. Corporate Units: If the name in the Resident section of the Term Sheet is a company or business (and not an individual person), then the company assumes all responsibility for damage to the Premises and any loss incurred by us or any third party that is caused by any person living in the Premises. The company also agrees to indemnify us for all claims, damages, losses and expenses related in any way to the occupancy of the Premises. The company agrees to identify all persons living in the Premises and to provide written authorization to us to re lease keys, key cards, and/or access cards to such occupants. The company agrees to maintain, at its sole cost and expense, throughout the term of the Lease and any subsequent renewal terms, the following insurance: Commercial General Liability insurance on a form at least as broad as Insurance Services Office ("ISO") Commercial General Liability Coverage "occurrence" form CG 00 01 0196 or another ISO Commercial General Liability "occurrence" form providing equivalent coverage, providing broad form comprehensive general liability coverage, blanket contractual liability coverage, coverage for bodily injury (including death), property damage (including loss of use thereof), products and completed operations with an authorized insurance company with a rating of A X in a minimum amount of One Million Dollars (\$1,000,000) per occurrence. The company must be named the insured and the company shall name the owner of the property, ERP Operating Limited Partnership, Equity Residential, Equity Residential Management, L.L.C., and their affiliates and agents (collectively, the "Lessor Entities") as additional insureds under the required policy. In the alternative, the company may purchase renters liability insurance for the Premises from an insurance company of company's choosing or through the program made available to residents at the Community through Residential Insurance Agency, LLC. If company elects to purchase such renters liability insurance through a company other than Residential Insurance Agency, LLC, the company must name the Community as an Interested Party under the policy. In any event, the company must, on or before the commencement date of the lease, deliver to us a certificate of insurance evidencing the coverage provided, and provide replacement certificates fifteen (15) days prior to the expiration of any required coverage. Except where prohibited by law, if the company fails to obtain and maintain the insurance as required by this paragraph, the company will be in violation of the Lease. In such event, we will send a written notice to the company demanding that it cure the violation by procuring the insurance and supplying evidence of coverage to us. If the company fails to supply evidence of such insurance to us on or before the date set forth in our notice, we may procure such insurance on the company's behalf and charge the company for the amount of the premium paid to the insurance company, not to exceed \$150.00 per year, along with an administrative fee of \$40.00. The company agrees that this administrative fee is a liquidated damages provision and that such amount is a fair and reasonable estimate of the administrative costs we will incur as a result of procuring the liability insurance coverage for the company. The premium payment made by us on the company's behalf, and the administrative fee we charge to procure the insurance for the company, will be considered additional rent. If the company fails to pay for the liability insurance and/or the company allows the expiration or cancellation of any liability insurance policy during the company's tenancy, without substitute insurance being put in place, this will be considered a default under the Lease.

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26. Default Remedies: If you fail to perform any of your obligations under this Lease, we may exercise all of our rights under this Lease, at law or in equity. This may include giving you notice to correct or cure such default, taking action to recover possession of the Premises via the eviction process or otherwise, and/or terminating the Lease, all in accordance with applicable law. In addition, we can recover from you all damages, costs and expenses, including, among other things, damage to the Premises, cleaning and trash removal charges, delinquent Total Monthly Rent and additional rent (described in the Rent paragraph above) such as utilities, late fees, and returned item fees. If you terminate your Lease early, skip or are evicted, we can also recover early termination rent for the time it takes for a new resident to move in or until the end of your current Lease term, whichever comes first. In cases where the default is due to non-payment of rent, you hereby expressly waive the right to receive from us a 30 day notice of such payment-related lease violation, and the Lease is hereby terminated. If the Lease is terminated early, you must also repay us a portion of the concessions you received as described in the Lease Concessions paragraph above. In all cases, we reserve the right to report your payment history, outstanding balances, returned item fees, late fees, defaults, and other payment-related activity to consumer reporting agencies who track such information.

27. Abandoned Property: You understand that if you leave personal property in the Premises after you move-out or if you put your property in areas of the Community that are not designated for your use, we can determine that such property has been abandoned and we can take steps to remove or dispose of the property consistent with applicable laws.

28. Notices: All notices that we provide to you will be considered delivered when we put them in the U.S. Mail and send them via first class or certified mail; when we personally hand them to you or someone else who is living in the Premises, or when we leave them in the Premises when no one is home by attaching them to the outside of the door. All notices from you will be considered delivered when you put them in the U.S. Mail addressed to the management office and send them via first class or certified mail, or when you personally deliver them to one of our employees at the management office during normal business hours. By providing us with your e-mail address and cell phone number, you agree that we may communicate with you from time to time via e-mail, telephone calls and/or text messages (message and data rates may apply). By entering into this Lease, you expressly authorize us to contact you in such manners. If you wish to opt out of receiving e-mail communications, please unsubscribe using the link at the bottom of the emails. If you wish to opt out of receiving text messages, please following the instructions at the end of the text. If you wish to opt out of receiving calls to your cell phone, please make that election by notifying the management office. The person designated as the on-site manager for the Community is the person authorized to act on our behalf in connection with this Lease. More formal notices, including service of process, can also be made by serving our registered service agent. In addition to U.S. mail and personal delivery options, lease renewal offers may be delivered to you via e-mail, text message and/or via a link to our resident website, My.EquityApartments.com.

29. Liability: To the maximum extent permitted by law, you agree that you will look solely to the owner's interest in the Community for the recovery of any judgment against us and that the owner, the management company, and any of their related and affiliated entities (and any of their officers, directors, trustees, employees, partners, shareholders, insurers, agents and representatives) will never be personally liable for such judgment. Except to the extent prohibited by law, we will not be liable for any damage, loss or injury to persons or property occurring in the Premises or in other areas of the Community. To the fullest extent permitted by law, you agree to hold us harmless and to indemnify us from any such liability or claim.

30. Fire and Casualty: If the Premises are damaged due to fire, explosion, casualty or any other health/safety issue which is not a result of your negligence or intentional conduct (or the negligence or intentional conduct of any person living in the Premises or any guest of such person), we may elect, in our sole discretion, to repair or re-build the Premises. Rent shall remain due and owing unless we, in our sole discretion, determine that the Premises or the building is uninhabitable. No penalty shall accrue against us for any reasonable delay in repairing the Premises by reason of adjustment of insurance proceeds, labor disputes, or any other cause beyond our reasonable control. If you are unable to live in the Premises while we conduct the repairs, your rent will be abated during the timeframe the repairs are being conducted. However, if we provide alternative accommodations at our expense during such repair, the rent will not be abated. Finally, if the damage to the Premises is caused by your negligence or intentional conduct (or the negligence or intentional conduct of any person living in the Premises or any guest), the rent for the Premises will not be abated, you will be responsible for paying rent on the Premises and for any costs we incur to repair the damage, and we will not provide alternative accommodations to you. If we elect to not repair the Premises or if the Premises are substantially or totally destroyed, we may elect to terminate this Lease.

31. Waivers: Our failure to insist upon strict compliance with the terms of this Lease or any delay by us in enforcing your obligations under the Lease will not constitute a waiver of our right to act on other breaches or to make demands on you to perform. Your obligation to pay rent during the Lease term or during your continued occupancy of the Premises will continue notwithstanding our issuance of any notice, demand for possession, notice of termination of tenancy, institution of any action or forcible detainer, or any other act which might result in the termination of your right to live in the Premises. Unless otherwise restricted by applicable law, our acceptance of rent from you after it falls due or after knowledge of your breach of any obligations under this Lease is not a waiver of our rights under this Lease nor is it an election to not proceed under any provision of this Lease or the law.

