DISTRICT OF COLUMBIA
Office of Administrative Hearings

GABRIEL FINEMAN, Tenant/Petitioner, V. 1131 Yahner SMITH PROPERTY HOLDINGS VAN NESS L.P., Housing Provider/Respondent	:	Case No.: 2016 DHCD TP 30,842 3003 Van Ness Street, N.W., Apt. W- Administrative Law Judge: Ann C.

TENANT'S REPLY TO HOUSING PROVIDER'S

OBJECTION TO THE MOTION FOR SUMMARY JUDGMENT

Tenant/Petitioner Gabriel Fineman ("**Petitioner**"), submits this reply to the Housing Provider's Opposition to the Motion for Summary Judgment. Petitioner hereby states:

I. BACKGROUND

A. The Petitioner filed a Tenant Petition (the "**Petition**") asking for the Housing Provider to be required to correct its "Housing Provider's Notice to Tenant of Adjustment in Rent Charged" notice ("**form 8**") and its "Certificate of Notice to RAD of Adjustment in Rent Charged" ("**form 9**") filings with the RAD. The Tenant then filed a Request for Summary Judgment on the Tenant Petition (the "**Request**"). The Tenant Petition was deliberately narrow in its focus. The Petitioner said:

> 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 Petition required a determination of what was meant by the term "Current Rent" in the Form 8 and Form 9 where the Housing Provider is required to disclosure the "Current Rent". The Petitioner argued that that definition of the term "Current Rent" should follow from the statutory definition of "rent" and the common definition of "current" to be the amount demanded by and paid to the Housing Provider for use of the dwelling unit at the time of the Form 8 disclosure.

The Housing Provider responded with an "Objection to the Motion for Summary Judgment and Cross Motion for Summary Judgment" (the "**Objection**") that objected to the following:

> A The Use of a Concession Does Not Reduce the Legal Rent; Rather it Limits the Amount Paid by a Tenant During the Concession Period; [and]
>
> B Petitioner Cannot Prevail on His Claim that the Rent Increase was Larger than Permitted Under the Rental Housing Act.

The Housing Provider is arguing against issues that were never raised and are irrelevant to the actual issues. The Petitioner's lease with the Housing Provider is not relevant to the question raised by this Petition of whether the Housing Provider filed a proper Form 9 with the RAD. That filing is independent of what terms were in a particular lease because the duty to file arises from the DC code and not from a contract with a Tenant.

II. THE BASIC ISSUE.

The basic issue to be decided is whether the Housing Provider was correct in using the Ceiling Rent (Lease Defined Rent or legal rent) when it filled in the line "Your current rent is" on the RAD form 8 or whether the proper number to use is the amount of rent due that month (the Actual Rent) as claimed by the Petitioner.

III. DEFINITIONS.

The word "rent" is used in various ways by the parties to mean very different things. Therefore, for clarity in this document we define the following:.

1. "**Ceiling Rent**" is the amount that the Housing Provider claims is the maximum rent it is allowed to collect under the law. This seems to be the number filed on the RAD form 9's. It is also the term that the Rent Control Reform Act of 2005 tried to eliminate from the law.[1]
2. "**Lease Defined Rent**" is the amount stated in the adhesion lease as the amount of the rent before any discount or concession. This is almost always the Ceiling Rent. The Housing Provider calls this "**legal rent**" in its Opposition.
3. "**Actual Rent**" is the amount that the Housing Provider collects each month (absent a default or hold over) after any discount, concession or other reduction. It is the amount that the Tenant expects to pay.
4. "**Current Rent**" is the amount of Actual Rent charged when the Form 8 is issued and is supposed to be entered on the RAD Form 9.
5. "**Rent**" without a qualifier is what is defined in the Rental Housing Act (the "**Act**") and referred to throughout the Act. ["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. § 42–3501.03(28)]

IV. FACTS AND ISSUES NOT IN DISPUTE.

1. Facts not in dispute are listed in a separate section:

There are no facts in dispute, and both parties are asking for summary judgment.

2. Claims raised by the Petitioner and not disputed by the Housing Provider in its Opposition and thus presumed to be true:

a. The Petitioner claimed that the Housing Provider did not file a correct form 9 with the RAD [Tenant Petition Part 4 box D]. As evidence, Petitioner attached a copy obtained from the RAD of the Form that was filed showing the "Current Rent Charged" as $3,114 (the Lease Defined Rent)

[1] See Exhibit 6 – Legislative history

rather than the amount of the Actual Rent charged each month (after the concession). This claim was also made in the Request for Summary Judgment (the "**Request**") in section IIB in the third paragraph. This incorrect filing was also evidenced in the Affidavit of Gabriel Fineman (the "**Affidavit**") attached to the Request as point 6 and point 8; and a copy is shown as Exhibit C of the Request.
The Housing Provider has not objected that this copy of the form 9 filing was not a correct copy.
The Housing Provider claimed that it had a right to charge the Lease Defined Rent, but it never claimed that the Lease Defined Rent was actually charged (a concession of zero). Thus, there was no objection by the Housing Provider to the Plaintiff's claim or was there any assertion by the Housing Provider that the "Current Rent Charged" reported on this form should not be the Actual Rent.

b. The Petitioner claimed that he was never given proper notice of the increase in rent (form 8). [Tenant Petition Part 4 box I; and the Request part II B, second paragraph.] This was evidenced by the Affidavit point 5 and a copy was shown in Exhibit B to the Affidavit.
There was no objection by the Housing Provider to the Plaintiff's claim of an incorrect form 8 or any assertion that the "Current Rent Charged" reported on this form was correct

c. The Petitioner claimed that the Housing Provider has failed to correct its form 8 despite notice that it was incorrect. [Tenant Petition Part 5, first sentence. Also in the Request part II B third paragraph. This was supported by the evidence provided in the Affidavit as point 7 and Exhibit D.]
The Housing Provider has not objected to the claims that such notice was given and that the Housing Provider failed to correct the form 8 notice.

d. The Petitioner claimed that the statute provided a definition of the term "rent" at DC Code §42-3501.03 (28). The Housing Provider also quoted that definition, in the second paragraph of section ii. B of its Objection.

The Housing Provider agreed with the statutory definition of "rent".

e. The Petitioner claimed that the term "Your Current Rent Charged" is what the Housing Provider tries to collect. In the Petition, the Petitioner said that it meant "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." [Petition Part 5, sixth paragraph] In the Request, this was in section IV. B. b. The Housing Provider did not directly object to these claims or the analysis supporting them. It only said that the form 9 filing was proper because concessions were allowed. [Section ii. B in the first paragraph of its Objection] The Housing Provider presented no alternative definition of "rent charged".

f. The Petitioner claimed that the amount of rent charged could also be induced from the actions of the Housing Provider because the amount that the Housing Provider demanded from the Petitioner's bank, received by ACH transfer and charged to the Petitioner's account each month was the amount of Actual Rent and not the amount of the Lease Defined Rent. [Request section IV. B. d] The Housing Provider did not object to that methodology but only said there was a concession lease that defined the rent as the amount of the Lease Defined Rent ("legal rent"). It did not claim that the Lease Defined Rent was the Current Rent that was actually charged.

g. The Plaintiff claimed that the amount of rent charged could also be deduced by the actions of the Housing Provider when it went into Landlord Tenant Court to evict tenants. [Request section IV. B. d] There, an investigation showed that the definition of rent used in that Court was the Actual Rent and not the Lease Defined Rent. [Exhibit F to the Request, points 20 and 21] The Housing Provider should not be allowed to use different definitions of rent when dealing with different units of the City legal system.

The Housing Provider did not object to the methodology used in the review or object to the facts presented in the affidavit. Rather, it argued that the OAH had no jurisdiction over claims in the

Housing Court; and, if it did, then the photographs supporting the affidavit were of poor quality. Neither has any bearings on the claim of inconsistency and of concurring with the Petitioner's definition in another forum. See the analysis at section IV. A. d. (Contention d)

h. The Plaintiff claimed that the issuance of the incorrect form 8 and the filing of the incorrect form 9 was done as a willful act that calls for a penalty to be assessed by the adjudicator. [Request: section I (Claims); section V (Relief) last paragraph; and Exhibit A (Affidavit) point 7] The Housing Provider did not object to this claim of the false filing being a willful act or to the analysis under the Relief Section or the information in the Affidavit.

3. Claims raised by the Housing Provider and disputed by the Petitioner:

a. The Housing Provider claimed that the filing of its form 9 was proper when it said: "Since concessions are permitted, the filing itself is proper." [Section ii. B in the first paragraph of its Objection]

The Petitioner objects to this claim. The filing may have been made, but the "Current Rent Charged" shown on the form was the Lease Defined Rent that was never charged. The mere filing of a paper does not make it correct, and the claimed ability to be *able* to charge the Lease Defined Rent (that is – no concession) did not transform the Lease Defined Rent into the actual Current Rent charged.

b. The Housing Provider claimed that the definition of "rent" in D.C. Code § 42-3501.03(28) does not exist in a vacuum. [Section ii. B of the Opposition.]

The Petitioner objects to this claim because the definition is clear and unambiguous and does not need to be viewed in any special context. See the extensive Analysis, below at section IV. A. c (Contention c) and in the Exhibit A.

c. The Housing Provider went on to say that the amount withdrawn from Mr. Fineman's bank account each month does not negate the fact that a contractual agreement was made between

Mr. Fineman and the Housing Provider in the 2014 Lease and the 2015 Lease. [Section ii. B of the Opposition.] As evidence of the Lease, The housing Provider attached copies of the 2014 and 2015 leases. The 2015 Lease was identical to the one the Petitioner had attached to its Tenant Petition. The Petitioner does not dispute the claim that there was a contractual lease between the Housing Provider and the Petitioner, or that the Housing Provider demanded, charged and collected from the Petitioner's bank each month the amount of the Actual Rent rather than the Lease Defined Rent. See the Analysis section VI. A. a.

d. The Housing Provider made an unstated claim that the lease definition of "rent" modified the statutory definition of rent in some way. [Section ii. B of the Opposition.]
The Petitioner rejects this claim of a modification of the definition of rent for the many reasons stated in the Analysis, Section IV A. c, below.

V. ANALYSIS

A. The Housing Provider does raise several arguments collateral to its attempt to attack the non-issues mentioned above. They deserve our attention:

a. **Contention**: The RAD Form 9 filing was proper because concessions are allowed.

The Housing Provider states:

> Petitioner's challenge must fail. The Housing Provider filed the Certificate of Notice of Rent Increase with the Rental Accommodations Division prior to the implementation of that increase (Exhibit C to the Motion). The Certificate shows that the rent for the Unit was increased by 3.5%, effective December 22, 2015 from $3,114 to $3,161. The 2016 Certificate shows that the rent for the Unit was increased by 1.5%, effective April 1, 2016 from $2,118 to $2,182. **Since concessions are permitted, the filing itself is proper**. [Opposition section ii. B, Bolding added]

The Housing Provider assumes that the filing was true and correct and proper because it was made. To be fair, this is the same assumption that was made by the Judges in both the Pope and Maxwell cases (although such cases are not precedent in the OAH). Courts have to decide issues based on the arguments made and the facts before them. In neither case did the tenant raised the issue of the notice or the filing being wrong because of the wrong interpretation of the term "rent". It is reasonable to assume that filings made with government agencies would be correct, especially, as in this case, when made under penalty of perjury. However, one of the purposes of this petition is to correct that assumption.

In this case, the Housing Provider might have been able to charge the Lease Defined Rent, but it chose not to and gave a concession instead. To claim that a concession is valid and then not report the concession as part of its form 8 notice or form 9 filing seems incongruous. Please note that the Rent Administrator has said that his office does not check the RAD form 9 filings for either correctness or reasonableness. [Affidavit of Harry Gural Exhibit 5, Attachment A]

b. **Contention**: <u>The use of a concession does not invalidate the higher, legal rent for a unit.</u>

That issue was never raised by the Petitioner. Instead, the Petitioner claims that the use of a concession lease or other contract between the Housing Provider and a third party does not affect the obligations of the Housing Provider to the City under law and regulation. That is, the obligation of the Housing Provider to provide proper notices and filings is an independent obligation between the Housing Provider and the City (RAD) and does not arise from or is dependent upon or is even related to a written lease, even if there is a written lease. The parties to a written contract can define terms however they want and could even say that the term "rent" means a number used to compute an Actual Rent. That definition might apply within that contract but would have no effect on law or

regulation. There could be ten different leases with ten different definitions of the term "rent" but that would not change the fact that § 42–3501.03(28) defines the term "rent". That definition is the only one reasonably applicable to the requirement that all landlords in the City that are under the Rent Stabilization Act are required to file the Current Rent before any rent increase.

c. **Contention**: Furthermore, the definition of "rent" in D.C. Code § 42-3501.03(28) does not exist in a vacuum.

The Housing Provider contends that we should not view the definition of "rent"" in a vacuum. We disagree because the meaning of the definition is clear and unambiguous. It is what the tenant pays each month. The Housing Provider gives no clue as to how the statutory definition of rent should be interpreted except for citing the lease that it wrote. If we look to the purpose of the form 8 notice, it is to provide the tenant with advance notice of a rent increase so he/she can plan and budget to meet that increase or look for another apartment. The form 8 notice meets that purpose if the Actual Rent is shown and fails to meet that purpose if the Ceiling or legal rent is shown. However, if statutory construction is needed, there is a clear procedure used by courts[2] to ascertain the meaning of words and phrases. [3] The definition of the term "rent" should be interpreted only by its common and plain definitions[4] (usually found in dictionaries[5]). This process is called statutory construction, and a full

[2] The rules of statutory construction are well established in this jurisdiction. [District of Columbia v. Place, 892 A.2d 1108, 1108 (2006)]

[3] Any question of statutory interpretation begins with looking at the plain language of the statute ….
Wex Legal Dictionary, Legal Information Institute, Cornell University Law School.
https://www.law.cornell.edu/wex/statutory construction

[4] The Supreme Court often recites the "plain meaning rule," that, if the language of the statute is clear, there is no need to look outside the statute to its legislative history …. ['Statutory Interpretation General Principles and Recent Trends' by Congressional Research Service - The Library of Congress March 30, 2006 page CRS-1]

[5] MCI Telecommunications Corp. v. AT&T Co., 512 U.S. 218, 224-26 (1994)
https://supreme.justia.com/cases/federal/us/512/218/case.html This case examines in detail what happens when there are conflicting dictionary definitions presented to the Court.

application of this process is found in Exhibit 1 (that is hereby incorporated by reference) and is summarized at its end by:

> The meanings of "current", "rent" and "charged" are obvious and do not really rate the full blown statutory construction they received above. However, applying the principles of statutory construction results in the phrase "current rent charged" in this context meaning the Actual Rent (after any discount) at the time of the notice and filing.

d. **Contention**: The rent charged cannot be ascertained by reviewing pending Landlord and Tenant proceedings filed against other tenants of the Housing Accommodations.

