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 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".

2. 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. There was no citation mentioned nor any evidence referenced. There was no claim that it was a term of art in use by the general public or even that part of the

public that rented apartment. There was no claim that it was a term of art within the DC Government. The only claim was that it was used in the undefined "rental housing industry". By that we think the OAH meant among large landlords that use concession leases in their conversations between each other. Instead, the Tenant provided substantial evidence that the terms "rent" and "rent charged" were used by the Housing Provider to mean actual rent (rent to be actually paid after any discount) in all important contexts when dealing with the public. These interactions included advertising, explaining the lease to prospective tenants, and dealings with other parts of the DC Government. The Tenant also offered evidence that the terms in general usage mean what was demanded by the landlord and paid each month by the tenant after any recurring discount.

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 <u>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.</u> No citation was given nor is any evidence cited. This is clearly wrong and conflicts with the Act because it would create two classes of Units: (a) those with concession leases where a huge gap existed between the actual (market) rent and the maximum rent; and (b) an even larger number of Units without concession leases where the maximum rent was reset to the market rent. It is important because it is part of the basis of 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 "<u>The terms on the RAD forms cannot</u>

be interpreted independently of the lease". This is not a claim made by the Housing Provider except to say that the Act cannot be read in a vacuum. There is no citation and there is no evidence in the record to support this claim that the lease must be used to determine the amount of the current rent charged. However, there is substantial evidence presented by the Tenant to refute that claim, including that there were many ways to determine the amount of the current rent charged that did not involve referring to the Lease. These include: (a) the term "Your current rent charged" is what the Housing Provider tries to collect; (b) by looking at how much the Housing Provider debited from the account of the Tenant each month; and (c) by looking at how the Housing Provider defined rent in Landlord/Tenant Court. 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. The Act provides a single definition of the term "rent" to be used in all circumstances.

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.

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. The term "maximum legal rent" is never used in Tenant's lease or in in the RAD forms.

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. The Decision ignores the evidence that the unit was advertised for considerably less as soon as the Tenant gave notice of not renewing his lease.

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

Dated: March 30, 2017

Gabriel Fineman

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