32. Severability: If any provision of this Lease is determined to be illegal, invalid, or unenforceable under present or future laws which are in effect during the Lease term, then, we will substitute similar provisions or language that will make such clause or provision legal, valid, and enforceable. If substitute provisions are not available, then the illegal or unenforceable provision shall be removed from the Lease, but the remaining provisions in the Lease shall remain intact.

33. [Intentionally Omitted]

34. Laws Governing this Lease/Venue: This Lease shall be governed by the laws of the state in which the Community is located, and all legal action arising from this Lease shall be tried in the county where the Community is located.

35. Written Agreement: This Lease, which includes the Term Sheet, these Terms and Conditions, the Resident Handbook and Community Policies, the Move-In/Move-Out Inspection Form, and all Lease addenda or other agreements that may be referenced on the Term Sheet or attached hereto, contains our entire agreement. We both acknowledge that there are no oral understandings between us, and neither of us have relied on any representations, express or implied, that are not contained in this Lease.

36. Joint and Several Liability: Each resident, including all co-residents, is jointly and severally liable for each and every provision of this Lease.

37. General: You confirm that you are of legal age to enter into a binding Lease for lodging.

**DISTRICT OF COLUMBIA
REQUIREMENTS AND DISCLOSURES ADDENDUM**

This District of Columbia Requirements and Disclosures Addendum ("Addendum") is dated and effective as of the date on the Residential Lease - Term Sheet (the "Term Sheet") to which this Addendum is attached and made a part of (the "Lease") and is made by and between Lessor and Resident for the Premises at the Community identified in the Lease.

Pursuant to Title 14 of the District of Columbia Municipal Regulations, we are required to provide you with notice of certain housing code provisions, as follows:

300 NOTICE TO TENANTS OF HOUSING CODE PROVISIONS

300.1 The owner of each habitation shall provide to each existing tenant, and shall at the commencement of any tenancy provide to the tenant, a copy of the provisions of this chapter and a copy of the following sections of chapter 1 of this subtitle:

- (a) Chapter 1, § 101 (Civil Enforcement Policy); and
- (b) Chapter 1, § 106 (Notification of Tenants Concerning Violations).

AUTHORITY: Unless otherwise noted, the authority for this chapter is contained at paragraphs 28 and 46 of section 7 of An Act Making appropriations to provide for the expenses of the government of the District of Columbia for the fiscal year ending June thirtieth, nineteen hundred and three, and for other purposes ("Act of 1902"), Public, No. 218, 32 Stat. 590, approved July 1, 1902, as amended by: An Act approved July 1, 1932 to amend section 7 [of the Act of 1902], Public, No. 237, 47 Stat. 550; and An Act approved July 22, 1947, Public Law 215, 61 Stat. 402.

SOURCE: The Housing Regulations of the District of Columbia, 5G DCRR § 2904, Commissioners' Order 55-1503 (August 11, 1955).

301 IMPLIED WARRANTY AND OTHER REMEDIES

301.1 There shall be deemed to be included in the terms of any lease or rental agreement covering a habitation an implied warranty that the owner will maintain the premises in compliance with this subtitle.

301.2 The rights, remedies, and duties set forth in this chapter shall not be deemed to be exclusive of one another unless expressly so declared or to preclude a court of law from determining that practices, acts, lease provisions and other matters not specifically dealt with in this chapter are contrary to public policy or unconscionable or otherwise unlawful.

SOURCE: The Housing Regulations of the District of Columbia, 5G DCRR §§ 2902, 2913, Commissioners' Order 55-1503 (August 11, 1955).

302 VOIDING LEASE FOR VIOLATION OF REGULATIONS

302.1 The leasing of any habitation which, at the beginning of the tenancy, is unsafe or unsanitary due to violations of this subtitle in that habitation or in the common space of the premises (whether or not those violations are the subject of a notice issued under this subtitle) of which the owner has knowledge or reasonably should have knowledge, shall render void the lease or rental agreement for the habitation.

302.2 After the beginning of the tenancy, if the habitation becomes unsafe or unsanitary due to violations of this subtitle in that habitation or in the common space of the premises (whether or not the violations are the subject of a notice issued under this subtitle), the lease or rental agreement for the habitation shall be rendered void if both of the following apply:

(a) The violations did not result from the intentional acts or negligence of the tenant or his or her invitees; and

(b) The violations are not corrected within the time allowed for correction under a notice issued under this subtitle (or, if a notice has not been issued, within a reasonable time after the owner has knowledge or reasonably should have knowledge of the violations).

SOURCE: The Housing Regulations of the District of Columbia, 5G DCRR § 2902, Commissioners' Order 55-1503 (August 11, 1955).

303 SIGNED COPIES OF AGREEMENTS AND APPLICATIONS

303.1 In each lease or rental of a habitation entered into after June 12, 1970, the owner shall provide to the tenant upon execution (or within seven (7) days after execution) an exact, legible, completed copy of any agreement or application which the tenant has signed.

303.2 This section shall not be subject to any notice requirement of this subtitle.

SOURCE: The Housing Regulations of the District of Columbia, 5G DCRR § 2905, Commissioners' Order 55-1503 (August 11, 1955).



304 PROHIBITED WAIVER CLAUSES IN LEASE AGREEMENTS

304.1 Any provision of any lease or agreement contrary to, or providing for a waiver of, the terms of this chapter, or § 101 or § 106 of chapter 1, shall be void and unenforceable.

304.2 No person shall cause any of the provisions prohibited by this section to be included in a lease or agreement respecting the use of the property in the District of Columbia, or demand that any person sign a lease or agreement containing any such provision.

304.3 No owner shall cause to be placed in a lease or rental agreement any provision exempting the owner or premises from liability or limiting the liability of the owner or the residential premises from damages for injuries to persons or property caused by or resulting from the negligence of the owner (or the owner's agents, servants, or employees) in the operation, care, or maintenance of the leased premises, or any facility upon or portion of the property of which the leased premises are a part.

304.4 No owner shall place (or cause to be placed) in a lease or rental agreement a provision waiving the right of a tenant of residential premises to a jury trial, or requiring that the tenant pay the owner's court costs or legal fees, or authorizing a person other than the tenant to confess judgment against a tenant. This subsection shall not preclude a court from assessing court or legal fees against a tenant in appropriate circumstances.

304.5 The provisions of this section shall not be subject to any notice requirement of this subtitle.

SOURCE: The Housing Regulations of the District of Columbia, 5G DCRR §§ 2906, 2907, and 2912, Commissioners' Order 55-1503 (August 11, 1955).

305 INSPECTION OF PREMISES AFTER BREACH OF WARRANTY OR VOIDED LEASE

305.1 Following a judicial determination that the owner has breached the implied warranty of habitability applying to the premises (under § 301 of this chapter), or following a judicial determination that a lease or rental agreement is void, the owner shall obtain a certificate from the Director that the habitation is in compliance with this subtitle prior to the next reletting of the habitation.

§ 16. The following Regulations of the Director of Public Safety, 50 D.C.R. 291, Commission Order 1-03 August 1, 1953.

§ 16. **WRITERS OF PUBLICATIONS BY TITLE**

§ 16. In accordance with the provisions of this section, the writer has provided with the publication or information to improve the content and quality of the publication, the payment shall be made to the writer.

§ 16. The writer shall be entitled to the following:

- (1) The writer shall be entitled to the following:
- (2) The writer shall be entitled to the following:
- (3) The purpose of the writer.