The Housing Provider has used the definition of rent elsewhere in the judicial system to evict tenants with a similar lease. See Second Affidavit of Gabriel Fineman in the Request. The Petitioner argued that the Housing Provider's use of the Actual Rent (instead of the Lease Defined Rent) in these proceedings was evidence of the rent charged to the tenant. (Request, section IV. B. e). Here the Housing Provider makes two arguments. The first arguement is:

> "The rent for those individuals is not within the jurisdiction of the Office of Administrative Hearings as they do not have a pending tenant petition."

The OAH is not being asked to rule upon the rent of these people being evicted, but simply to take notice of the use of the term "rent charged" as used by the Housing Provider in this context and how it differs from how it uses the same term in the Rad form 8 and form 9 context. It is analogous to the Housing Provider claiming that the OAH has no jurisdiction over the lease with the Petitioner ("The Office of Administrative Hearings does not have jurisdiction over the terms of the Lease, which Mr. Fineman agreed to." Objection, Section ii. B), and also requesting the OAH to take notice of the terms of the same lease.

The second argument is:

> "Even if such arguments would support his allegation, Petitioner has failed to provide legible copies of the Landlord and Tenant cases or the relevant lease in those

cases for this Court to consider. Without such, this Court cannot even make the analogy that Mr. Fineman seeks."

The Petitioner rejects the claim that the copies were not legible. Certainly the relevant parts where the current rate of rent per month was stated were very legible. That part reads "The monthly rent is $_____ (explain). Defined as rent under paragraph no _____ of the lease …." The problem is that the copies appearing in the Landlord Tenant database were poorly made and require care in reading. The Housing Provider made no objection to the facts recited in the Second Affidavit of Gabriel Fineman (Request, Exhibit F), where Exhibits LT2, LT3 and LT4 were only additional supporting evidence, but it only objected to their difficulty in reading this supporting evidence. Note that the Housing Provider, as the plaintiff in these Housing Court cases, had easy access to the originals of these documents and would have had no issues reading those originals. Note also that the Housing Provider did not provide the more legible copies to the Court to help it with its tasks.

The Housing Provider offered no argument or authority for its claim that the Court would be unable to consider the Second Affidavit of Gabriel Fineman (that is evidence of his claims without the copies) or be unable to consider the arguments made based upon the Second Affidavit. The OAH has wide discretion to admit evidence that might not meet the standards of a Federal court.

B. The Housing Provider raised no objections to the central contention of the Petitioner that the term "Current Rent" meant the rent currently paid by the Tenant.

a. Most importantly, it is not the "legal rent" or the "Ceiling Rent" that the Act requires to be stated, but the Current Rent.

The law and regulations and the forms *could* have required the Housing Provider to disclose:

1. The Ceiling Rent we could have charge for your unit;
2. The Ceiling Rent we would have liked to charge for your unit;

3. The Ceiling Rent we intended to charge for your unit but it was too high for anyone to willingly pay;
4. The number in your lease that we used to calculate your Actual Rent after a concession;
5. The Ceiling Rent that the lease says that we can charge you on the renewal date, but probably will not because of a new concession;
6. The Ceiling Rent that we may or may not charge you if you go month to month; or
7. A number computed for us by our contractor (RCC) as the Ceiling Rent.

But, instead, the RAD Form 8 uses the term "Current Rent" that clearly means the rent that is demanded now (the day the Form 8 is issued) and not what could have been demanded or what might be demanded in the future.

The RAD Form 9 also uses the terms "Prior Rent" and "New Rent". However, there is no ambiguity in these phrases. The RAD form 9 consists of three parts: (i) a certification under penalty of perjury; (ii) a sample Form 8 (Housing Provider's Notice to Tenants of Changes to Rent Charged) with the "Current Rent charged" and "new rent charged"; and (iii) an Appendix of Notices of Rent Charged. Because the RAD Form 9 is an appendix and summary of the RAD Form 8's that were issued, it is obvious that Lines 1, 2, 3 and 4 of the RAD Form 8 become columns 3, 4, 5 and 6 of RAD Form 9.

b. <u>The Housing Provider provides no alternative method of defining "Current Rent" or the phrase "Your Current Rent is".</u>

The Housing Provider has each tenant sign a lease. This is an adhesion lease where the tenant has no paper copy and must sign an electronic version of the lease where there is no mechanism for the tenant to make any corrections or changes. The only items able to be negotiated are the amount of the concession and ancillary charges such as security deposit, garage rental, other fees and deposits (that is, some of the amounts). There is no negotiation of definitions or terms or the amount defined as the

rent. It appears that the amount defined as the rent in the lease (the Lease Defined Rent) is always the Ceiling Rent. It is not at all clear if this Lease Defined Rent would supersede the Actual Rent in a dispute between the Housing Provider and tenant who signed it. In Landlord/Tenant Court, the Housing Provider does not even attempt to use this higher number. In Maxwell, it was held that concession leases are valid, but it was assumed that the Current Rent filed under penalty of perjury with the RAD was correct and the issue of improper filing was not raised by the tenant.

However, questions about the lease do not have to be answered here, because the filing of Form 9 has nothing to do with the contract between the Housing Provider and the tenant as a concession lease. It has to do with the RAD regulations and if the Housing Provider followed them or if it filed false statements with the RAD. Again, the regulations do not ask for the amount that the Housing Provider and the tenant may have agreed upon as the rent. RAD form 8 and 9 instead require the Housing Provider to state the amount of the Current Rent as defined by the statute.

c. <u>The Housing Provider uses the word "rent" as the Actual Rent in every other context except its lease and the issuance of RAD for 8's and filing of RAD form 9's.</u>

The Housing Provider uses the term rent to mean the Actual Rent when it advertises the housing accommodations. (Exhibit 2). The Housing Provider used the term rent to mean the Actual Rent when it goes into court to evict a tenant (Section IV.2.g, above). The Housing Provider uses the term rent to mean the Actual Rent when explaining the lease to a tenant. (Exhibit 4, below). The Housing Provider uses the term rent to mean Actual Rent when it sends out monthly reminders to tenants to pay their rent.

The Housing Provider uses the Lease Defined Rent in the Lease and only to compute the Actual Rent. The Housing Provider would be correct only in its filing in those cases of non-concession leas-

es (grandfathered) where there was no discount. Once it gives a discount, it can no longer correctly use the Lease Defined Rent on RAD form 8's and 9's.

C. The relief sought in the Motion includes sanctions for perjury because the incorrect filings were willful.

The Housing Provider was notified that the filings were incorrect and should be corrected, but did not reply or make any correction. [Motion, Exhibit A, point 7 and Exhibit D] In addition, the incorrect filings were part of a pattern and practice of such incorrect filings in order to increase revenue and not isolated mistakes. [Exhibit 5]

D. The Housing Provider says at the end of its Objection that "judgment should instead be entered in favor of the Housing Provider". This appears to be the Cross Motion for Summary Judgment mentioned in the Caption.

The Housing Provider has introduced no new evidence except the leases (one already provided by the Petitioner and one so identical that it was not originally recognized by the Housing Provider as distinct) and the two OAH cases to support its cross motion. The Housing Provider has introduced no arguments as to why judgment should be entered on its behalf other than the irrelevant assertion that concession leases are legal. Accordingly, judgment should not be entered for the Housing Provider.

SUMMARY

There is no dispute about the facts in this case. The Housing Provider has not disputed any of the facts stated by the Petitioner in either the Petition or the Motion for Summary Judgement. The Housing Provider has introduced no evidence (by affidavit or otherwise) except for the undisputed leases it claims were signed by the Tenant and copies of court cases. The issue before this court is if the

Housing Provider was correct in certifying to the RAD that the "Current Rent" was the amount defined as rent before a discount in the lease between the Housing Provider and the Tenant or if the "Current Rent" was the amount of money, demanded, received, or charged by the Housing Provider in the month that the certification was made. Putting it differently, the issue is if the definition of rent in a contract between the Housing Provider and the Tenant supersedes the definition in the statute for purposes of complying with that same statute.

For the reasons stated above, judgment should be entered for the Petitioner, and the relief sought and such other relief as the court feels appropriate should be granted.

Respectfully submitted,
Tenant/Petitioner

Dated: February 13, 2017

Gabriel Fineman
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Reply to the Housing Provider's Opposition To Mr. Fineman's Motion for Summary Judgment and Cross Motion for Summary Judgment, including Exhibits 1-6 was served on February 13, 2017, by first class mail, postage pre-paid upon the attorney for the Housing Provider:

Debra F. Leege
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_____

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EXHIBIT 1

Statutory Construction of the term

RENT

STATUTORY CONSTRUCTION OF "CURRENT RENT CHARGED"

The Housing Provider contends that we should not view the definition of "rent" in a vacuum[1]. There is no need to try and interpret the meaning of "rent" because the meaning of the definition is clear and unambiguous. However, if we need to preform statutory construction, our courts have provided a clear procedure[2] to do so[3] and it does not involve looking to private contracts at all. The definition of the term "rent" should be interpreted only by common and plain definitions (usually found in dictionaries),[4] and then any ambiguous words should only be further interpreted in relation to other terms of the statute and or its legislative history. This is because the requirements to file the RAD forms is City wide and independent of any particular contract[5] and there is no provision in the law

[1] By this the Petitioner thinks the Housing Provider means that the statutory definition of rent requires interpretation. It seems that the Housing Provider wants to pick and choose a definition of rent to suit its purposes in each situation: the Ceiling Rent in the Lease; the Actual Rent in its advertisements; and the Actual Rent in Landlord Tenant Court. However, when it comes to official notices and filings, it has to use the official definition that we examine in this Exhibit.

[2] The rules of statutory construction are well established in this jurisdiction. "Our first step when interpreting a statute is to look at the language of the statute." Jeffrey v. United States, 878 A.2d 1189, 1193 (D.C.2005). "The primary and general rule of statutory construction is that the intent of the lawmaker is to be found in the language that he has used." Peoples Drug Stores, Inc. v. District of Columbia, 470 A.2d 751, 753 (D.C.1983) (en banc) (citing Varela v. Hi-Lo Powered Stirrups, Inc., 424 A.2d 61, 64 (D.C.1980) (en banc)). "It is axiomatic that `the words of the statute should be construed according to their ordinary sense and with the meaning commonly attributed to them.'" Id. (quoting Davis v. United States, 397 A.2d 951, 956 (D.C.1979)). When interpreting the language of a statute, we must look to the plain meaning if the words are clear and unambiguous. District of Columbia v. District of Columbia Office of Employment Appeals, 883 A.2d 124, 127 (D.C.2005) (citing Jeffrey, supra, 878 A.2d at 1193). Usually "[w]hen the plain meaning of the statutory language is unambiguous, the intent of the legislature is clear, and judicial inquiry need go no further." District of Columbia v. Gallagher, 734 A.2d 1087, 1091 (D.C. 1999) (citations omitted). [District of Columbia v. Place, 892 A.2d 1108, 1108 (2006)]

[3] Any question of statutory interpretation begins with looking at the plain language of the statute to discover its original intent. To discover a statute's original intent, courts first look to the words of the statute and apply their usual and ordinary meanings.
If after looking at the language of the statute the meaning of the statute remains unclear, courts attempt to ascertain the intent of the legislature by looking at legislative history and other sources. Courts generally steer clear of any interpretation that would create an absurd result which the Legislature did not intend. Wex Legal Dictionary, Legal Information Institute, Cornell University Law School. https://www.law.cornell.edu/wex/statutory_construction

[4] The starting point in statutory construction is the language of the statute itself. The Supreme Court often recites the "plain meaning rule," that, if the language of the statute is clear, there is no need to look outside the statute to its legislative history in order to ascertain the statute's meaning. ['Statutory Interpretation General Principles and Recent Trends' by Congressional Research Service - The Library of Congress March 30, 2006 page CRS-1]

[5] There could be ten different contracts with ten different definitions of rent.

for its definitions to be superseded or modified by private contract. That is, private contracts must abide by the law rather than change or replace it.

A summary of the methodology for statutory construction is:

- Look at the definition of each word in the dictionary
- Put those definitions together to interpret the phrase
- Check that the interpretation is not unreasonable
- If there is still ambiguity, look at the legislative history

The definition of "rent" in the statute is:

> "'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)]

Or, to shorten it for this issue:

> 'Rent' means the … amount of money… demanded, received, or charged by a housing provider [for the]… use of a rental unit….

Or, more succinctly, how much was demanded, received or charged.

So, what does the statute mean by "demanded", "received" and "charged" and how does that relate to the common definition of "rent"? [6]

[6] Rent" is used by the Housing Provider and in parts of the Act to mean different things. Therefore, in this document we use several terms.

1. "**Ceiling Rent**" is the amount that the Housing Provider claims is the maximum rent it is allowed to collect under the law. This seems to be the number filed on the RAD form 9's. It is also the term that the Rent Control Reform Act of 2005 tried to eliminate from the law.[6]
2. "**Lease Defined Rent**" is the amount stated in the adhesion lease as the amount of the rent before any discount or concession. Almost always the Ceiling Rent. The Housing Provider calls this "**legal rent**" in its Opposition.
3. "**Actual Rent**" is the amount that the Housing Provider collects each month (absent a default or hold over) after any discount, concession or other reduction. It is the amount that the Tenant expects to pay.
4. "**Current Rent**" is the amount of Actual Rent charged when the Form 8 is issued and is supposed to be entered on the RAD Form 9.