§ 16. Except where otherwise stated, any amount shall be paid to the writer which shall be paid to the writer as a result of the publication of the work.

§ 16. If the writer is made by the writer or the writer, the writer shall be paid the amount which shall be paid to the writer as a result of the publication of the work.

§ 16. The provisions of this section shall not be subject to any other requirements of the writer.

§ 16. The following Regulations of the Director of Public Safety, 50 D.C.R. 291, Commission Order 1-03 August 1, 1953.

§ 17. **PROVISIONS OF THE WRITERS ACT AND THE WRITERS ACT**

§ 17. No action or proceeding for the enforcement of a provision of this Act shall be brought against the writer, nor shall any other person be liable for the enforcement of this Act.

§ 17. No writer shall be liable for the enforcement of this Act, or for the enforcement of this Act, or for the enforcement of this Act.

§ 17. The provisions of this Act shall not be subject to any other requirements of the writer.

- (1) A good will, reputation or expert opinion of the writer shall be paid to the writer as a result of the publication of the work.
- (2) The provisions of this Act shall not be subject to any other requirements of the writer.
- (3) The provisions of this Act shall not be subject to any other requirements of the writer.

§ 17. The following Regulations of the Director of Public Safety, 50 D.C.R. 291, Commission Order 1-03 August 1, 1953.

308 SECURITY DEPOSITS

308.1 For purposes of this chapter, the term "security deposit" shall mean all monies paid to the owner by the tenant as a deposit or other payment made as security for performance of the tenant's obligations in a lease or rental of the property.

308.2 On or after February 20, 1976, any security deposit or other payment required by an owner as security for performance of the tenant's obligations in a lease or rental of a dwelling unit shall not exceed an amount equivalent to the first full month's rent charged that tenant for the dwelling unit, and shall be charged only once by the owner to the tenant.

308.3 All monies paid to an owner by tenants for security deposits or other payment made as security for performance of the tenant's obligations shall be deposited by the owner in an interest bearing escrow account established and held in trust in a financial institution in the District of Columbia insured by a federal or state agency for the sole purposes of holding such deposits or payments.

308.4 All monies held by an owner on February 20, 1976 for security deposits or other payments covered by this section shall be paid into an escrow account within thirty (30) days.

308.5 The owner of more than one residential building may establish one (1) escrow account for holding security deposits or other payments by the tenants of those buildings.

308.6 For each security deposit or other payment covered by this section, the owner shall clearly state in the lease or agreement or on the receipt for the deposit or other payment the terms and conditions under which the payment was made.

308.7 The housing provider shall post in the lobby of the building and rental office at the end of each calendar year, the following information: Where the tenants' security deposits are held and what the prevailing rate was for each six-month (6) period over the past year. At the end of a tenant's tenancy, the housing provider shall list for the tenant the interest rate for each six month period during the tenancy.

308.8 The provisions of this section shall not be applicable to Federal or District of Columbia agencies' dwelling units leased in the District of Columbia or to units for which rents are Federally subsidized.

SOURCE: The Housing Regulations of the District of Columbia, 5G DCRR § 2908, Commissioners' Order 55-1503 (August 11, 1955); as amended by: section 3 of the Security Deposit Act, D.C. Law 1-48, 22 DCR 2823 (November 28, 1975); and section 2 of the Adjustment of Interest Rates Paid on Rental Security Deposits Amendment Act of 1992, D.C. Law 9-212, §§ 2908.1(b) and 2908.5, 40 DCR 2204 (March 17, 1993), incorporating by reference the text of D.C. Act 9-341, 40 DCR 23 (December 21, 1992).

309 REPAYMENT OF SECURITY DEPOSITS TO TENANTS

309.1 Within forty-five (45) days after the termination of the tenancy, the owner shall do one of the following:

(a) Tender payment to the tenant, without demand, any security deposit and any similar payment paid by the tenant as a condition of tenancy in addition to the stipulated rent, and any interest due the tenant on that deposit or payment as provided in § 311; or

(b) Notify the tenant in writing, to be delivered to the tenant personally or by certified mail at the tenant's last known address, of the owner's intention to withhold and apply the monies toward defraying the cost of expenses properly incurred under the terms and conditions of the security deposit agreement.

309.2 The owner, within thirty (30) days after notification to the tenant pursuant to the requirement of § 309.1(b), shall tender a refund of the balance of the deposit or payment,

including interest not used to defray such expenses, and at the same time give the tenant an itemized statement of the repairs and other uses to which the monies were applied and the cost of each repair or other use.

309.3 Failure by the owner to comply with § 309.1 and § 309.2 of this section shall constitute *prima facie* evidence that the tenant is entitled to full return, including interest as provided in § 311, of any deposit or other payment made by the tenant as security for performance of his or her obligations or as a condition of tenancy, in addition to the stipulated rent.

309.4 Failure by the owner to serve the tenant personally or by certified mail, after good faith effort to do so, shall not constitute a failure by the owner to comply with § 309.1 and

309.5 Any housing provider violating the provisions of this chapter by failing to return a security deposit rightfully owed to a tenant in accordance with the requirements of this chapter shall be liable for the amount of the deposit withheld, or in the event of bad faith, for treble that amount.

309.6 For the purposes of § 309.5, the term "bad faith" means any frivolous or unfounded refusal to return a security deposit, as required by law, that is motivated by a fraudulent, deceptive, misleading, dishonest, or unreasonably self-serving purpose and not by simple negligence, bad judgment, or an honest belief in the course of action taken.



SOURCE: The Housing Regulations of the District of Columbia, 5G DCRR § 2908, Commissioners' Order 55-1503 (August 11, 1955); as amended by: section 3 of the Security Deposit Act, D.C. Law 1-48, 22 DCR 2823 (November 28, 1975); and section 2 of the Unitary Rent Ceiling Adjustment Amendment Act of 1992, D.C. Law 9-191, §§ 2908.6 and 2908.7, 40 DCR 2184 (April 2, 1993).

310 RETURN OF SECURITY DEPOSIT: INSPECTION OF PREMISES

310.1 In order to determine the amount of the security deposit or other payment to be returned to the tenant, the owner may inspect the dwelling unit within three (3) days, excluding Saturdays, Sundays, and holidays, before or after the termination of the tenancy.

310.2 The owner shall conduct the inspection, if the inspection is to be conducted, at the time and place of which notice is given to the tenant.

310.3 The owner shall notify the tenant in writing of the time and date of the inspection.

310.4 The notice of inspection shall be delivered to the tenant, or at the dwelling unit in question, at least ten (10) days before the date of the intended inspection.

SOURCE: The Housing Regulations of the District of Columbia, 5G DCRR § 2908, Commissioners' Order 55-1503 (August 11, 1955); as amended by section 3 of the Security Deposit Act, D.C. Law 1-48, 22 DCR 2823 (November 28, 1975).

311 INTEREST ON SECURITY DEPOSIT ESCROW ACCOUNTS

311.1 The interest in the escrow account described in § 309 on all money paid by the tenant prior to or during the tenancy as a security deposit, decorating fee, or similar deposit or fee, shall commence on the date the money is actually paid by the tenant, or within thirty (30) days after February 20, 1976, whichever is later, and shall accrue at the passbook rate then prevailing on January 1st and on July 1st for each six (6) month period (or part thereof) of the tenancy which follows those dates. On those dates, the passbook rate in the District of Columbia financial institution in which the escrow account is held shall be used.