1. First, the most widely used judicial method to understand a definition is to look at the **plain meaning of the words** as they would be understood by a reasonable and prudent person and usually relies on dictionary definitions[7].

    a. **Demand** is defined in dictionaries as asking with authority or to claim as a right to receive. The main dictionaries define it as follows:

        i. "*a* : an act of demanding or asking especially with authority <*a demand for obedience*> *b*: something claimed as due or owed <*the demands of the workers' union*>" (Merriam Webster) https://www.merriam-webster.com/dictionary/demand

        ii. **"1.** To ask for urgently or peremptorily: *demand an investigation into the murder; demanding that he leave immediately; demanded to speak to the manager.*
        2. To claim as just or due: *demand repayment of a loan.*
        3. To ask to be informed of: *demanded an explanation for the interruption.*
        4. To require as useful, just, proper, or necessary; call for: *a gem that demands a fine setting.*
        5. *Law*
        a. To lay legal claim to; claim formally.
        b. To ask that (something) be done in accordance with a legal requirement."
        (American Heritage)
        https://www.ahdictionary.com/word/search.html?q=demand

        iii. "[reporting verb] Ask authoritatively or brusquely:
        [with direct speech] *''Where is she?' he demanded'*
        [with clause] *'the police demanded that he give them the names'* "
        (Oxford) https://en.oxforddictionaries.com/definition/rent

        iv. "In practice. To claim as one's due; to require; to ask relief. To summon; to call in court. 'Although solemnly demanded, comes not, but makes default.' "
        (Blacks) http://thelawdictionary.org/demand/

    In our case, it means to insist on receiving a certain payment. With the concession lease, the amount demanded to be paid is the Actual Rent that was (in my case) demanded of the Petitioner's bank. The amount of this demand on my bank was entirely under the control of the Housing Provider and it demanded the Actual Rent and not the Lease Defined Rent.

[7] MCI Telecommunications Corp. v. AT&T Co., 512 U.S. 218, 224-26 (1994) https://supreme.justia.com/cases/federal/us/512/218/case.html This case examines in detail what happens when there are conflicting dictionary definitions presented to the Court. Although that issue is not present in this case, its analysis of how to do statutory interpretation is clear – use the dictionary to look for the plain meaning of the words.

b. **Receive** is defined in most dictionaries as acquiring, taking possession of, or getting something:

i. "to come into possession of : acquire <*receive a gift*>" (Merriam Webster) https://www.merriam-webster.com/dictionary/receive

ii. "To take or acquire (something given or offered); get or be given: *receive a present.*" (American Heritage) https://www.ahdictionary.com/word/search.html?q=receive

iii. "Be given, presented with, or paid (something): 'the band will receive a £100,000 advance' 'she received her prize from the manager'" *(Oxford) https://en.oxforddictionaries.com/definition/rent*

iv. "To acquire or get something. Someone can receive an item such as a letter or a gift or can receive something non-tangible such as a word of encouragement or praise." (Blacks) http://thelawdictionary.org/receive

In our case, it means to get payment every month. With the concession lease, the amount of actual payment is the Actual Rent that was (in my case) received from the Petitioner's bank. The amount received from my bank was entirely under the control of the Housing Provider and it demanded and received the Actual Rent and not the Lease Defined Rent.

c. **Charge** is defined in most dictionaries as the price that is asked for something. In some cases, it is the debit to an account for money owed to the account holder:

i. "*a* : expense, cost <gave *the banquet at his own charge*>
b : the price demanded for something <*no admission charge*>
c : a debit to an account <*the purchase was a charge*>"
(Merriam Webster) https://www.merriam-webster.com/dictionary/charge

ii. "2. To set or ask (a given amount) as a price: *charges ten dollars for a haircut.*
3. To hold financially liable; demand payment from: *charged her for the balance due.*"
(American Heritage)
https://www.ahdictionary.com/word/search.html?q=charge

iii. "1. Demand (an amount) as a price for a service rendered or goods supplied:
'wedding planners may charge an hourly fee of up to £150'
[with two objects] *'he charged me five dollars for the wine'*
1.1. charge something to: Record the cost of something as an amount payable by (someone) or on (an account):

'they charge the calls to their credit-card accounts' " (Oxford)
https://en.oxforddictionaries.com/definition/charge

iv. "To impose a burden, obligation, or lien; to create a claim against property; to claim, to demand; to accuse; to instruct a jury on matters of law."
(Blacks) http://thelawdictionary.org/charge

In our case, it means the amount required to be paid. With the concession lease, the amount required to be paid is the Actual Rent that was (in my case) charged to the Petitioner's bank. The amount charged from my bank was entirely under the control of the Housing Provider, and it charged the Actual Rent and not the Lease Defined Rent. Note that this resulted in a debit to my bank account but a credit to my account with the Housing Provider.

So each word in the definition tells us that the term "rent" means the Actual Rent as claimed by the Petitioner and not the Lease Defined Rent.

2. The next step in judicial construction is to test to see if the definition of rent as Actual Rent is **unreasonable**. In our case, the term rent being the Actual Rent is a conclusion that most people would expect. Even the Housing Provider uses it to mean Actual Rent except for this filing. To check on this, we first have to look at the meaning of the word "rent", itself. So we go through the process again, with the word "rent".

   Rent is defined in dictionaries as:

   a. "a usually fixed periodical return made by a tenant or occupant of property to the owner for the possession and use thereof; *especially* : an agreed sum paid at fixed intervals by a tenant to the landlord" (Merriam Webster)
   https://www.merriam-webster.com/dictionary/rent

   b. "Payment, usually of an amount fixed by contract, made by a tenant at specified intervals in return for the right to occupy or use the property of another." (American Heritage)
   https://www.ahdictionary.com/word/search.html?q=%20RENT

   c. "A tenant's regular payment to a landlord for the use of property or land" (Oxford)
   https://en.oxforddictionaries.com/definition/rent

d. "At common law. A certain profit issuing yearly out of lands and tenements corporeal; a species of incorporeal hereditament. 2 Bl. Comm. 41. A compensation or return yielded periodically, to a certain amount, out of the profits of some corporeal hereditaments, by the tenant thereof. 2 Steph. Comm. 23. A certain yearly profit in money, provisions, chattels, or labor, issuing out of lands and tenements, in retribution for the use. 3 Kent, Comm. 4G0. The compensation, either in money, provisions, chattels, or labor, received by the owner of the soil from the occupant thereof." (Blacks) http://thelawdictionary.org/rent/

Note that each definition uses the amount paid to or received by the landlord and not the amount defined as rent in a lease or other agreement. Note that none talk about discounts, rebates, concessions or other adjustments. This is consistent with the Plaintiff's term "Actual Rent" and inconsistent with the term legal rent or Lease Defined Rent.

In addition, when looking for the plain meaning of the words, we should look at how the average person would interpret this definition of rent. The typical tenant views the rent as what he/she pays each month and not some other figure. This is consistent with the fact that when the Housing Provider advertises its apartments, it always shows the rent as the amount after concessions and never the amount defined in the written lease (shown to the prospect only when being signed) to avoid such confusion. A true and accurate copy of the advertisement for my apartment (Unit 1131) is attached as Exhibit 3 to the Third Affidavit of Gabriel Fineman that is hereby incorporated herein and is attached as Exhibit 2 (the "**Third Affidavit**"). It shows a rent of $1,980 per month being offered to a new tenant despite the fact that that my Actual Rent in 2016 was $2,169 [Request section IV. B. d] the last best offer from the Housing Provider in 2016 (for the 2017 term) was $2,301 and the Ceiling Rent for Unit 1131 was $3,161. That is, not only does the Housing Provider use the Actual Rent as the rent for the apartment, but most people assume that the rent is the Actual Rent.

In fact, the Housing Provider has tried to explain the Lease Defined Rent in its lease to prospective tenants. [Exhibit 4] In a letter to a prospective tenant it said:

> You will be receiving a separate email to sign your lease electronically. Your lease agreement will state the RCC Rent Control Price of $3105. The RCC rent amount of $3105 is the rent amount that is recorded with the city. It is the maximum rent that the city tells us we can charge for your specific apartment. I have also attached a few documents for your review regarding rent control. There will be additional documents for you to sign upon your arrival. Please remember, on the 1st page of the lease you will see a paragraph regarding your concession (discount) of $1400 which will be subtracted from $3105 to bring your rent down to $1705 per month for 12 months. $1705 is the monthly rent amount that you will pay.
>
> [Exhibit 4]

Note that the Ceiling Rent is clearly defined as the maximum rent allowed for the apartment, and that it was $1,400 more than the Actual Rent. "$1,705 is the monthly rent amount that you will pay." It appears that RCC stands for Rent Control Consultants, Inc. That is, the letter clearly states that the amount stated as "rent" in the lease was the maximum allowable rent and was there to be used to compute the actual amount of rent to be demanded, received, or charged each month, which was $1,705. In a subsequent email, the Housing Provider stated "Your December rent is $1705.00".

Indeed, the plain meaning of the word rent in the statute is what the Plaintiff calls "Actual Rent".

3. Another test of reasonableness is to use the statue, itself. **Definitions should not be inconsistent**. Other definitions and terms in the statute that may help us include:

a. "Annual fair market rental amount" means the annualized sum of the rents collected for all rental units in the housing accommodation during the base calculation year …."

[§ 42–3501.03 (1) – Underlining added] Note that this is not rents that might have been collected if there was no discount. This definition, using the term "rents collect-

ed", is consistent with rent being Actual Rent and inconsistent with rent being Lease Defined Rent.

b. "Base rent" means that rent legally charged or chargeable on April 30, 1985, for the rental unit which shall be the sum of rent charged on September 1, 1983, and all rent increases authorized for that rental unit by prior rent control laws or any administrative decision issued under those laws, and any rent increases authorized by a court of competent jurisdiction. [§ 42–3501.03 (4) – Underlining added]

This is used in DCMR § 4201 to compute the Ceiling Rent and is the base (starting point) for computing the Ceiling Rent. The term is also used in § 42–3502.08 to limit increases in the Ceiling Rent (but note the section § 42–3502.08.a(1) differentiates between rent and base rent when it says "Notwithstanding any provision of this chapter, the rent for any rental unit shall not be increased above the base rent unless:…" underlining added). Thus, this definition, that differentiated between "rent charged" and the computed "rent chargeable", is not inconsistent with rent being Actual Rent and supports the contention that the Ceiling Rent is different (and often higher) than the rent.

c. "Uncollected rent" means the amount of rent and other charges due for at least 30 days but not received from tenants at the time any statement, form, or petition is filed under this chapter. [§42–3501.03 (37) – Underlining added]

That is, rent means the amount that should be paid and not the amount before any discount. This definition, using the term "uncollected rent", is consistent with rent being Actual Rent and inconsistent with rent being Lease Defined Rent.

d. "Rent ceilings" (supposedly abolished) refers to the maximum rent that can be charged on a unit. [§ 42–3502.06] It was not envisioned as usually being the Actual Rent charged on a unit. See item 3(c) below. The usage does not conflict with the Petitioner's interpretation of the term rent.

e. "Rent increases" and "rent adjustments" are used throughout § 42–3502.06 and apply to the increase in the amount of rent paid by the tenant. The usage does not conflict with the Tenant's interpretation of the term rent and usually bolsters its contention that "rent" means what is paid.

Note that none of these definitions conflict with the definition of rent in D.C. Code § 42-3501.03(28) although none confirm that definition. There is no inconsistency of definitions with the Plaintiff's claim that the word "rent" as used in this statute means Actual Rent.

SUMMARY: The dictionary definitions, the way that the term is used in general usage and even by the Housing Provider in most cases and common sense shows that rent in the Rental Housing Act means Actual Rent. Perhaps this is why the Housing Provider did not offer any definitions of its own or attempt statutory construction in its Opposition.

4. Yet another test of reasonableness is to **look at the purpose** of the RAD form 8 notice. The official title of this form is "Housing Provider's Notice to Tenant of Adjustment in Rent Charged". It purpose is to tell the tenant of a change in the rent. This is to give the tenant time to budget for the change or to seek alternative accommodations. Because the Housing Provider almost always offers a new (and lower) concession, this information is useless without the new concession. That is, what the tenant needs to know is how much he/she is currently paying and what he/she will be paying when the lease renews. That amount is the Actual Rent and not the Lease Defined Rent.

Normally, courts would stop at this point.

5. However, if there is still ambiguity after looking at the plain meaning of the words and their reasonableness, one must then look at the **legislative history** to understand the intent of the Council and how they understood the term. The most instructive history was when the Council tried to eliminate Ceiling Rents and is contained in the Committee Report (June 8, 2006). A true and accurate copy of the Committee report is attached as Exhibit 6. The Committee Report said in part:

a. On June 6, 2006 on final reading, the Council passed Bill 16-109 as amended on May 2, 2006. It amends the Rental Housing Act of 1985 to:

1. Limit the frequency of <u>rent increases</u> on occupied units to once per year.

2. Cap annual rent increases generally at 2% plus the CPI, but not to exceed 10%.

3. Cap annual rent increases for elderly and disabled tenant at the CPI, but not to exceed 5%, and not to be means-tested.

4. Cap vacancy rent increases at 10% of the Current Rent charged, or at the Current Rent charged for a substantially identical unit in the building, but not to exceed 30% of the Current Rent charged for the vacant unit.

5. Abolish rent ceilings and rent ceiling adjustments, except for adjustments by petition previously approved by the Rent Administrator.

[Introduction Page 2 – underlining added]

Note that this says that the intent was to eliminate rent ceilings and not allow rent ceiling adjustments going forward. This did not ban concession leases but if they existed, limited their effect "cap[ping] annual rent increases generally at 2% plus the CPI". Note that this was the summary of the actual bill that only shows intent and not effective language.

b. "The number of large increases in rental ceilings has resulted in rental ceilings as high as $6,371 at Columbia Plaza, $8,225 at Marbury Plaza and $8,330 for no fewer than twenty-three different units in the Cleveland House. These ceilings are simply not plausible rental rates for the apartments; they serve as reservoirs to allow future rent increases in comparable apartments to virtually any level desired by the landlord."

[Inspector General's Report quoted on page 9 – underlining added]

Note the clear distinction between Ceiling Rent and Actual Rent. Cleveland House is another Equity property.

c. "An example should suffice. If the rent charged comes to $1,000 per month and the rent ceiling comes to $4,000 per month, under the current law, a CPI of even 4% would raise the rent ceiling to $4,160 per month and the rent charged, which can be increased by that same dollar amount, to $1,160 per month."

[Reasoning for the Consensus Legislation on Page 12 – underlining added]

This is another case of a clear distinction between rent charged (Actual Rent) and rent ceilings (Lease Defined Rent). Note that the adjustment to the "rent charged" is limited to the CPI amount increase to the rent ceiling. That is, the rent charged cannot be increased by shrinking some concession. (Note also that the adjustment was to the ceiling rent before the Council attempted to abolish Ceiling Rents.)