311.2 Interest on an escrow account shall be due and payable by the owner to the tenant upon termination of any tenancy of a duration of twelve (12) months or more, unless an amount is deducted under procedures set forth in § 309.

311.3 Except in cases where no interest is paid to the tenant as provided in § 311.2, no interest or other consideration shall inure to the benefit of the owner by reason of the owner's control over the escrow account nor shall the account be assigned or used as security for loans.

311.4 It is the intent of this section that the account referred to in this section and § 309 shall be used solely for the purpose of securing the lessees' performance under the lease.

311.5 This section and § 309 and § 310 shall not be subject to the notice requirements of any other section of this subtitle.

SOURCE: The Housing Regulations of the District of Columbia, 5G DCRR § 2908, Commissioners' Order 55-1503 (August 11, 1955); as amended by: section 3 of the Security Deposit Act, D.C. Law 1-48, 22 DCR 2823 (November 28, 1975); and section 2 of the Adjustment of Interest Rates Paid on Rental Security Deposits Amendment Act of 1992, D.C. Law 9-212, § 2908.4(a), 40 DCR 2204 (March 17, 1993), incorporating by reference the text of D.C. Act 9-341, 40 DCR 23 (December 21, 1992).

312 - 314 [RESERVED]

315 NOTIFICATION REQUIRED

315.1 Prior to the acceptance of a nonrefundable application fee or security deposit, the owner of the habitation shall provide written notice of any requests that are pending for an adjustment in the rent ceiling of the habitation, as the adjustments are specifically enumerated in section 207 of the Rental Housing Act of 1985, D.C. Law 6-10, D.C. Official Code § 42-3502.07 (2001).

315.2 The notification shall include the current rent ceiling, the new rent ceiling requested in the petition, the petition filing date and petition number, and the nature of any repairs or rehabilitation planned in the dwelling unit as part of the petition.

315.3 A violation of this section shall be a Class 2 civil infraction pursuant to Titles I-III of the Department of Consumer and Regulatory Affairs Infractions Act of 1985. Adjudication of any infraction of this article shall be pursuant to titles I-III of the Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985.

SOURCE: Section 2 of the Rent Ceiling Adjustment Notification Amendment Act of 1992, D.C. Law 9-79, §§ 2915.1 through 2915.3, 39 DCR 673 (February 7, 1992).

399 DEFINITIONS

399.1 The provisions of section 199 of chapter 1 of this title and the definitions set forth in that section shall be applicable to this chapter.

101 CIVIL ENFORCEMENT POLICY

101.1 The maintenance of leased or rental habitations in violation of the provisions of this subtitle, where those violations constitute a danger to the health, welfare, or safety of the occupants, is declared to be a public nuisance.

101.2 The abatement of the public nuisances referred to in subsection 101.1 by criminal prosecution or by compulsory repair, condemnation, and demolition alone has been and continues to be inadequate.

101.3 The public nuisances referred to in subsection 101.1 additionally cause specific, immediate, irreparable and continuing harm to the occupants of these habitations.



101.4 The public nuisances referred to in subsection 101.1 damage the quality of life and the mental development and well-being of the occupants, as well as their physical health and personal property, and this harm cannot be fully compensated for by an action for damages, rescission or equitable set-off for the reduction in rental value of the premises.

101.5 It is the purpose of this section to declare expressly a public policy in favor of speedy abatement of the public nuisances referred to in subsection 101.1, if necessary, by preliminary and permanent injunction issued by Courts of competent jurisdiction.

SOURCE: The Housing Regulations of the District of Columbia, 5G DCRR § 2901, Commissioners' Order 55-1503 (August 11, 1955).

106 NOTIFICATION OF TENANTS CONCERNING VIOLATIONS

106.1 After an inspection of a habitation, the Director shall provide the tenant of the habitation a copy of any notification with respect to that habitation issued to the owner pursuant to this subtitle.

106.2 The notification to the tenant shall state plainly and conspicuously that it is only for the tenant's information; provided, that if the notice places duties on the tenant, it shall state those duties.

106.3 In any instance where a violation of this subtitle directly involves more than one habitation, the Director shall post a copy of any notification issued to the owner pursuant to this chapter for a reasonable time in one or more locations within the building or buildings in which the deficiency exists. The locations for posting the notification shall be reasonably selected to give notice to all tenants affected.

106.4 No person shall alter, modify, destroy, or otherwise tamper with or mutilate a notification posted under this section.

106.5 Any tenant directly affected by the violation(s) shall, upon request to the Director, be sent a copy of the posted notification.

106.6 This section shall not be subject to any notice requirement of this subtitle.

SOURCE: The Housing Regulations of the District of Columbia, 5G DCRR § 2903(b), Commissioners' Order 55-1503 (August 11, 1955).

CONSTRUCTION AND REHAB ADDENDUM

This Construction and Rehab Addendum ("Addendum") is dated effective as of the date on the Residential Lease - Term Sheet (the "Term Sheet") to which this Addendum is attached and made a part of (the "Lease") and is made by and between Lessor and Resident for the Premises at the Community identified in the Lease.

We are anticipating the possibility of undertaking major construction at the Community during the term of your Lease. You acknowledge that you may, from time to time, be inconvenienced by the noise and activity that generally accompanies such construction activities. This Addendum is intended to put you on notice of such potential construction activity; however, nothing in this Addendum is intended to be a waiver of either party's rights or obligations under the Lease.



CONCESSION ADDENDUM
(D.C. Rent Control Properties Only)

This Concession Addendum ("Addendum") is dated and effective as of the date on the Residential Lease - Term Sheet (the "Term Sheet") to which this Addendum is attached and made a part of (the "Lease") and is made by and between Lessor and Resident for the Premises at the Community identified in the Lease.

You have been granted a monthly recurring concession as reflected on the Term Sheet. The monthly recurring concession will expire and be of no further force and effect as of the Expiration Date shown on the Term Sheet.

Consistent with the provisions of the Rental Housing Act of 1985 (DC Law 6-10) as amended (the Act), we reserve the right to increase your rent once each year. In doing so, we will deliver to you a "Housing Provider's Notice to Tenants of Adjustment in Rent Charged," which will reflect the "new rent charged." If you allow your Lease to roll on a month to month basis after the Expiration Date, your monthly rent will be the "new rent charged" amount that is reflected on the Housing Provider's Notice.

It is understood and agreed by all parties that the monthly recurring concession is being given to you as an inducement to enter into the Lease. You acknowledge and agree that you have read and understand the Lease Concessions provision contained in the Terms and Conditions of your Lease.

Any term that is capitalized but not defined in this Addendum that is capitalized and defined in the Lease shall have the same meaning for purposes of this Addendum as it has for purposes of the Lease.



Smith Property Holdings Van Ness L.P.
3003 Van Ness Street NW
Washington, DC 20008

District of Columbia Department of Housing and Community Development
Housing Regulation Administration – Rental Accommodations Division (RAD)
1800 Martin Luther King Jr. Avenue SE, 2nd Floor
Washington, DC 20020
(202) 442-9505

I certify that this is a true and correct copy of
the RAD form 8 that I received.