Thus, the legislative history shows clearly that the term "rent" did not mean the Ceiling Rent or the Lease Defined Rent, but rather the Actual Rent.

6. Finally, we can use **other parts of the Real Property Law** as a guide. Chapter 34 says in section 05.11:

> The purposes of this chapter favor resolution of ambiguity by the hearing officer or a court toward the end of strengthening the legal rights of tenants or tenant organizations to the maximum extent permissible under law. If this chapter conflicts with another provision of law of general applicability, the provisions of this chapter control. [DC Code § 42–3405.11]
>
> https://beta.code.dccouncil.us/dc/council/code/sections/42-3405.11.html

To strengthen the legal rights of the tenants, it would be advantageous to define the rent as the Actual Rent and not the Lease Defined Rent.

The Meaning of "current"

Looking at the meaning of the word "current" is simple because there is little disagreement about what it means. It means in the present time or now.

a. "*(1)* : presently elapsing <*the current year*> *(2)* : occurring in or existing at the present time <*the current crisis*> <*current supplies*> <*current needs*> *(3)* : most recent <*the magazine's current issue*> <*the current survey*>" (Merriam Webster)
https://www.merriam-webster.com/dictionary/current

b. "**a.** Belonging to the present time: *current events; current leaders.*
b. Being in progress now: *current negotiations.*" (American Heritage) https://ahdictionary.com/word/search.html?q=current

c. "Belonging to the present time; happening or being used or done now:
'keep abreast of current events'
'I started my current job in 2001' " (Oxford)
https://en.oxforddictionaries.com/definition/current

d. "Running; now in transit; whatever is at present in course of passage; as 'the current month' " (Blacks) http://thelawdictionary.org/current

In our case, "current" means the month during which the notice was given or filed.

In Summary

The meanings of "current", "rent" and "charged" are obvious and do not really rate the full blown statutory construction they received above. However, applying the principles of statutory construction results in the phrase "current rent charged" in this context meaning the Actual Rent (after any discount) at the time of the notice and filing.

EXHIBIT 2

DISTRICT OF COLUMBIA
Office of Administrative Hearings

GABRIEL FINEMAN, Tenant/Petitioner, V. SMITH PROPERTY HOLDINGS VAN NESS L.P., Housing Provider/Respondent	:	Case No.: 2016 DHCD TP 30,842 3003 Van Ness Street, N.W., Apt. W-1131 Administrative Law Judge: Ann C. Yahner

THIRD AFFIDAVIT OF GABRIEL FINEMAN

I, Gabriel Fineman, declare under penalty of perjury as follows:

1. I am over twenty one (21) years of age and make this Affidavit on personal knowledge and in support of the Tenant/Petitioner's ("Petitioner") Reply to the Housing Provider's Opposition to the Petitioner's Request for Summary Judgment.

2. Smith Property Holdings Van Ness L.P. (the "Housing Provider") is the owner of the residential rental accommodation located at 3003 Van Ness Street, N.W. in Washington, D.C. (the "Housing Accommodation").

3. After I gave notice to the Housing Provider that I was not renewing my lease for my unit ("Unit 1131") at the Housing Accommodation, I periodically reviewed the apartments listed for rent on the website of the Housing Provider.

4. I was easily able to identify Unit 1131 because of its unusually small balcony, its room configuration, its distinctive shape in wrapping around the stair well and the elevators, its 11th floor location and its view.

5. On January 25, 2017, I used my computer to view the website of the Housing Provider and obtained a listing of available one bedroom apartments. I again recognized Unit 1131. A true and accurate copy of the listing is attached as Exhibit 3.

6. The listing shows the rent for Unit 1131 as $1,980 per month. I had been paying $2,169 for Unit 1131 and the last best offer from the Housing Provider in 2016 (for the 2017 term) was $2,301.

7. The web listing included more than 20 one bedroom apartments and none of them showed the Ceiling Rent price that would become the Lease Defined Price.

8. At the bottom of all of the listings was a short cryptic sentence that read "Quoted rent may include a concession." This was added in 2016 after another tenant started his Tenant Petition.

9. I have in my possession a copy of an email (the "move-in email") sent by the Housing Provider to new tenants explaining the terms of their lease. The move-in email was forwarded to me by the new tenants. A true and accurate copy of the email is attached as Exhibit 4.

10. I have in my possession an affidavit from Harry Gural. A true and accurate copy of the email is attached as Exhibit 5.

11. I received a copy of the legislative report on Bill 16-109 the "Rent Control Reform Amendment Act of 2006". I believe that the Report is genuine, and a true and accurate copy is attached as Exhibit 6.

The copy that I received also had attachments that do not seem to be relevant. A full copy of this report with the attachments is available at

http://3003vn.org/RAD/Commitee_Report_Rent_Control_2006.pdf

Dated: January 13, 2017

_____

Gabriel Fineman
Tenant/Petitioner

EXHIBIT 3

Exhibit 3

Web listing for Apartment 1131 on January 25, 2017

I, Gabriel Fineman, herby certify under penalty of perjury that this is a true and correct copy of the listing shown on the web for an apartment described as identical to Unit 1131. The apartment listing says nothing about the higher rent that is shown in the lease.

However, after the listing of more than 20 one bedroom apartments, plus more studio and two bedroom apartments, is the following cryptic notice [arrow added]. Nowhere is the "legal" or "ceiling" rent specified. This notice was not present in 2015.

Available Soon...

Our availability changes all the time. We are happy to notify you when a floor plan comes available.

VIEW UNAVAILABLE FLOOR PLANS

Quoted rent may include a concession. Contact the community for more information.

EXHIBIT 4

Exhibit 4
Move In Letter
Arrow Added

From: **Julie Jackson** jjackson2@eqr.com
Subject: Fwd: 3003 Van Ness
Date: November 23, 2015 at 6:08 PM
To. Ionut Dobre dobreionut88@gmail.com

Hi Ionut and Savin,

We look forward to welcoming you to 3003 Van Ness. I've provided below a few details to help you prepare for your move in.

You will need to pay the amount of $2621.00 on-line or by check by no later than 11/25. This amount includes your November pro-rated rent, one application fee and your December rent. The $500 move in fee was waived. If you make your payment on-line at www.mvequitvapartments.com do remember to disregard the amount on-line and only pay the amount above.

You will be receiving a separate email to sign your lease electronically. Your lease agreement will state the RCC Rent Control Price of $3105 The RCC rent amount of $3105 is the rent amount that is recorded with the city. It is the maximum rent that the city tells us we can charge for your specific apartment. I have also attached a few documents for your review regarding rent control. There will be additional documents for you to sign upon your arrival. Please remember, on the 1st page of the lease you will see a paragraph regarding your concession (discount) of $1400 which will be subtracted from $3105 to bring your rent down to $1705 per month for 12 months. $1705 is the monthly rent amount that you will pay. Additional items to prepare for your move-in are below. **PROOF OF RENTERS INSURANCE IS REQUIRED ON YOUR MOVE IN DAY.** See below for more information. Don't forget to reserve the freight elevator as soon as possible and to take advantage of residents specials please use the direct contacts below should you choose either Comcast or RCN. If you have any questions feel free to let me know. Thank you again for working with me and for choosing to make 3003 Van Ness your new home.

3003	VAN NESS

Congratulations on your new home! Your lease start date is 11/25.

Your new address is:
3003 Van Ness Street, NW
Apt S-804
Washington, DC 20008

Do let me know the time you plan to arrive to pick up your keys. Prior to doing so I have just a few more documents to sign and I will need proof of your renter's insurance.

3003
VANNESS
Office/Front Desk:
(202) 244-3100

Email:
archstonevanness@eqr.com

Office Hours:

Mon.,Tues.,Wed,.:

1. Renter's Insurance:
A total of at least $100,000 basic liability coverage is required. You are more than welcome to use a company of your choice. We work directly with Assurant Solutions. All leaseholders must be listed on

EXHIBIT 5

DISTRICT OF COLUMBIA
Office of Administrative Hearings

GABRIEL FINEMAN, Tenant/Petitioner, V. SMITH PROPERTY HOLDINGS VAN NESS L.P., Housing Provider/Respondent	:	Case No.: 2016 DHCD TP 30,842 3003 Van Ness Street, N.W., Apt. W-1131 Administrative Law Judge: Ann C. Yahner

DISTRICT OF COLUMBIA
Office of Administrative Hearings

GABRIEL FINEMAN, Tenant/Petitioner, V. SMITH PROPERTY HOLDINGS VAN NESS L.P., Housing Provider/Respondent	:	Case No.: 2016 DHCD TP 30,842 3003 Van Ness Street, N.W., Apt. W-1131 Administrative Law Judge: Ann C. Yahner

AFFIDAVIT BY HARRY GURAL

I, Harry Gural, declare under penalty of perjury as follows:

1. I am over twenty one (21) years of age and make this Affidavit on personal knowledge and in support of the Tenant/Petitioner's Reply to the Housing Provider's Opposition to the Petitioner's Request for Summary Judgment.

2. I am a tenant at 3003 Van Ness Street (the "Housing Accommodation").

3. I am the President of the Van Ness South Tenants Association ("VNSTA") that represents tenants at the Housing Accommodation.

4. In my role as President of VNSTA. I have helped more than sixty (60) tenants negotiate their rents with the Housing Provider.

5. In almost every case, tenants report to me that Equity Residential has sent to them rent increase notices (RAD Form 8—Housing Provider's Notice to Tenant of Adjustment in Rent Charged) that list the current rent charged as substantially more than the actual rent demanded each month from the tenant. In some cases, the rent reported on the Form 8 is well over $1,000 per month more than the rent paid.

6. In most of these eases, the tenants report to me that they were pressured to sign a new lease and pay a rent increase that is substantially more than the amount allowed by the section of the law cited in the Form 8 (CPI+). Tenants have reported to me that in some eases Equity Residential management has successfully pressured them into leas-

es with rent increases several hundred dollars per month higher than what is allowed under DC law.

7. My knowledge of these interactions between tenants and Equity Management is reinforced by extensive email evidence of rent negotiations.

8. As a result of a Freedom of Information Act (FOIA) request, I have found that Equity Residential systematically reports rents on RAD 9 forms (Certificate of Notice to RAI) of Adjustments in Rent Charged) that are far above the average market rents for those apartments.

9. I have been told by many tenants that Equity Residential has caught them in a "bait and switch," advertising rents at a given amount e.g.. $1,800, and requiring them to sign leases that list rents hundreds of dollars or even well over $1,000 per month over the advertised rent. Tenants report to me that they were reluctant to sign those leases, but that Equity leasing agents told them that it was "just a formality" or "required by DC rent control laws."

10. Many tenants have reported to me their confusion over the fact that Equity Residential sends them rent increase forms (RAD 8—Housing Provider's Notice to Tenant of Adjustment in Rent Charged) which appear to be official documents from the DC Rental Accommodations Division (RAD), but which are in fact issued by Equity Residential. The printed header on those documents list both Smith Property Holdings (Equity Residential) and the District of Columbia Department of I lousing and Community Development. Rental Accommodations Division.

11. My personal experience confirms tenants' reports to me. On Jan. 15 2015. Equity Residential sent me a Housing Provider's Notice to Tenants of Adjustment in Rent Charged. That document lists my "current rent charged" as $2,048 when in fact I was paying $1,770.

12. In January 2016. Equity Residential sent me a Housing Provider's Notice to Tenants of Adjustment in Rent Charged dated Jan. 15. 2016. That document lists my "current rent charged" as $2.1 18 when in fact I was paying $1,830.

13. On March 18. 2016. I met with Equity Residential Property Manager Avis Duvall to discuss my rent for the year beginning April I. 2016. We argued about the new monthly rent, but agreed that I would pay $1,805 per month. Despite the fact that I was a month to month tenant. Ms. Duvall stated that I must sign a new lease in order to gel the negotiated $1,895 monthly rent. I refused to sign a lease with an incorrect figure listed as the rent. Equity Residential subsequently filed against me a Verified Complaint for Possession of Real Property in the Landlord and Tenant Branch of the DC Superior Court.

14. I have found that the rent figures submitted by Equity Residential to the Rental Accommodations Division on RAD 9 forms (Certificate of Notice to RAD of Adjustments in Rent Charged) are not verified by the Rental Accommodations in any way. I know this from email correspondence with the Rent Administrator and from

multiple conversations with RAD employees. True and accurate copies of emails exchanged between me and Rent Administrator Keith Anderson are attached as Exhibit A.

15. I have found that the RAD does not investigate the rent figures submitted by housing providers even when a tenant can provides a bank statement proving that the rent paid is far less than the amount Equity Residential has filed with the RAD. I know this through two phone calls with RAD employees, two in-person visits and from email correspondence with the Rent Administrator. The Rent Administrator has told me via email that the RAD has not conducted a single investigation in the last five years.

I hereby state under penalty of perjury that the foregoing statements are true and correct.

Harry Gural
President, Van Ness South Tenants Association
February 12. 2017

Attachment A
Email from Keith Anderson
Arrow Added

---------- Forwarded message ----------
From: **Harry Gural** <harrygural@gmail.com>
Date: Tue, Feb 7, 2017 at 1:56 PM
Subject: Re: Important question regarding RAD procedure on rent price submissions by housing providers
To: "Anderson, Keith (DHCD)" <KeithA.Anderson@dc.gov>
Cc: "Pelletiere, Danilo (DHCD)" < Danilo.pelletiere@dc.gov>

Mr. Anderson,

Thank you for your quick response. However, your response is confusing.

3) If a tenant complains that a housing provider is misrepresenting the rent filed with RAD, does RAD initiate an investigation or not? Or must a tenant file a tenant petition and get a ruling at OAH before RAD will investigate?

4) How many investigations of tenant complaints has RAD done over the past five years?

Harry Gural
President
Van Ness South Tenants Association

On Tue, Feb 7, 2017 at 12:49 PM, Anderson, Keith (DHCD) <KeithA.Anderson@dc.gov> wrote:

> Good Afternoon, Mr. Gural:
>
> 1) Historically, RAD has/does not perform a review of rent adjustment filings for rent calculation accuracy.
>
> 2) Yes. RAD will investigate an allegation that a housing provider has misrepresented rent levels on a rent adjustment filing. When such an allegation is made, a tenant files a tenant petition/complaint to

address the issue. Rarely does a tenant request RAD to launch a show cause investigation to resolve a rent adjustment claim in lieu of choosing the tenant petition/complaint adjudication process.

Mr. Anderson

From: Harry Gural [mailto:harrygural@gmail.com]
Sent: Tuesday, February 07, 2017 11:55 AM
To: Anderson, Keith (DHCD); Pelletiere, Danilo (DHCD)
Cc: Anita Bonds; Anita Bonds; Barry Weiss; Beth Harrison; Taylor, Dennis (OTA); Cohn, Joel (OTA); Shreve, Johanna (OTA); Falcicchio, John (EOM); Willingham, Jonathan (COUNCIL); Cheh, Mary (COUNCIL); Meghan Brown; Sadeghy, Amir (OTA); Adelstein, Shirley (SMD 3F02); Shirley Adelstein; Ahmed, Umar (OTA); Stein, Perry
Subject: Important question regarding RAD procedure on rent price submissions by housing providers

Mr. Anderson,

As you know, I have a tenant petition against Equity Residential for charging me a rent increase greater than the legal limit of 2% plus the CPI.Â I have a court document due on Friday and I need answers to the following two simple questions:

1) Does the Rental Accommodations Division check the rent figures submitted by housing providers? (For example, does it check to see if the numbers are plausible -- that a one-bedroom apartment in Van Ness is listed at $3,500 per month.)

2) If a tenant can show that the housing provider has misrepresented rent amounts to RAD (for example, by showing a bank statement), does the RAD investigate?

Many thanks for your attention to this important matter.

Harry Gural

President

Van Ness South Tenants Association

PUBLIC SAFETY SURVEY: Let us know about your experiences and opinions regarding public safety in Washington, DC. Take the 10-minute survey Here. #SaferStrongerDC

EXHIBIT 6

COUNCIL OF THE DISTRICT OF COLUMBIA
COMMITTEE ON CONSUMER AND REGULATORY AFFAIRS,
ADDENDUM TO COMMITTEE REPORT

1350 Pennsylvania Avenue, NW, 20004

TO: All Councilmembers
FROM: Councilmember Jim Graham, Chairperson
Committee on Consumer and Regulatory Affairs
DATE: June 8, 2006

SUBJECT: Bill 16-109, the "Rent Control Reform Amendment Act of 2006"

On May 2, 2006, the Council unanimously approved on first reading an Amendment in the Nature of a Substitute to Bill 16-109, the "Tenants' Rights to Information Amendment Act of 2006." The Amendment renames Bill 16-109 the "Rent Control Reform Amendment Act of 2006"; incorporates comprehensive rent control reform legislation that moots related legislation, Bill 16457, previously approved by the Committee; and incorporates the provisions of Bill 16-109 and Bill 16-48, the "Rent Ceiling Calculation Disclosure Amendment Act of 2006," as amended to conform to the comprehensive reform legislation's elimination of rent ceilings from the District's rent control law. On June 6, 2006, the Council unanimously passed on final reading Bill 16-109 as amended by the Amendment in the Nature of a Substitute. Pursuant to Council Rule 444, the Committee adopts this addendum to the Committee Report on Bill 16-109, filed March 17, 2006, to explain the reasoning for Bill 16-109 as amended by the Amendment in the Nature of a Substitute and as passed by the full Council.

CONTENTS

I. INTRODUCTION

On October 11, 2005, **Councilmember Jim Graham**, the Chairperson of this Committee, introduced the "Rent Control Reform Amendment Act of 2005," which was designated Bill 16-457 and referred to the Committee. It was co-introduced by Chairman **Cropp**, Committee members **Brown** and **Fenty**, and Councilmembers **Barry**, **Evans, Gray**, **Mendelson**, **Orange**, and **Patterson**, and co-sponsored by Committee member **Catania** and Councilmember **Schwartz**. As introduced, the bill would amend sections 208(g), 208(h), and 213 of the Rental Housing Act of 1985 (D.C. Code §§ 42-3502.08(g), 42-3502.08(h), and 42-3502.13) which govern rent charged increases and vacancy rent ceiling adjustments on rent-controlled apartments in the District of Columbia.

Chairperson Graham's primary objectives in introducing this legislation were (1) to address the lack of effective and meaningful controls on rent levels and on rent increases in many of the District's rent-controlled apartments, and (2) to restore to the District's rent control law its chief statutory purpose "[t]o protect low- and moderate-income tenants from the erosion of their income from increased housing costs." D.C. Code § 42-3501.02(1).

On introducing the "Rent Control Reform Amendment Act of 2006," **Chairperson Graham** identified 3 discrete areas of the rent control law that prompted the legislation: (1) the ability of the landlord to increase the rent twice annually; (2) the "vacancy high comparable" rent ceiling adjustment, which allows the landlord to increase the rent ceiling upon vacancy to the highest rent ceiling of any "substantially identical" unit in the building; and (3) the ability of the landlord to increase the rent on an occupied unit by the amount of any single rent ceiling adjustment, including a "vacancy high comparable" adjustment, which can and often does exceed $500 or even $1,000.

Over the course of the next 7 months, **Chairperson Graham** consulted all stakeholders — including tenant advocates, landlord representatives, DCRA, and the Mayor's office — in an effort to achieve greater tenant protection in the context of as broad a consensus as possible consistent with the legislation's primary objectives. The process (described below) culminated in consensus legislation, which Chairperson Graham introduced as an Amendment in the Nature of a Substitute to Bill 16-109, the "Tenants' Rights to Information Amendment Act of 2006," on first reading at the May 2,2006 legislative session. On June 6,2006 on final reading the Council passed Bill 16-109 as amended on May 2, 2006. It amends the Rental Housing Act of 1985 to:

1. Limit the frequency of rent increases on occupied units to once per year.

2. Cap annual rent increases generally at *2%* plus the CPI, but not to exceed 10%.

3. Cap annual rent increases for elderly and disabled tenant at the CPI, but not to exceed 5%, and not to be means-tested.

4. Cap vacancy rent increases at 10% of the current rent charged, or at the current rent charged for a substantially identical unit in the building, but not to exceed 30% of the

current rent charged for the vacant unit.

5. Abolish rent ceilings and rent ceiling adjustments, except for adjustments by petition previously approved by the Rent Administrator.

6. Require that housing providers make certain information available to tenants regarding rent control and the condition of the building, and file certain information with the Rent Administrator including notices of rent increases.

7. Require that the Mayor include in his Comprehensive Housing Strategy report consideration of the need for and ways to implement a low-income rental unit set-aside program within the Rent Stabilization program.

II. COMMITTEE ACTION

On Friday, February 17,2006, at 3:00 p.m., the Committee on Consumer and Regulatory Affairs held an additional meeting of the Committee to markup and vote on the Graham version of the Committee print of and accompanying report on Bill 16-457, in Room 123 of the historic Wilson Building, located at 1350 Pennsylvania Avenue, NW. With Chairperson Jim Graham (Ward 1) and Councilmembers Ambrose, Brown, Catania, and Fenty present, Chairperson Graham convened a quorum. Having just received 2 additional reform proposals, Chairperson Graham enumerated the major provisions of each and called for the meeting to be recessed so they could be fully considered. Prior to recessing, each of Committee members offered comments on the Committee print, on the 2 alternative proposals, and on the 2 concepts newly introduced in these proposals of abolishing rent ceilings and of establishing a set-aside of a certain percentage of rent-controlled units to be made available to low-income tenants.

On Thursday, March 16,2006, at 3:30 p.m., the Committee on Consumer and Regulatory Affairs reconvened the additional meeting in the same room to markup and vote on the Committee print of and accompanying report on Bill 16-457. Chairperson Graham had incorporated a provision directing the Mayor to propose rules, subject to full Council review, establishing a low-income set-aside of 5% of units in rent-controlled buildings with 20 or more rental units. (On the premise that rent ceilings should not be abolished until possible ramifications are at least considered, Chairperson Graham scheduled a hearing on this matter for April 6, 2006, later moved to and held on March 31, 2006.) With Chairperson Jim Graham (Ward 1) and Councilmembers Ambrose, Brown, Catania, and Fenty present, Chairperson Graham again convened a quorum. After the Committee approved without amendment 4 other bills relating to tenants' rights, Chairperson Graham moved the Draft Committee Print.

Councilmember Ambrose moved an Amendment in the Nature of a Substitute. As initially offered for the Committee's consideration, the Substitute's provisions that correlated to those in the Draft Committee Print included a limit on annual rent increases of 8% plus the CPI% capped at 10% (all percentages to be based on the current rent charged); a CPI% limit on annual rent increases for units occupied by lower-income elderly and disabled tenants, schoolteachers, and tenants now occupying units for which the rent charged is within *5%* of the rent ceiling; a limit on vacancy increases up to the rent charged for a "substantially identical"

unit in the building, not to exceed 50% of the current rent charged for the vacant unit, provided that the landlord could use the aggregated amount of previously unimplemented rent ceiling adjustments
to achieve a 50% vacancy increase. Additionally, rent ceilings would be frozen (except that previously unimplemented rent ceiling adjustments could be implemented towards the 50% vacancy increase), would no longer to be correlated to rent increases on occupied units, and would never increase. A set-aside would be established of 5% of units in rent-controlled buildings with 20 or more units to be made available to tenants whose income does not exceed 60% of.the area median income.

Various amendments to the Amendment in the Nature of a Substitute were discussed and voted upon as follows:

1. Chairperson Graham moved a further Amendment in the Nature of a Substitute to allow the landlord to increase the rent ceiling of a vacant rental unit to the rent charged for a substantially identical unit in the building, not to exceed 40% of the current lawful amount of rent charged for the vacated unit, to limit the amount of any increase in the rent charged on an occupied unit to 8% of the current lawful amount of rent charged plus CPI, or, if the unit is occupied by an elderly or disabled person, to the lesser of 4% or the CPI taken as a percentage of rent charged, to limit to one per year the number of increases in rent charged, and to provide that any rollback of rent may reduce the amount of rent charged and not merely the rent ceiling. It failed by a vote of 2-3 (Graham and Brown voting yes).

2. Councilmember Fenty moved an amendment to include among the categories of tenants subject to the CPI% cap on annual rent increases those "resident tenants" who earn under 40% of the Area Median Income. It was accepted as friendly amendment.

3. Chairperson Graham moved an amendment to subject the agency rule-making for the income qualified unit set-aside program to active Council approval. It was approved by voice vote.

4. Chairperson Graham moved an amendment to strike the phrase "which become vacant" from the provision on units to be included in the income qualified unit set- aside, and insert the phrase "as they become available." It was approved by voice vote.

5. Chairperson Graham moved an amendment to strike the phrase "5% of units" and insert the phrase "up to 10% of units" from the provision on the percentage of total units in each housing accommodation subject to rent stabilization with 20 or more units to be set aside as income qualified units. It was approved by voice vote.

6. Chairperson Graham moved an amendment to strike the phrase "8% + CPI" and insert the phrase "7%" in the annual rent cap provision. It failed by a vote of 2-3 (Graham and Brown voting yes).

7. Chairperson Graham moved an amendment to strike the phrase "8% + CPI" and insert

the phrase "8%" in the annual rent cap provision. It failed by a vote of 2-3 (Graham and Brown voting yes).

8. Councilmember Catania moved an amendment to strike the phrase "8% + CPI" and insert the phrase " 6% + CPI" in the annual rent cap provision. It passed by a vote of 3-2 (Graham and Ambrose voting no).

9. Chairperson Graham moved an amendment to strike the phrase "50%" and insert the phrase "2% per year since prior vacancy but no less than 10%" in the provision on capping the vacancy increase in rent charged. It failed by a vote of 2-3 (Graham and Brown voting yes).

10. Councilmember Brown moved an amendment to strike the phrase "50%" and insert the phrase "30%" in the provision on capping the vacancy increase in rent charged. It failed by a vote of 2-3 (Graham and Brown voting yes).

11. - Chairperson Graham moved an amendment to strike the phrase "within 5% of the rent ceiling" and insert the phrase "within 20% of the rent ceiling" in the provision capping the annual rent charged increase at CPI for current resident tenants (who have signed a lease) whose rent charged is within a certain percentage of the rent ceiling. It was approved by voice vote.

By 4 to 1 (Graham voting no), the Committee voted in favor of the Amendment in the Nature of a Substitute as amended. By 4 to 1 (Graham voting no), the Committee voted in favor of Committee print of Bill 16-457 as amended by the Amendment in the Nature of a Substitute and amendments thereto, with leave for staff and the General Counsel to make technical and conforming amendments.

At the March 31, 2006 Committee roundtable on the "possible ramifications of the elimination of rent ceilings," Bill 16-457, as amended by the Amendment in the Nature of a Substitute at the March 16,2006 Committee mark-up meeting, received much criticism by tenant representatives and advocates. Representatives of housing providers, with whom Chairperson Graham continued to consult, also expressed dissatisfaction with the bill. In a series of 3 meetings jointly chaired by Chairperson Graham and Deputy Mayor Stanley Jackson, the stakeholders were reconvened in a successful effort to reach consensus on comprehensive rent control reform legislation. The key elements of that consensus legislation are enumerated in Section I above.

On Thursday, June 8,2006, at 3:00 p.m., the Committee convened an additional meeting in room 123. With Chairperson Jim Graham (Ward 1) and Councilmembers Catania and Fenty present, Chairperson Graham convened a quorum. Pursuant to Council Rule 444, Chairperson Graham moved for adoption of this addendum to the Committee report on Bill 16-109 approved on March 16, 2006. The motion passed unanimously. Pursuant to Council Rule 357, Councilmember Catania moved to reconsider 3 bills approved by the Committee on March 16, 2006, which were subsequently mooted by the consensus legislation: Bill 16-457, the "Rent Control Reform Amendment Act of 2006, "Bill 16-48, the "Disclosure of Rent Ceiling Calculation Amendment Act of 2006," and Bill 16-51, the "Rent Control Statute of Limitations Amendment

Act of 2006." The latter bill was mooted because it was agreed at the working group sessions that the consensus legislation should not and does not have any impact on the existing statute of limitations in the Rental Housing Act. The motion passed unanimously.

III. BILL 16-109 SECTION-BY-SECTION ANALYSIS

Section 1 states the short title of the bill.

Section 2(a)

amends as appropriate each section that refers to "rent ceilings" to conform with the abolition of rent ceilings.

Section 2(b)

amends section 205(g) to enumerate the notices the housing provider is required to file with the Rent Administrator.

Section 2(c)

amends section 206(a) to abolish rent ceilings except for those rent ceiling adjustments pursuant to petitions and Voluntary Agreements that the Rent Administrator has already approved.