Gabriel Fineman

**HOUSING PROVIDER'S NOTICE TO TENANTS
OF ADJUSTMENT IN RENT CHARGED**

Gabriel Fineman
3003 Van Ness Street, N.W. Apt # W1131
Washington, DC 20008

Date: 09/18/2015

**IF YOU ARE ELDERLY OR DISABLED, CONTACT YOUR HOUSING PROVIDER TO COMPLETE
A "NOTICE OF ELDERLY OR DISABLED STATUS" FORM, AND GIVE A COPY TO YOUR
HOUSING PROVIDER. THIS FORM IS ALSO AVAILABLE FROM THE RENTAL
ACCOMMODATIONS DIVISION.**

Dear Tenant(s):

In accordance with the provisions of the Rental Housing Act of 1985, as amended (Act), the rent
charged for your rental unit will be adjusted as set forth below:

Your current rent charged is:	<u>\$ 3,114</u>
The dollar adjustment in your rent charged is:	<u>\$ 47</u>
The percentage adjustment in your rent charged	<u>1.50 %</u>
Your new rent charged is:	<u>\$ 3,161</u>
The effective date is:	<u>12/22/2015</u>



The basis of the adjustment in rent charged is as follows [check one]:

Under section 206(b) and 208(h) of the Act (D.C. OFFICIAL CODE §§ 42-3502.06(b) & 42-3502.08(h)(2) (Supp. 2008), the increase in rent charged is based on the increase in the Consumer Price Index (CPI-W). For tenants qualified under the Act as elderly or disabled, the maximum increase in rent charged is the lesser of the CPI-W percentage, or 5% of the current allowable rent charged. For other tenants, the maximum percentage increase in rent charged is the CPI-W percentage plus 2%, but the total increase shall not be more than 10% of the current allowable rent charged. The Rental Housing Commission (RHC) determines the annual adjustment of general applicability in the rent charged established by Section 206(b) for each Rental Unit, which shall be equal to the change during the previous calendar year in the Washington, D.C. Standard Metropolitan Statistical Area (SMSA) Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W). The CPI-W percentage published by the Rental Housing Commission for May 2015 through April 2016 is 1.5%.

Alternatively, a housing provider may seek an allowable rent adjustment under other provisions of the Act, including petitions based on capital improvements, changes in services and/or facilities, hardship, substantial rehabilitation or voluntary agreement with 70% of the tenants.

Gabriel Fineman
3003 Van Ness St. Apt W-1131
Washington, DC 20008
gabe@gfineman.com

Smith Property Holdings Van Ness L.P.
Avis Duvall, Agent
3003 Van Ness Street, NW
Washington, DC 20008

RE: Notice to Tenants of Adjustment in Rent Charged unit W-1131

Dear Sirs:

I am in receipt of your Notice to Tenants of Adjustment in Rent Charged dated 09/08/2015 relating to my unit number West 1131 in 3003 Van Ness Apartments. It is incorrect.

DC Code section §42-3501.03 (28) clearly defines 'rent' as:

"Rent" means 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.

Note that this definition is independent of any methods of calculation to derive the amount of the rent. The amount that you currently demand from my bank, receive by ACH transfer and is charged to my account each month is \$2,329. That is clearly my current rent for my unit and related garage space. However, your notice states that my current rent is \$3,114.

Please correct your records and send me a corrected notice.

Sincerely,



Gabriel Fineman

Cc: DC Office of the Tenant Advocate
VNSTA – Harry Gural

Smith Property Holdings Van Ness L.P.
3003 Van Ness Street NW
Washington, DC 20008

District of Columbia Department of Housing and Community Development
Housing Regulation Administration - Rental Accommodations Division (RAD)
1800 Martin Luther King Jr. Avenue SE, 2nd Floor
Washington, DC 20020
(202) 442-8505

**HOUSING PROVIDER'S NOTICE TO TENANTS
OF ADJUSTMENT IN RENT CHARGED**

Gabriel Fineman
3003 Van Ness Street, N.W. Apt # W1131
Washington, DC 20008

Date: 09/18/2015

**IF YOU ARE ELDERLY OR DISABLED, CONTACT YOUR HOUSING PROVIDER TO COMPLETE
A "NOTICE OF ELDERLY OR DISABLED STATUS" FORM, AND GIVE A COPY TO YOUR
HOUSING PROVIDER. THIS FORM IS ALSO AVAILABLE FROM THE RENTAL
ACCOMMODATIONS DIVISION.**

Dear Tenant(s):

In accordance with the provisions of the Rental Housing Act of 1985, as amended (Act), the rent charged for your rental unit will be adjusted as set forth below:

Your current rent charged is:	<u>\$ 3,114</u>
The dollar adjustment in your rent charged is:	<u>\$ 47</u>
The percentage adjustment in your rent charged	<u>1.50</u> %
Your new rent charged is:	<u>\$ 3,161</u>
The effective date is:	<u>12/22/2015</u>

The basis of the adjustment in rent charged is as follows [check one]:

Under section 206(b) and 208(h) of the Act (D.C. OFFICIAL CODE §§ 42-3502.06(b) & 42-3502.08(h)(2) (Supp. 2008), the increase in rent charged is based on the increase in the Consumer Price Index (CPI-W). For tenants qualified under the Act as elderly or disabled, the maximum increase in rent charged is the lesser of the CPI-W percentage, or 5% of the current allowable rent charged. For other tenants, the maximum percentage increase in rent charged is the CPI-W percentage plus 2%, but the total increase shall not be more than 10% of the current allowable rent charged. The Rental Housing Commission (RHC) determines the annual adjustment of general applicability in the rent charged established by Section 206(b) for each Rental Unit, which shall be equal to the change during the previous calendar year in the Washington, D.C. Standard Metropolitan Statistical Area (SMSA) Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W). The CPI-W percentage published by the Rental Housing Commission for May 2015 through April 2016 is 1.5%.

Alternatively, a housing provider may seek an allowable rent adjustment under other provisions of the Act, including petitions based on capital improvements, changes in services and/or facilities, hardship, substantial rehabilitation or voluntary agreement with 70% of the tenants.

I certify that this is a true and correct copy of the RAD form 9 received from RAD
Gabriel Fineman
Gabriel Fineman



District of Columbia Department of Housing and Community Development
Housing Regulation Administration -- Rental Accommodations Division (RAD)
1800 Martin Luther King Jr. Avenue SE, 2nd Floor
Washington, DC 20020
(202) 442-9505

RAD Date Stamp

Internal Use Only
C/O current:

yes no n/a

BBL current: yes no

Reg. current: yes no

**CERTIFICATE OF NOTICE TO RAD
OF ADJUSTMENTS IN RENT CHARGED**

**HOUSING PROVIDER(S) SHALL FILE THIS CERTIFICATE WITH THE RENTAL
ACCOMMODATIONS DIVISION. THIS FORM IS NOT SERVED ON TENANTS.**

I, Smith Property Holdings Van Ness L.P., declare, affirm and ratify as follows:
(Housing Provider's Name)

1. I am the Housing Provider of the following Housing Accommodation or Rental Unit(s)

(address): 3003 Van Ness, 3003 Van Ness Street, N.W.
Washington, D.C. 20008

2. My business address is (No P.O. Box): Robert Grealy

1500 Massachusetts Ave NW, Suite 25, Washington, DC 20005

3. My business telephone number and email address are:

202-971-7065, rgrealy@eqr.com

4. The Certificate of Occupancy number for the Housing Accommodation is B175541

5. My Basic Business License number is 54002038 and expires on (date): 10/31/2015

6. My RAD Registration Number for the Housing Accommodation is: 54002038

7. Attached hereto are the following documents related to the adjustment(s) in the rent charged for the Housing Accommodation and the Rental Unit(s): (1) a sample "Housing Provider's Notice to Tenants of Adjustment in Rent Charged" (except for Vacancy Increases); and (2) a completed "Appendix of Notices of Adjustments in Rent(s) Charged."

8. The "Housing Provider's Notice to Tenants of Adjustment in Rent Charged" was served on each of the Tenant(s) listed in the "Appendix of Notices of Adjustments in Rent(s) Charged" prior to the filing of this "Certificate of Notice to RAD of Adjustments in Rent Charged."

9. The Rental Unit(s) and common elements of the Housing Accommodation are in substantial compliance with the Housing Code as required by 14 DCMR § 4216.2 (2004), or any noncompliance is the result of Tenant neglect or misconduct.

I declare, affirm and ratify under penalty of perjury that the foregoing information is complete and accurate to the best of my knowledge. I fully understand and acknowledge that my signature below shall be deemed as the taking of an oath or affirmation regarding all of the information provided herein, to which the sanctions for perjury, false swearing or false statements under D.C. OFFICIAL CODE §§ 22-2402, 2404 & 2405 (Supp. 2008), respectively, shall apply.

Smith Property Holdings Van Ness L.P.

Housing Provider's Printed Name

Housing Provider's Signature

09/18/2015

Date:

Smith Property Holdings Van Ness L.P.
3003 Van Ness Street NW
Washington, DC 20008

District of Columbia Department of Housing and Community Development
Housing Regulation Administration - Rental Accommodations Division (RAD)
1800 Martin Luther King Jr. Avenue SE, 2nd Floor
Washington, DC 20020
(202) 442-9605

**HOUSING PROVIDER'S NOTICE TO TENANTS
OF ADJUSTMENT IN RENT CHARGED**


Yan Li, Li Yangyang
3003 Van Ness Street, N.W. Apt # S0203
Washington, DC 20008

Date: 09/18/2015

**IF YOU ARE ELDERLY OR DISABLED, CONTACT YOUR HOUSING PROVIDER TO COMPLETE
A "NOTICE OF ELDERLY OR DISABLED STATUS" FORM, AND GIVE A COPY TO YOUR
HOUSING PROVIDER. THIS FORM IS ALSO AVAILABLE FROM THE RENTAL
ACCOMMODATIONS DIVISION.**

Dear Tenants(s):

In accordance with the provisions of the Rental Housing Act of 1985, as amended (Act), the rent charged for your rental unit will be adjusted as set forth below:

Your current rent charged is:	<u>\$ 2,720</u>	
The dollar adjustment in your rent charged is:	<u>\$ 95</u>	
The percentage adjustment in your rent charged	<u>3.50 %</u>	
Your new rent charged is:	<u>\$ 2,815</u>	
The effective date is:	<u>12/08/2015</u>	

The basis of the adjustment in rent charged is as follows [check one]:

Under section 206(b) and 208(h) of the Act (D.C. OFFICIAL CODE §§ 42-3502.06(b) & 42-3502.08(h)(2) (Supp. 2008), the increase in rent charged is based on the increase in the Consumer Price Index (CPI-W). For tenants qualified under the Act as elderly or disabled, the maximum increase in rent charged is the lesser of the CPI-W percentage, or 5% of the current allowable rent charged. For other tenants, the maximum percentage increase in rent charged is the CPI-W percentage plus 2%, but the total increase shall not be more than 10% of the current allowable rent charged. The Rental Housing Commission (RHC) determines the annual adjustment of general applicability in the rent charged established by Section 206(b) for each Rental Unit, which shall be equal to the change during the previous calendar year in the Washington, D.C. Standard Metropolitan Statistical Area (SMSA) Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W). The CPI-W percentage published by the Rental Housing Commission for May 2015 through April 2016 is 1.5%.

Alternatively, a housing provider may seek an allowable rent adjustment under other provisions of the Act, including petitions based on capital improvements, changes in services and/or facilities, hardship, substantial rehabilitation or voluntary agreement with 70% of the tenants.

The adjustment in rent charged is based on the following provision of the Act:

Section of Act	Type of Increase	Increase Authorized
Effective date of Authorization	Case number and Date of Decision, if applicable	
Section of Act	Description	
208(h)(2)	Annual Increase of General Applicability (CPI-W based)	
210	Capital Improvement	
211	Change in Services/Facilities	
212	Hardship Petition	
213(a)(1)	Vacancy (10% Increase)	
213(a)(2)*	Highest Comparable Vacancy (Up to 30% Increase)	
214	Substantial Rehabilitation	
215	Voluntary Agreement	

The Housing Provider certifies that (1) at least one (1) year has passed since the last rent adjustment (except for any vacancy increases); (2) the Rental Unit and the common elements of the Housing Accommodation are in substantial compliance with the Housing Code of the District of Columbia at the time that the adjustment is implemented, or that any non-compliance is the result of Tenant neglect or misconduct; and (3) the rent adjustment is in compliance with all other provisions of the Act.

You have the right to request that the Rental Accommodations Division (RAD) review this notice. You may contact RAD at 202-442-9505. Walk-in assistance is available Monday through Friday from 8:30 am to 3:30 pm in the Housing Resource Center located at 1800 Martin Luther King Jr. Avenue SE, Washington, DC 20020. A more detailed summary of Tenant rights and sources of technical assistance are available in the RAD pamphlet entitled "What You Should Know about Rent Control in the District of Columbia," which is available from the Housing Provider, the RAD office, and online at www.dhcd.dc.gov.

Certificate of Occupancy Number (if applicable):
B175541

Basic Business License Number: 54002038

RAD Registration Number: 54002038

Housing Provider's Business Address
(No P.O. Box):

Smith Property Holdings Van Ness L.P.
3003 Van Ness Street NW
Washington, DC 20008

Equity Residential

Housing Provider's Name (print)

Owner Authorized Agent

Other Title (if applicable):



Housing Provider's Signature

202-244-3100, aduvall@eqr.com

Housing Provider's Telephone Number and E-mail address:

APPENDIX OF NOTICES OF ADJUSTMENT IN RENT CHARGED
(with Continuation Page)

Unit No.	Tenant(s) Name(s)	Prior Rent	New Rent	Dollar (\$) Change	Percent (%) Change	Section of Act	Date Tenant Served with Notice
S0203	Yan Li, Li Yangyang	2720	2815	95	3.5	208(h)(2)	09/18/20
S0324	Tanya Weinberg, Shlomo Yahana	1784	1846	62	3.5	208(h)(2)	09/18/20
S0418	Dmitry Zontov	2140	2215	75	3.5	208(h)(2)	09/18/20
S0502	Ligong Li, Yu Qingshun	2585	2675	90	3.5	208(h)(2)	09/18/20
S0708	Jose Sembler, Paz Cisternas	2713	2808	95	3.5	208(h)(2)	09/18/20
S0821	Sam Lee	1674	1733	59	3.5	208(h)(2)	09/18/20
S0908	Judith Levine	3043	3150	107	3.5	208(h)(2)	09/18/20
S0909	Ferdous Al Faruque, Samantha Al Faruque	1748	1809	61	3.5	208(h)(2)	09/18/20
S0912	Chinese Embassy	3075	3183	108	3.5	208(h)(2)	09/18/20
S0922	Chinese Embassy	2476	2563	87	3.5	208(h)(2)	09/18/20
S1103	Jordan Kaplan	2851	2951	100	3.5	208(h)(2)	09/18/20
S1104	Embassy of the Peoples Republic Of China	2832	2931	99	3.5	208(h)(2)	09/18/20
W0106	Stephen Hill	2329	2411	82	3.5	208(h)(2)	09/18/20
W0132	Jaimie Reid, Pernell Fowler	1987	2057	70	3.5	208(h)(2)	09/18/20
W0326	Andrew Morrison	1887	1953	66	3.5	208(h)(2)	09/18/20
W0401	Embassy of the Peoples Republic of China	4515	4673	158	3.5	208(h)(2)	09/18/20
W0404	Benjamin Scrinisky, Samantha Hassard	2642	2734	92	3.5	208(h)(2)	09/18/20
W0406	Jeff Schmidt	1987	2017	30	1.5	208(h)(2)	09/18/20
W0426	Michael Ferrari, Amanda Shipley	3218	3331	113	3.5	208(h)(2)	09/18/20
W0505	Diane Leeson, Kelsey McCutcheon	2139	2214	75	3.5	208(h)(2)	09/18/20
W0507	Jessica Crippin	2211	2288	77	3.5	208(h)(2)	09/18/20
W0620	Aisling Swaine	3113	3222	109	3.5	208(h)(2)	09/18/20
W0715	Patricia Remick	2742	2783	41	1.5	208(h)(2)	09/18/20