Sections 2(d)

repeals section 207 "Adjustments in rent ceiling" which enumerates rent ceiling adjustment petitions available to housing providers.

Section 2(e)(1)

amends section 208(g) to limit the frequency of rent increases to once per year, except in the case of the first vacancy that occurs within any 12-month period.

Section 2(e)(2)

amends section 208(h) to limit the amount of rent increases on occupied units generally to 2% plus the CPI, but not to exceed 10%, the total to be taken as a percentage of rent charged; to limit the amount of rent increases for elderly and disabled tenants to the CPI, but not to exceed 5%, the total to be taken as a percentage of rent charged.

Section 2(f)(1)

amends section 213 to limit the amount of rent increases on vacant units to 10% of the current rent charged, or at the rent charged for a substantially identical unit in the same building, but not to exceed 30% of the current rent charged for the vacant unit.

Section 2(f)(2)

adds anew subsection 213(d) to require the housing provider to disclose to a new tenant the rent charged increases for the preceding 3 years and, if relevant, any substantially identical unit used as the basis for any such increase.

Section 2(g)

adds a new section 222 to require the housing provider to provide any current tenant upon request with rent increase information; to provide a prospective tenant with certain information, including information regarding rent control, petitions pending with the Rent Administrator, and unabated housing code violations; and to maintain all such information in an area accessible to tenants.

Sections 2(h) adds a new section 223 to require the Mayor to provide the Council, as part of Comprehensive Housing Strategy reports, with an analysis of the merits of

and methods for further assisting low income and other qualified tenants to pay their rent.

Section 3 states the fiscal impact statement as that adopted in the committee report.

Section 4 states the effective date of the bill should it become law.

IV. PURPOSE AND BACKGROUND

NEED FOR REFORM: THE RESEAR CH

Chairperson Graham determined that reform of the rent control law is necessary for the following reasons:

1. At the request of **Chairperson Graham**, the Office of the Inspector General prepared a report, "Review of Housing Provider Filings at the Rental Accommodations and Conversion Division of the Department of Consumer and Regulatory Affairs" (Attachment #1), publishing its results on Dec. 12, 2005. The committee convened a roundtable on the Inspector General's report on Dec. 21, 2005. The Inspector General selected seven "rent controlled" buildings, comprising 1,492 rental units in total and located in six wards of the city, and compared the rent and rent ceilings for units in these buildings in 1999 with the rent and rent ceilings in 2005. The buildings selected were: the Park Plaza in Ward One, the Barclay Apartments and Columbia Plaza in Ward Two, the Cleveland House in Ward Three, the Rittenhouse in Ward Four, the Parkview Apartments in Ward Five and the Marbury Plaza in Ward Seven. By selecting buildings in various District neighborhoods, there was an intention to demonstrate how the rules applicable to rent control of a vacant apartment operated under different real estate situations.

Chairperson Graham in consultation with stakeholders reached the following conclusions based on a range of evidence including data provided in the Inspector General's report:

A. *A landlord's ability to increase the rent ceiling in a vacant unit to equal the highest rent ceiling of a substantially identical unit in the same building, and to then apply the same increase to the rent charged, is the principal legal means by which landlords have transformed buildings with affordable rents into luxury apartments way beyond the means of people who, previously, could afford to live there.*

The data provided in the Inspector General's report show that units that had comparable rent ceilings in 1999 now have rent ceilings that differ dramatically. 1 The rent control implications of this fact are also dramatic. Byway of example, in 1999, two units in the Park Plaza had rent ceilings of $765 and $720, respectively. By 2005, the rent ceilings for these two units were $814 and $2,671, respectively. If these units are substantially identical, and if the $814 unit was vacated in 2005, the landlord could raise that the rent ceiling for that unit to

[1] The OIG has reported to the Committee a data error rate for each building of 0-1 percent, which is well below acceptable levels.

$2,671, or by $1,857. The rent charged for that unit could also go up by $1,857, because that is

the amount of a single, previously unimplemented rent ceiling adjustment, hi fact, according to the data, the rent charged for the unit with the $2,671 rent ceiling actually rose from $605 to $1,003 per month from 1999 to 2005, a 54 percent increase, while the monthly rent for the unit with the $814 rent ceiling rose only 7 percent, from $641 to $685. Even in the Marbury Plaza, the most "affordable" property in the study, similar numbers can be seen. In 1999, two units had rent ceilings of $643 and $638, these ceilings rose to $736 and $4,973 by 2005, during which time the rent on one increased by 14 percent ($632 to $720) while the rent on the other increased 75 percent ($521 to $914). The examples provided above are hardly unusual; the same pattern repeats throughout every property in the study, as indicated by Table 4 from the Inspector General's report, reproduced below:

Table 4. Rent Charged by Affordability Criteria

	Affordable		**Moderate**		**Unaffordable**		**Total Units Per Building**	*Percent Unaffordable*	
	Under $500		*$500 $1000*		*Over $1000*				
Building	**1999**	**2005**	**1999**	**2005**	**1999**	**2005**		*1999*	**2005**
Park Plaza	**7**	**4**	227	166	**45**	109	280	16%	39%
Barclay Apartments	**4**	**3**	**40**	23	13	31	57	23%	**54%**
Columbia Plaza	**1**	**0**	163	**81**	102	185	268	38%	69%
Cleveland House	**0**	**0**	67	**8**	147	206	216	68%	95%
The Rittenhouse	**4**	**0**	193	**54**	**9**	152	204	**4%**	**75%**
Parkview Apartments	**0**	**0**	51	39	**0**	12	51	**0%**	**24%**
Marbury Plaza	35	**7**	280	272	**1**	37	316	**0%**	12%

B. This development toward luxury rentals in so-called "rent controlled" buildings has so far been particularly pronounced in those neighborhoods that have been the subject of escalating real estate values. The future trend in this regard, however, is predictable as more neighborhoods experience increased real estate values.

While every property in the study demonstrated a significant decline in affordable housing availability, many of the most dramatic losses came in areas with the District's highest real estate values. Reflecting these escalating real estate values, the buildings in these neighborhoods have lost the great number of affordable units. For example, the Cleveland House in Ward 3 had 95% of the units unaffordable by 2005. The Rittenhouse, in Ward 4, went from 4% unaffordable to 75% in just 6 years. But in the east side of the city, the same trend, though still somewhat restrained, was evident. Parkview (Ward 5), 24% unaffordable, up from 0%; and the Marbury (Ward 7), 12% unaffordable, up from 0%. While "vacancy high comparable" rent

ceiling increases account for 62 percent of all rent ceiling increases filed by the buildings in the study, the Park Plaza (Ward 1), located in a still diverse area often considered prime territory for new development, filed 413 "vacancy high comparable" rent ceiling increases during the course of the study as opposed to just 33 vacancy 12 percent rent ceiling increases. As shown in section A above, such "vacancy high comparable" rent ceiling increases can open the door for large increases in rent charged down the road.

C. In consequence of the "vacancy high comparable" rule, rent control has become, for an ever-increasing number of apartments, not very meaningful.

The decrease in affordable housing availability in the Cleveland House stands out as dramatic, hi 1999, about one-third (32 percent) of all units in the Cleveland House were rated affordable; today, affordable housing is all but extinct in the building, with only eight affordable units out of two hundred and sixteen. If the Council does not act, the future of the District's rent controlled housing can be seen in the Cleveland House. Across Rock Creek in Ward Four, The Rittenhouse went from 96 percent affordable housing to a mere 25 percent over just six years, and the other properties in the study are all poised to follow.

The number of large increases in rental ceilings has resulted in rental ceilings as high as $6,371 at Columbia Plaza, $8,225 at Marbury Plaza and $8,330 for no fewer than twenty-three different units in the Cleveland House. These ceilings are simply not plausible rental rates for the apartments; they serve as reservoirs to allow future rent increases in comparable apartments to virtually any level desired by the landlord.

D. In summary, the data provided by the Inspector General demonstrate the need for Council action to repeal the "vacancy high comparable " rule, and replace it with restraints on the current ability of landlords to increase the rent by as much as double or more of the prior rent.

The data provide many cases of rental rates on formerly affordable housing increasing by over 100 or even 200 percent over the period of the study, removing units from the affordable housing.rolls throughout the city. By way of example, during the course of the study, the rent on a unit at the Cleveland House increased 134 percent ($705 to $1650), the rent on a unit at the Rittenhouse increased 196 percent ($429 to $1270), and the rent on a unit at Columbia Plaza increased 215 percent ($542 to $1660). All three units also saw huge increases in rent ceilings during the period of the study- 1,065 percent at Cleveland House unit, 571 percent at the Rittenhouse unit, and 686 percent at the Columbia Plaza unit - that could only have plausibly resulted from application of the "vacancy high comparable" rule, and which paved the way for the conversion of rent-controlled affordable housing to luxury housing.

While the 3 examples provided above are among the steeper increases documented by the report, they are by no means unique, and the report demonstrates that even "routine" rent increases under the current rent control rules endanger the District's supply of affordable housing. The table below, generated by the Committee based upon the detailed unit-by-unit breakdowns provided in the Inspector General's report, shows the median and 75th percentile increases in rent charged at the buildings during the study and demonstrates the extent to which rents on a sub-

stantial portion of the District's "rent-controlled" housing are increasing at a rate that soon puts them out of the reach of tenants who could have afforded to live in these units only a few years previously.

BUILDING	Median percentage increase	75th percentile percentage increase
Park Plaza	20%	50"»
Barclay Apartments	19%	43"»
Columbia Plaza	28%	44%
Cleveland House	^56%	72"»
The Rittenhouse	55%	81%
Parkview Apartments	27%	31%
Marbury Plaza	15"»	34%

As shown above, the report provides no shortage of examples of the current rent control law failing to control the city's rent levels, and, without Council action, the examples will become the rule.

2. The Department of Consumer and Regulatory Affairs (DCRA) has reported to **Chairperson Graham** that the Rental Housing Act's rent control provisions apply to about 65 % of the District'? approximately 135,000 rental units. Thus, it is evident that the District's major and primary means of preserving units with affordable rents is the rent stabilization act and related laws.

3. hi addition, from other reports, we know that the District is losing affordable housing, and especially affordable rental housing, at an alarming rate. In September 2005, the D.C. Fiscal Policy Institute issued findings that between 2003 and 2004, the District lost 2,400 units of affordable rental units, while gaining 4,600 units of high-cost rental units. Furthermore, between 2000 and 2004, the share of the city's renters paying more than 30 percent of their income for housing rose from 39 to 46 percent, and the share paying more than 50 percent rose from 18 to 23 percent. An estimated 4 in 10 of the District's low-income renters now have severe cost burdens.

4. As the District's affordable housing crisis looms ever larger, what is at stake is the District's future character. Will the District continue to be a place where economic and cultural diversity thrives, and where low and moderate-income residents can afford to live? Because rent control affects far more apartments than does, for example, inclusionary zoning or inclusionary development, it is the most essential among the District's affordable housing tools. But that can only be true if rent control is made to truly control rental housing costs.

RENT CONTROL REFORM WORKING GROUP

In order to discuss stakeholder issues in Bill B16-457, **Councilmember Graham** convened a working group comprised of tenant advocates, housing provider advocates, DCRA personnel, and representatives of the Mayor.

The working group met 7 times prior to February 17, 2006, when the Committee first met to mark-up Bill 16-457 (but recessed to consider 2 alternative proposals presented that day),

on December 6 and 14, 2005, and on January 11, 18 and 25 and February 1, 2006. The group reconvened on February 9, 2006 at the request of the Mayor to consider the Mayor's reform proposals. After the Committee mark-up meeting on March 16, 2006, the group reconvened in a series of 3 meetings jointly chaired by Chairperson Graham and Deputy Mayor Stanley Jackson.

Representing tenants were David Conn, Esq. and Betty Sellers of the Tenant Action Network (TAN); Kevin Fitzgerald of the New Capitol Park Plaza Tenant Association; Julie Becker, Esq. of the Legal Aid Society; Jonathan Strong, Esq. of the Brandywine Tenant Association; Farah Fosse of the Latino Economic Development Corporation; Professor Ed Allen of the University of the District of Columbia Law School; Elizabeth Figueroa, Esq. of Blumenthal & Shanley; and Kim Farhenholtz of the Park Plaza Tenant Association. Kenneth Rothschild of the D.C. Coalition for Rent Control, Janet Brown of the Affordable Housing Alliance, Peter Schwartz of the Kennedy-Warren Tenants Association, Antonia Fasanelli of the Washington Legal Clinic for the Homeless, Natalie LeBeau of Housing Counseling Services, Karen Perry of the Van Ness South Tenants Association, and Jim McGrath of D.C. Tenants Advocacy Coalition joined the stakeholder meetings in April 2006.

Representing housing providers were John Ritz of the W.C. Smith Company; Nicola Whiteman, Esq. and Shaun Pharr, Esq. of the Apartment and Office Building Association; Michael Sims of the D.C. Small Apartment Owners Association; Charles Hathway of the Bernstein Management Company; and Vincent Mark Policy, Esq. of the law firm of Greenstein, Delorme & Luchs. Peggy Jeffers of AOB A joined the stakeholder meetings in April 2006. Representing the Mayor were Acting Rent Administrator Keith Anderson, Esq.; DCRA Legislative Liaison Paul Waters, Esq.; DCRA representatives Gloria Johnson and D. Greer; and Lisa Hodges and Alicia Lewis of the Office of the Deputy Mayor for Planning and Economic Development.

The group focused its attention on the vacancy rent ceiling adjustment mechanism and on ideas on how to replace it. Considerable attention was paid to turnovers of units that have been occupied for long periods of time, and thus might likely have rents that were still affordable for moderate and low-income tenants. Various suggestions were explored that attempted to keep the system as uncomplicated as possible, and at the same time tie rent increases upon vacancies to the realities of increased costs faced by housing providers. The ideas included correlating vacancy increases to the number of years a unit had been occupied, and the exploration of tax credits for the remaining affordable units. Upon reconvening the stakeholder meetings in April 2006, following the March 31, 2006 Committee roundtable on "possible ramifications of the elimination of rent ceilings," the group focused on what direct caps on rent charged increases could satisfy the competing demands of affordability for tenants and profitability for housing providers as well as easing the administrative burdens created by the rent ceiling mechanism.

REASONING FOR THE CONSENSUS LEGISLATION

The consensus legislation that emerged from the April 2006 stakeholder meetings placed a cap on annual rent increases of 2% plus the CPI, not to exceed 10% no matter how high the CPI is in any given year. An additional protection exists for the elderly or disabled tenant without regard to income. For that tenant, the housing provider may only assess an annual rental increase equal to the lesser of the relevant CPI percentage or 5%.