Page 2 of 3

RAD Form 9 (Rev 02/12)

APPENDIX OF NOTICES OF ADJUSTMENT IN RENT CHARGED
(with Continuation Page)

Unit No.	Tenant(s) Name(s)	Prior Rent	New Rent	Dollar (\$) Change	Percent (%) Change	Section of Act	Date Tenant Served with Notice
W0809	Xiaofang Yu	3423	3543	120	3.5	208(h)(2)	09/18/201
W0902	Donna Sharpe	2950	3053	103	3.5	208(h)(2)	09/18/201
W1102	Sasha Techet, Patrick Matisi	3075	3183	108	3.5	208(h)(2)	09/18/201
W1126	Alberto Tumiasi, Emilia Cristallo	2925	3027	102	3.5	208(h)(2)	09/18/201
W1129	Michael Weber, Michaela Denk	2806	2904	98	3.5	208(h)(2)	09/18/201
W1131	Gabriel Fineman	3114	3161	47	1.5	208(h)(2)	09/18/201

Section of Act	Description
208(h)(2)	Annual Increase of General Applicability (CPI-W based)
210	Capital Improvement
211	Change in Services/Facilities
212	Hardship Petition
213(a)(1)	Vacancy (10%)
213(a)(2) *	IF APPLICABLE – State in the Appendix the Substantially Identical Rental Unit used for the Highest Comparable Vacancy Increase (30% max)
214	Substantial Rehabilitation
215	Voluntary Agreement

Type of Service	No.	
TENANT	1	Personal serv
ADULT	2	Personal serv with instructi
AGENT	3	Personal serv of the Tenant
MAIL	4	First class ma
CERTIFIED	5	Certified mai
PRIORITY	6	Priority mail

¹ Housing Provider's Notice to Ten



EXHIBIT 2

DISTRICT OF COLUMBIA
OFFICE OF ADMINISTRATIVE HEARINGS
One Judiciary Square
441 Fourth Street, NW
Washington, DC 20001-2714
TEL: (202) 442-9094
FAX: (202) 442-9451

DISTRICT OF COLUMBIA
OFFICE OF
ADMINISTRATIVE HEARINGS
2017 MAR 16 PM 12:18

GABRIEL FINEMAN,
Tenant/Petitioner,

v.

SMITH PROPERTY HOLDINGS
VAN NESS LP,
Housing Provider/Respondent.

Case No.: 2016-DHCD-TP 30,842

In re: 3003 Van Ness Street, NW
W-1131

FINAL ORDER

I. Introduction and Procedural History

On July 12, 2016, Tenant/Petitioner Gabriel Fineman filed a tenant petition alleging the following violations of the Rental Housing Act of 1985 (Rental Housing Act or the Act):

- Housing Provider Smith Property Holdings Van Ness, LP, did not file the correct rent increase forms with the Rental Accommodations Division (RAD) (RAD form 9); and
- “Improper notice of RAD form 8 to tenant (Notice in adjustment of rent charged).”¹

Tenant seeks an order requiring Housing Provider to correct the amount of “current rent charged” shown on RAD Form 8 for Tenant’s unit and all other units, and to properly compute “current rent charged” going forward. Tenant also seeks a fine of \$5,000 for Housing Provider’s willfully making a false statement on Tenant’s RAD Form 8 and the same amount for other false RAD Form 8’s given to other tenants or for other false statements on RAD Form 9.

¹ Tenant inserted this allegation as an additional “I” to the pre-printed Tenant Petition form.

On October 21, 2016, the parties appeared for mediation which was unsuccessful. On October 28, 2016, I issued a Case Management Order scheduling briefing on motions for summary judgment. Tenant filed his Motion for Summary Judgment (Motion) on December 9, 2016; Housing Provider filed its Opposition to Tenant's Motion and Housing Provider's Cross-Motion for Summary Judgment (Opposition) on January 17, 2017. Tenant filed his Reply and Opposition to the Cross-Motion (Reply) on February 16, 2017.

II. Jurisdiction

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

III. Legal Standard for Summary Judgment

The rules of this administrative court provide that a party may request that an Administrative Law Judge decide a case summarily, without an evidentiary hearing, so long as the motion includes sufficient evidence. OAH Rule 2819. The summary judgment standard set forth in the Super. Ct. Civ. R. 56(c) provides:

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

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

'A motion for summary judgment is properly granted if (1) taking all reasonable inferences in the light most favorable to the nonmoving party, (2) a reasonable juror, acting reasonably, could not find for the non-moving party, (3) under the appropriate burden of proof.' *Kendrick v. Fox Television*, 659 A.2d 814, 818 (D.C. 1995) (quoting *Nader v. de Toledano*, 408 A.2d 31, 42 (D.C. 1979)).

Here, both Tenant and Housing Provider have filed for summary judgment. There is no dispute concerning the facts that are the basis of these motions. The dispute is over the interpretation of a term on two RAD forms. The appropriate burden of proof here is the preponderance of the evidence. The moving party must show that its interpretation, viewed reasonably, does not allow for judgment against it.

IV. Material Facts Not in Dispute

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.
 - All parties agree that the monthly 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. 3.²
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.*

² Housing Provider substituted a copy of the 2015 Lease for the 2014 Lease it had initially provided as Exh. 3. My reference throughout to Exh. 3 is to the substituted 2015 Lease.

- “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.

V. Conclusions of Law

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

1. Introduction

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.

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 forms 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

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).

Under the Rental Housing Act and regulations, a housing provider may increase a tenant’s rent once every 12 months by an amount authorized by the Act. The most common type of rent increase is known as an adjustment of general applicability or a “CPI-W” increase. The Rental Housing Commission (RHC) determines the amount of the adjustment annually. 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.

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 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

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. ***

The August 2006 amendments abolished rent ceilings.³ D.C. Official Code § 42-3502.06(1). The current rent charged at the effective date of the amendments in rent-controlled buildings became the base rent and the maximum allowable rent for all units subject to rent control. The 2006 Amendments also abolished a housing provider's ability to hold CPI-W increases for future imposition. As long as a CPI-W increase occurs at least 12 months after the last increase, a housing provider can implement it at any time in the CPI-W year. ***

3. RAD Forms and Leases

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

³ Although rent ceilings were abolished in 2006, they "live on" because the rent ceiling regulations have not been amended. ✓

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 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 increased by \$47 to \$3,161. In addition, in each succeeding year, any increase is based on the prior year's rent.

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 argument, the figure called for as "your current rent charged" and "prior rent" on RAD Forms 8 and 9 must be \$2,329.⁴

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

⁴ Tenant argues that Housing Provider's actions against other tenants at the Housing Accommodation in Landlord-Tenant Branch of D.C. Superior Court supports his interpretation of the term "rent." Reply at 10-11. Tenant argues that Housing Provider is now advertising his former apartment at a rent lower than the maximum legal rent, with the notation "quoted rent may include a concession." Reply at 13. He has also supplied an Affidavit from another tenant discussing contacts with still other tenants about their interactions with Housing Provider and the terms of their leases. Affidavit By Harry Gural. The Tenant Petition here is based on a particular tenant and his lease. Partial histories of others' experiences are not relevant to the interpretation of the terms on the RAD forms. Nothing supplied by Tenant, however, indicates that Housing Provider has used anything other than the maximum legal rent on the RAD forms.

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)).

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.

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.*

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.

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.”

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 decreases the rent that a housing provider will charge tenant over the term of the lease.⁵

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.⁶

⁵ Tenant acknowledges that tenants negotiate the amount of the concession with Housing Provider. Reply at 12.

⁶ Various bills have also proposed revised definitions of the term “rent.” See The Rental Housing Affordability Stabilization Amendment Act of 2017 (B22-0025).

4. Concessions

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 increases 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.

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 investments.

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.⁷ A 12-month lease also protects a tenant from changes in the concession amount. Rent concessions benefit a housing provider because they allow housing providers some ability to respond to fluctuations in the housing market. Using concessions in a slow rental market also benefits housing providers because they can retain past increases to use if and when the market changes.

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

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

⁷ 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 NYCRR 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 renewing 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.

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.

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).

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

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

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

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 has Tenant been harmed by the RAD Forms as filed.

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.

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.

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 the allegedly false statements made on Forms 8 and 9 to other tenants as well as for the allegedly false statements made on his documents. *Id.*

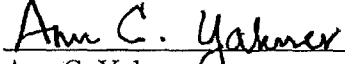
Tenant is basically seeking to be the representative of a class of all tenants in the building. However, to the extent that a tenant petition is filed for more than one person, the petition must individually name each person. OAH Rule 2922.1. A tenant association may act on behalf of its named members, 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.

VI. Order

Therefore, it is this 16th day of March, 2017:

ORDERED, that Tenant Petition 30,842 is **DISMISSED WITH PREJUDICE**; and it is further

ORDERED, that the reconsideration and appeal rights of any party aggrieved by this Order are stated below.



Ann C. Yahner
Administrative Law Judge

MOTIONS FOR RECONSIDERATION

Any party served with a final order may file a motion for reconsideration within ten (10) calendar days of service of the final order in accordance with 1 DCMR 2938 and 2828.3. When the final order is served by mail, five (5) days are added to the 10 day period in accordance with 1 DCMR 2812.5.

Where substantial justice requires, a motion for reconsideration shall be granted for any reason including, but not limited to: if a party shows that there was a good reason for not attending the hearing; there is a clear error of law in the final order; the final order's findings of fact are not supported by the evidence; or new evidence has been discovered that previously was not reasonably available to the party seeking reconsideration. 1 DCMR 2828.5.

The Administrative Law Judge has ninety (90) days to decide a motion for reconsideration. If a timely motion for reconsideration of a final order is filed, the time to appeal shall not begin to run until the motion for reconsideration is decided or denied by operation of law. If the Judge has not ruled on the motion for reconsideration and 45 days have passed, the motion is automatically denied and the 10 day period for filing an appeal to the Rental Housing Commission begins to run.

APPEAL RIGHTS

Pursuant to D.C. Official Code §§ 2-1831.16(b) and 42-3502.16(h), any party aggrieved by a final order issued by the Office of Administrative Hearings may appeal the final order to the District of Columbia Rental Housing Commission within ten (10) business days after service of the final order, in accordance with the Commission's rule, 14 DCMR 3802. If the final order is served on the parties by mail, an additional three (3) days shall be allowed, in accordance with 14 DCMR 3802.2.

Additional important information about appeals to the Rental Housing Commission may be found in the Commission's rules, 14 DCMR 3800 et seq., or you may contact the Commission at the following address:

District of Columbia Rental Housing Commission
441 4th Street, NW
Suite 1140 North
Washington, DC 20001
(202) 442-8949

Certificate of Service:

By First-Class Mail (Postage Prepaid):

Gabriel Fineman
7270 Ashford Place
#206
Delray Beach, FL 33446

Debra F. Leege, Esq.
Greenstein Delorme & Luchs
1620 L Street, NW
Suite 900
Washington, DC 20036

Keith Anderson
Acting Rent Administrator
District of Columbia Department of
Housing and Community Development
Housing Regulation Administration
1800 Martin Luther King Jr. Avenue, SE
Washington, DC 20020

By Inter-Agency Mail:

District of Columbia Rental Housing
Commission
441 4th Street, NW
Suite 1140 North
Washington, DC 20001

I hereby certify that on
3/11/16, 2017 this document
was caused to be served upon the above-
named parties at the addresses and by the
means stated.

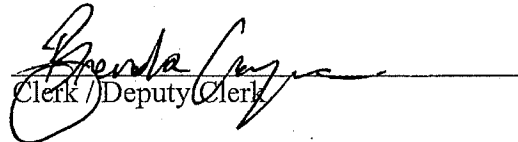

Clerk / Deputy Clerk

EXHIBIT 3

DISTRICT OF COLUMBIA
RENTAL HOUSING COMMISSION

★ ★ ★



GABRIEL FINEMAN,

Appellant /Tenant,

V.

SMITH PROPERTY HOLDINGS VAN NESS L.P.,

Appellee/Housing Provider

Case No.: 2016 DHCD TP 30,842

3003 Van Ness Street, N.W., Apt. W-1131

Notice of Appeal

Gabriel Fineman ("Tenant"), hereby appeals the Final Order issued on March 16, 2017, by the Office of Administrative Hearings ("OAH"), Administrative Law Judge Ann C, Yahner presiding (the "Decision"), and asserts the following:

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".

Notice of Appeal

Case No.: 2016 DHCD TP 30,842

Page 1 of 4

EXHIBIT III

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 that "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") [DC Code §§ 42-3502.01 - 42-3502.23], 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.

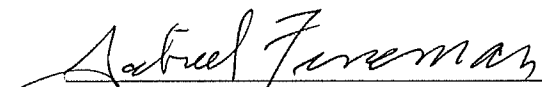
- b. The Decision repeatedly confuses requirements in the regulations to give notice of rent increases (the RAD Form 8's and Form 9's) with the old and no longer applicable requirements to give notice of increased rent ceilings.
- c. The Decision finds that the purpose of showing the "current rent charged" 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 City would require examining how they apply to all such units and not just to 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 the 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 Regulations 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 could 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.

WHEREFORE, Gabriel Fineman prays that the Rent Administrator's decision and order be Reversed and Remanded.

Respectfully submitted,

Appellant/Tenant


Gabriel Fineman

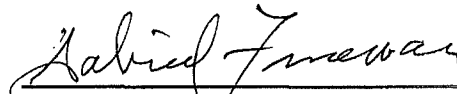
Dated: March 30, 2017

4450 South Park Avenue #810
Chevy Chase, MD 20815
Telephone (202) 290-7460
Email: gabe@gfineman.com

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Notice of Appeal was served on March 30, 2017,
by first class mail, postage pre-paid upon the attorney for the Housing Provider:

Debra F. Leege
Greenstein DeLorme & Luchs, P.C.
1620 L Street N.W., Suite 900
Washington, DC 20036-5605



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