This version improves the lot of most tenants in rent-controlled units. First, it amends section 208(g) of the Act, 42 D.C. Code § 3502.08(g), to provide that the housing provider may take only one rent increase per year instead of two. Second, it replaces rent ceilings with a tight cap on rent charged increases, one that is significantly lower than any such rent charged cap previously considered. Third, at age 62 any tenant will be subject to annual rent increases no greater than the CPI, never to exceed 5%.

An example should suffice. If the rent charged comes to $1,000 per month and the rent ceiling comes to $4,000 per month, under the current law, a CPI of even 4% would raise the rent ceiling to $4,160 per month and the rent charged, which can be increased by that same dollar amount, to $1,160 per month. With the 2% + CPI rent charged cap in the reform legislation, the maximum rent charged could not exceed $1,060 per month, a monthly savings of $100. For an elderly or disabled tenant, the maximum rent charged could not exceed $1,040 per month (current'rent charged plus CPI% of current rent charged), a monthly savings of $120.

The reform also assists incoming tenants greatly through its treatment of vacancy increases. First, it repeals the much criticized "highest comparable" provision of the law. Instead, the housing provider may raise the rent charged for the vacant apartment by 10% of the current lawful amount of rent charged or to the rent charged for a substantially identical unit in the building, but not to exceed 30% of the current rent charged for the vacant unit. Under this formula, there is an effective break on rent charged increases for any vacant unit in any building, whereas the current law allows that unit to leap from affordability to unaffordability because the rent ceiling for a "comp unit" in the building has escalated far beyond the market rate.

Currently, as the OIG report demonstrates, many apartment units have rent ceilings exceeding $3,000 per month even for one-bedroom apartments. For units already at the 'highest comparable' rent ceiling figures, even a 12% rent ceiling increase under the existing law's alternative vacancy adjustment allowance, is substantial, hi the example above, a $3,000 rent ceiling would increase to $3,360 for the incoming tenant and a rent increase potentially could be $360 based on that ceiling adjustment. So a $750 rent charged amount could increase to $1,110. But under the reform, an increase of 30% would be based on the rent charged, not the rent ceiling, hi that case, a $750 would increase only by $225 to $975, for annual savings of $1,620. This provides more certainty and affordability than uncapped rent ceiling increases.

The reform legislation assures the housing provider that he/she will continue to make a reasonable rate of return. For most tenants, the housing provider may recover up to 2% plus the CPI of the rent charged to that tenant, and for only a subset of elderly and disabled tenants the housing provider is limited to the CPI%.[13] Based on numbers provided to the Committee's working group by representatives of housing providers, it also allows the housing provider to recover

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* The Supreme Court has rejected both Constitutional and anticompetitive challenges to the imposition of a rent stabilization or rent control scheme since the RHA of 1985. Pennell v. City of San Jose. 485 U.S. 1 (1988); Fishery. City of Berkeley. 475 U.S. 260 (1986); see Silverman v. Barry. 845 F.2d 1072 (D.C. Cir.), cert, denied. 488 U.S. 956 119881; Homstein v_Barry. 560 A.2d 530 (D.C. 1989) (enbane)

the costs of renovating a vacated unit within a reasonable timeframe.

Mr. Ritz, a housing provider with William C. Smith Company and a part of the group discussing this version with **Chairperson Graham**, stated that from his experience housing providers would invest the amount necessary to renovate a vacated unit to the extent it could be recovered within 3 years. Mr. Ritz also posited that the most such a renovation would likely cost is $8,200. When asked why this figure is higher than others quoted, Mr. Ritz acknowledged that this estimate of renovation cost at the high end presumes that the housing provider would replace the refrigerator and floors in the unit. Thus the estimate for the high estimate actually includes capital expenditures as well as the normal maintenance and repair costs for wear and tear, hi any event, this high estimate assumes a prior tenancy of relatively long duration, or that the vacancy occurrence is the best opportunity the housing provider has had in a long time to do major renovations.

To recover the $8,200 cost of renovating a vacated unit in three years, the increase in rent charged would have to come to $228 per month. If the rent charged for the newly vacated unit came to.$760 per month, a 30% rent increase to the unit would come to $228 per month for a new rent charged of $988 per month to the incoming tenant, and Mr. Ritz would recover $8,200 in 3 years.

Other estimates of the renovation cost at the higher end came to $5,000. An increase in rent charged of $140 per month would enable the housing provider to recover $5,000 in 3 years, hi such a case, a 30% rent increase on a rent charged of $470 per month would cover the renovation cost in three years. The new rent charged would come to $610 per month.

Mr. Simms, a housing provider whose constituents include those owning 20 or fewer rental units citywide, estimated that it costs between $2,000 and $3,000 to renovate a unit for the next occupant. It would take a monthly rent increase of $70 to enable Mr. Simms to recover the cost of a $2,500 renovation of the unit for the new tenant in 3 years. If the previous tenant paid $700 a month in rent, the 10% vacancy increase would enable Mr. Simms to recover a $2,500 cost in 3 years.

ALTERNATIVES CONSIDERED

Over the course of working group sessions, various alternative concepts were considered and rejected. These concepts include "means-testing" — that is, a general means-test for apartments that fall under a certain rent level threshold — and a "tax credit" for housing providers who maintain affordable rent levels.

Specifically, with regard to means-testing, the Committee examined whether it makes sense to cap rent ceilings and rents charged for units that might not exceed a rent charged, for example, of $800 or $1,000 per month. Capping such units would mean that tenants who could afford higher priced moderate-income rents or even wealthier people would have an equal opportunity to rent a unit with a well-below market rate as the lower income tenant, hi the case of a much lower than market rent, a preference system to assist lower income tenants receive the lowest rent units appeared warranted.

On the other hand, it also appeared necessary to offer a tax credit for a housing provider who would have had to accept a freeze on rents to keep it affordable. Questions arose because housing providers raised objections to having to keep a unit vacant while waiting for a qualifying low-income tenant, many housing providers prefer tenants with higher incomes to guarantee rent payments, and what level of "tax credits" could the city guarantee.

A host of questions arose as to whether certain areas of the city would lose diversity and the advantages of having mixed income housing, whether "inclusionary zoning" or other programs would accomplish goals of finding lower income housing, and whether other subsidy programs better meet the needs of low income tenants to have affordable housing. Moreover, no figures showed what type of fiscal impact the District would face with a "means test" included in the Rental Housing Act and a "tax credit" system to fill encourage housing providers to allow means-tested individuals to fill vacancies in lower-priced apartment units. Ultimately, the dual concepts of means-testing and tax-credit were deemed too impracticable administratively and otherwise to pursue. Instead, the working group agreed that the same goals are better served by slowing down increases in rents for rent stabilized units by limiting rent increases to current tenants and moderating rent increases for vacant units. Instead of preserving or freezing low rents for rental housing units, a more practicable solution is to do better what rent stabilization is intended to do — moderate rent increases and protect tenants from sudden and rapid marketplace increases.

On January 13, 2006, Deputy Mayor Stanley Jackson on behalf of the Mayor submitted to **Chairperson Graham** a number of specific proposals to reform rent control, including the elimination of rent ceilings, hi consultation with the working group, the Chairperson determined that the elimination of rent ceilings may make rent control more understandable and easier to administer, but some tenants could be made worse off unless the direct cap on rent charged increases were significantly reduced from those considered up until then. Specifically, the tenants most affected would be those who have occupied their units the longest, who pay in rent an amount equal to the rent ceiling, and who are now subject only to rent increases equal to the CPI. The Chairperson was also not willing to abolish rent ceilings without a careful review.

However, **Chairperson Graham** in consultation with the working group found **2** parts of that Mayoral proposal to be very positive, and incorporated them into the version of Bill **16-457** he offered both at the mark-up meeting scheduled for February **17, 2006** and at the March **16, 2006** mark-up meeting:

1. Place a lower cap on rent charged increases for elderly and disabled tenants who meet an annual income eligibility requirement.

2. Allow for rent refunds and rollbacks, for instance when housing code violations are found, based on the rent charged rather than just the rent ceiling.

On the day prior to the mark-up meeting scheduled for February 17, 2006,[14] the

[14] **Chairperson Graham** recessed the February 17, 2006 mark-up to allow the Committee to consider these 2 proposals and their ramifications.

Chairperson Graham received **2** additional reform proposals, one from the Mayor's office and one from the office of Councilmember Catania, hi addition to the concept of eliminating or freezing rent ceilings, these proposals introduced 2 new ideas to the discussion of rent control reform. One would establish a "Low Income Housing" set aside of 5% of units in each rent- controlled building with at least 20 units for lower income tenants who would pay no more than 30% of income toward rent. The other would tie "the applicability of the rent stabilization program to the amount of family income for low and moderate income families."

Prior to recessing the February 17, 2006 meeting to allow the Committee to further consider these alternative proposals, **Chairperson Graham** expressed his belief that the concept of targeting lower-income residents for a set-aside of more affordable units has merit. To establish one by legislative fiat, however, would raise a host of concerns, including with regard to fiscal impact, logistical matters, burdens on stakeholders including the agency, predictable anomalies, and others. Rather, **Chairperson Graham** said it more appropriate that the Mayor should first consider the devil in the details and propose regulations for Council review and approval.

Chairperson Graham also expressed his belief that the concept of rent ceiling abolition has not been given nearly enough consideration with regard to the ramifications on other aspects of the Rental Housing Act, and in particular with regard to the impact that would have on the restraints the rent ceiling now provides under some circumstances both for the current tenant and for the subsequent tenant. Accordingly, Chairperson **Graham** held a public roundtable on March 31, 2006, on the "possible ramifications of the elimination of rent ceilings in the District of Columbia." This public roundtable is discussed below. The evidence presented at that roundtable indicates that rent ceilings have failed to protect most tenants from onerously large rent increases. The rent ceilings, however, have benefited certain tenants — generally those who have occupied their units for a very long period of time and therefore have rent charged amounts at or near the rent ceiling. Only a very tight across-the-board cap directly on rent charged increases would justify elimination of the rent ceilings. No proposal prior to the consensus legislation introduced at the May 2, 2006 Council session reform included a cap of less than *6%* plus the CPI.

BRIEF HISTORY OF RENT CONTROL

The hallmark of the District of Columbia's rent stabilization program has balanced the need to preserve reasonable quality moderate income housing so as to prevent the erosion of income of low and moderate income tenants while allowing the housing provider to make a reasonable rate of return on investment. 42 D.C. Code § 3502.01 (1), (5). The rent stabilization program accomplishes this goal by having in place a ceiling which the rent charged cannot exceed, and generally limiting rent ceiling increases to the Washington, D.C. Standard Metropolitan Statistical Area to the Consumer Price Index for Urban Wage Earners and Clerical Workers ("CPI-W"). 42 D.C. Code § 3502.06 (b). Such an increase cannot exceed 10 percent per year. Id.

In order to assure that owners make a reasonable rate of return, the housing provider can petition the Rent Administrator to grant hardship petitions, 42 D.C. Code § 3502.12. Moreover, in order to increase the rent ceilings and charge higher rents, housing providers may petition the Rent Administrator to grant capital improvement petitions, 42 D.C. Code § 3502.10, Voluntary

Agreements, 42 D.C. Code § 3502.15, increases in services and facilities petitions, 42 D.C. Code § 3502.11, and substantial rehabilitations, 42 D.C. Code § 3502.14.

The tenants, on the other hand, may seek to reduce rent ceilings due to rent overcharges, housing code violations, or reductions in services and facilities by filing with the Rent Administrator, a tenant petition to obtain relief. 42 D.C. Code § 3502.16. The Rental Housing Act of 1985 ("RHA"), D.C. Law 6-10, codified at 42 D.C. Code § 3500_e/ seq,, made major changes to the original Act of 1975. First, the RHA included a provision for the first time mandating "vacancy decontrol." This meant that when the current occupant vacated the rent- stabilized unit, the new tenant would encounter unregulated rental increases. Second, the RHA included a provision that exempted buildings with vacancies of 80% or higher from the rent stabilization program. See Section 205, 42 D.C. Code § 3502.5. The citizens of the District of Columbia overturned the vacancy decontrol provisions in a citizen initiative in 1986.

The Council had an alternative provision for vacancy decontrol. Namely, it amended section 213(b), 42 D.C. Code 3502.13 (b) to provide that when a tenant vacated an apartment unit, and the new tenant rerented it, the rent ceiling of the unit could now increase to the most expensive or greatest rent ceiling of a "substantially identical" unit in the same housing accommodation. This clause has become known as the "highest comparable" unit rent ceiling clause. Previously, the Act provided only for a vacancy increase that would increase the rent ceiling by a straight 12%. Section 213 (a), 42 D.C. Code § 3502.13 (a).

The "highest comparable" or "substantially identical" clause of the vacancy increase provision has led to large increases in rent ceilings for tenants in a 20 year period. For instance, if a current tenant vacates a unit with a current rent ceiling of $800, the straight 12% vacancy increase leads to a rent ceiling of $896 for the incoming tenant. However, if a "substantially identical" unit in the building has a rent ceiling of $4,000 per month, the incoming tenant may see her rent ceiling increased to the same $4,000 per month. This has major ramifications. So long as the housing provider had room in the rent ceiling, and had properly perfected the rent increases that he/she had not implemented against the tenant, the housing provider had the ability to raise the rent charged from $800 to the full $4000. The D.C. Court of Appeals had affirmed this interpretation of the law in Winchester Van Burden Tenants Ass~nv. D.C. Rental Housing Comm'n, 550 A.2d 551 (D.C. 1988).^~Namely, the Winchester Van Buren *holding affirmed*" Borger Management's ability to "stack" both a capital improvement and a CPI rent increase at one time to the tenants to raise the rent charged to the same level as the rent ceiling after waiting [15] six months from the previous rent increase.

Alarmed at the holding in the Winchester Van Buren litigation, and the fact that rent

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[15] Of course, market forces might not allow the housing provider to take the full increase without driving the tenant out of the unit. Nothing in the law prohibited it, however.

[s] The court affirmed that the housing provider could take more than one perfected and unimplemented rent charged adjustment at one time to bring the rent charged in line with the rent ceiling so long as it had waited six months before implementing a rent charged increase against the tenant. See Section 208(g) of the Act, 42 D.C. Code § 3502.08(g).

ceilings quickly outpaced the rent charged after the enactment of the "highest comparable" or "substantially identical" vacancy increase, tenant activists sought to limit the "stacking" of rent charged increases when implemented against tenants. In recognition of this concern, the Council enacted the "Unitary Rent Ceiling Adjustment Act" in 1993, Section 208 (h), codified as 42 D.C. Code § 3502.08 (h). 42 D.C. Code § 3502.08 (h) (1) slowed the rate of rent increases by changing the law to allow the housing provider to implement only one previously unimplemented rent adjustment at one time. The Unitary Rent Ceiling Adjustment Act did not change the provision allowing a housing provider to take most types of rent increases 180 days apart or require the housing provider to forfeit unimplemented rent increases if not taken.[16]

The effects of the "substantially identical" language did not become apparent immediately. For instance, if a unit vacated every year for six years, the housing provider could add 12% to the rent ceiling every year. Without factoring in the annual CPI-W, which the housing provider also adds to the rent ceiling every year, the rent ceiling for that unit would double.. Hence, if a substantially identical unit in the building vacated after six years, the housing provider could raise the rent ceiling to the level of that unit which had vacated every year for the past six years. This would mean that the incoming tenant would find that the rent ceiling for her unit had doubled under the "highest comparable" rather than simply gone up 12% under the alternative scenario.[17]

Therefore, if the incoming tenant's unit formerly had a rent ceiling and rent charged of $800, the vacancy increase would take the rent ceiling to $1600. The Unitary Rent Ceiling Adjustment Act enables the housing provider to implement all or part of the $800 unimplemented rent increase. Should market conditions currently limit the increase to $1400, the housing provider would still have a perfected, but unimplemented rent adjustment of $200 that it could levy by waiting six months.

The higher rent ceiling also affects the percentage rent charged increase even with an annual CPI adjustment. For instance, taking the previous example, if the rent ceiling comes to $1,600 per month and the rent charged comes to $800 per month, a 3% annual CPI will have the following effect. Namely, the rent ceiling will increase by the 3% CPI adjustment from $1,600 to $1,648. A 3% increase in the rent charged would raise the rent charged from $800 per month to $824 per month. However, because the amount of rent adjustment in the rent ceiling came to $48 per month, the housing provider may legally assess the tenant an increase of 6% or to $848. Therefore, the CPI increase on the rent charged can far exceed the annual CPI because of the differentials between the rent charged and rent ceiling.

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14 D.C.M.R. § 4204.11. A housing provider may take and perfect an upward rent ceiling adjustment pursuant to §§ 4204.9 and 4204.10 without simultaneously implementing a rent increase to the new rent ceiling, and the election not to implement a rent increase to the new ceiling shall not constitute a waiver or forfeiture of the housing provider's right to implement the full rent increase at a later time.

? The recently released Inspector General report sample of rent ceiling increases citywide indicates that the housing provider opts to take the "highest comparable" increase 87% of the time, compared to taking the alternative 12% rent ceiling increase.

The Inspector General's report shows that after many years, it is likely that a rent ceiling can exceed the rent by fourfold. Therefore, if the rent ceiling comes to $4,000 and includes an unimplemented vacancy increase of $1,500, an unimplemented vacancy increase of $1,000, and several smaller unimplemented increases adding up to $500, the tenant faces a risk that at any one time, she may face a rent increase of up to $1,500. Even if the housing provider opts to take a 3% CPI adjustment, the rent ceiling increases to $4,120 and the rent charged rather than only increasing from $1,000 per month to $1,030 per month will instead likely increase to $1,120, an effective increase of 12%.

As people vacate their units over time, rent ceilings generally exceed the rents charged. A report released in early 2000 by Nathan Associates concluded that 83% of the approximately 100,000 rental units under the rent stabilization program had rent ceilings that exceeded the rent charged although the study did not indicate the magnitude of difference. Therefore, the large majority of tenants under the rent stabilization program face a situation where rent increases are uncertain and worrisome.

FINAL ACTION ON REFORM

On May 2, 2006, after months of consultations and deliberations, Chairperson Graham moved reform legislation that had received ample comment from and had been fully considered by stakeholders. It was premised on the belief that the rent-stabilization program remains a viable method for keeping about 100,000 rental units built prior to 1975 affordable for low and moderate-income tenants in our city; on the fact that about 60% of the District's population resides in rental housing[18] [19]; and on the sobering reality that the District is losing affordable housing rapidly as rising housing prices and rents put housing out of reach of low and moderate-income households. It was based on research produced by the DC Fiscal Policy Institute, which recently estimated that rising rents alone caused a loss of 7,500 units with rent levels under $500 a month between 2000 and 2004.9 Regardless of the failure of the Comprehensive Housing Strategy Task Force ("CHSTF") to include the city's RHA or rent stabilization program as an integral strategic method to preserve and promote affordable rental housing, it was consistent with CHSTF's conclusion that keeping the existing housing stock of high quality and of reasonable price provides the most cost-effective method to promote affordable housing.[20]

Finally, it kept to the legislative objectives of the bill as introduced and of the Rental Housing Act itself; it would make the greatest changes in favor of tenants and affordable housing since 1985, when amendments to the Rental Housing Act weakened it greatly; and it would enhance the Rental Housing Act's fundamental goal of helping to preserve the income of low and moderate-income tenants while guaranteeing the housing provider a reasonable rate of return.

' Homes for an Inclusive City: A Comprehensive Housing Strategy for Washington, D. C; STATEMENT OF PRINCIPLES AND RECOMMENDATIONS Comprehensive Housing Strategy Task Force, Washington, DC (January 31, 2006) at 12.

Id at 8.

Id at 10. The CHSTF notes, "[M]ore than 50 percent of existing housing units in the District of Columbia are rental units. Renters are more likely than homeowners to experience severe housing-cost burden, meaning that they spend over 50% of the household

V. LEGISLATIVE HISTORY

DATE	ACTION
October 11,2005	Chairperson Jim Graham introduces B16-45 7, the "Rental Control Reform Amendment Act of 2005" to repeal and replace the vacancy high comparable and 12% rent ceiling adjustment provisions, and to cap rent increases at 10% of the amount of current rent charged annually. B lb-457 is subsequently referred to the Committee.
October 21, 2005	Notice of the Council's intent to act on Bill 16-457 is published in the District of Columbia Register.
October 21, 2005	Notice of a hearing on Bill 16-457 is published in the District of Columbia Register.
October 26,2005	Public hearing on Bill 16-457.
December 6, 2005 December 14, 2005 January 11,2006 January 18,2006 January 25, 2006 February 1, 2006 February 9, 2006	Chairperson Graham convenes meetings of a rent control reform working group that includes all stakeholders.
February 17, 2006	The Committee on Consumer and Regulatory Affairs meets to mark-up and vote on the report and committee print of Bill 16-457. Chairperson Graham recesses the meeting to consider new reform proposals offered by the Mayor and by Committee Member Catania just prior to the meeting.
March 16, 2006	The Committee on Consumer and Regulatory Affairs meets to mark-up and vote on the report and committee print of Bill 16-457. Councilmember Ambrose moves an Amendment in the Nature of a Substitute, which the Committee passes on a vote of 4 to 1 (Graham voting "no").

income, on housing. Therefore the city must have a strategy specifically targeted at maintaining that housing stock and keeping a portion of it affordable to low income renters. Preserving existing affordable housing is usually much less costly than producing new affordable housing,.."

March 17, 2006	Notice of a public roundtable on "Possible Ramifications of the Elimination of Rent Ceilings" is published in the District of Columbia Register.
March 31, 2006	Public roundtable on "Possible Ramifications of the Elimination of Rent Ceilings."
April 21, 2006 **April 24, 2006** **April 26, 2006**	Chairperson Graham with Deputy Mayor Stanley Jackson reconvenes stakeholder meetings concluding in an agreement on consensus legislation.
May 2, 2006	Chairperson Graham introduces the consensus legislation as an Amendment in the Nature of a Substitute for Bill 16-109, the "Tenants Rights to Information Amendment Act of 2006" at first reading. The Council unanimously approves the Amendment.
June 6, 2006	At final reading, the Council unanimously passes Bill 16-109, the "Rent Control Reform Amendment Act of2006."

VI. PUBLIC HEARING AND PUBLIC ROUNDTABLE SUMMARY

On Wednesday, October 26, 2006, the Committee held a public hearing on Bill 16-457 as introduced by **Chairperson Jim Graham** and on four other bills that would protect and enhance tenants' rights: Bill 16-48, the "Disclosure of Rent Ceiling Calculation Amendment Act of 2005," Bill 16-51, the "Statute of Limitations Amendment Act of 2005," Bill 16-109, the "Tenants Right to Information Amendment Act of2005," and Bill 16-458, the "Right ofTenants to Organize Amendment Act of 2005." **Chairperson Graham** opened the hearing by acknowledging the bill's nine co-introducers and two cosponsors. **Chairperson Graham** said the five bills together represent more comprehensive reform than the Council has considered in decades. **Chairperson Graham** noted that funding for the newly established Office of the Tenant Advocate began on October 1, 2005 at the start of fiscal year 2006. He noted the link between the soon-to-be-named Chief Tenant Advocate and each of the five bills being considered. An important role of the Chief Tenant Advocate will be to help tenants cut through the complexities of the rent control law and understand tenants rights.

Councilmembers **David Catania** and **Adrian Fenty** made statements. Councilmember Catania said the current allowable two rent increases per year poses hardships on tenants and he is eager to support the limitation to one annual increase. Given that buildings under rent control were built before 1975, key questions concern the infrastructure of affordable housing in the District and the revenue stream of housing providers to make necessary improvements. Many buildings are badly in need of repairs and maintenance, and some are literally falling down around tenants. Property values, operating costs, and the need of housing providers to borrow for capital improvements are dramatically on the rise. Reform shouldn't risk creating onerous mechanisms that make it difficult to finance improvements. The bills are timely and thoughtful. The hearing should reflect a spirit of seeking solutions, not winners and losers. He expressed the hope that **Chairperson Graham** would provide the required balance and bring all sides to the table. He

also expressed support for an income eligibility requirement for moving into apartments under rent control.

Councilmember Fenty expressed support for a number of the reforms. He noted that the District has the highest percentage of rental property in nation - 60 percent - and also one of the biggest affordable housing crises. He commended **Chairperson Graham** for moving reforms that the Council should have been moved rather than merely extending the rent control status quo every five years. Rent control should be meaningful. **Chairperson Graham** is right to close loopholes in the Rental Housing Act similar to those that he closed in the Tenant Opportunity to Purchase Act. They include the twice-annual rent increase allowance and the so-called "vacancy high comp" rent ceiling adjustment, which turns affordable units into unaffordable units.

Witnesses included affordable housing experts Angie Rodgers, Policy Analyst for the D.C. Fiscal Policy Institute, and Cheryl Cort, Executive Director of the Washington Regional Network for Livable Communities and a panel of government witnesses including Stanley Jackson, Deputy Mayor for Planning and Economic Development, Theresa Lewis, Chief of Staff, Department of Consumer and Regulatory Affairs, and Raenelle Zapata, Esq., Rent Administrator. Alternate panels of tenant advocates and housing provider representatives were then called upon to testify, including: Betty Sellers and David Conn of the Tenant Action Network and Jonathan Strong of the Brandywine Tenants Association; W. Shaun Pharr, Esq., Senior Vice President of Government Affairs, and Nicola Y. Whiteman, Esq., Vice President of Government Affairs, of the Apartment and Office Building Association (AOBA), Michael T. Sims, President, DC Small Apartment Owners Association, K. David Meit, Executive Vice President Affairs, Daro Realty, Inc., and Vincent M. Policy, Esq., attorney for Daro Realty, Inc.; Dr. Barbara Kraft, Board of Directors, Quebec House Tenants Association and Jim McGrath, Chairman, and Dr. Chris Crowder of the D.C. Tenants' Advocacy Coalition (TENAC); Thomas Borger of the Borger Management Corporation, Denise Johnson, Community Manager of the Normandy Apartments; and Joyce Roberts, Community Manager of the Park Manor Apartments; Kevin Fitzgerald, economist and treasurer of the New Capital Park Plaza Tenants Association, and Marilyn Rubin and Dorothy Miller, President of the Columbia Plaza Tenants Association of the Columbia Plaza Tenants Associations; and Benoit Brookens, Esq. of the Dorchester Rent Rollback Organization and Luzette King of the Dorchester Apartments.

Other witnesses included Michael Sussman, Natalie LeBeau of Housing Counseling Services, Joe Martin, Vice Chair ANC 4C09 M. Michael Hull of the Cafritz Company, Donna Lewis, Deborah Lindeman, ANC 3C02 Commissioner, Kenneth Rothchild of the DC Coalition for Rent Control, Donna Stinson, Fred Silver of the Bojan Management Corporation, Malcolm E. Peabody of the Peabody Corporation, Mary R. Hueg, Regional Manager, Sawyer Realty Holdings, LLC, Lin Dalton, Campbell Johnson of the Urban Housing Alliance, Alex Martin, President of the Cleveland House Tenant Association, Ed Krauze of the Realtors Association, Lauren Bladen-White, Lorena Cabaniss of the Rittenhouse Tenants Association, Femi Akinbi of the Mt. Vernon Tenants Association, John B. Murgolo, Vice President of the Aldon Management Corporation, Chad Hill, Senior Vice President of Homing Brothers, Karen Williamson, President of the Barclay Tenants Association Jeffery Gelman, Chair to CDBIA Housing District of Columbia Building Industry Association, Olivia Klaben of the 4000 Mass. Ave. Tenants Association, William Stokes of Community Education, Stephanie Clipper, John Utley of Windsor Associates, Amy LeFaivre Dolan, Senior Residential Manager of QDC Property

Management, Inc., John Hoskinson of MPM Management, Rebecca Lindhurst and Jennifer Berger of Bread for the City, and Elizabeth Figueroa, Legal Counsel to 420 16th Street, S.E., Tenants Association.

Angie Rodgers of the D.C. Fiscal Policy institute reported that, since 2000, the District has lost 7,500 units of low-cost housing (costing less than $500 per month) while gaining 13,000 units of high-cost housing (costing more than $1000 per month). She pointed out that Wider Opportunities for Women's self-sufficiency standards, which measure the income required to live in a jurisdiction without receiving public assistance, show that the District is less expensive than the close-in suburbs, and so that without public action low- and moderate-income housing could vanish not only from the District, but from the region.

Deputy Mayor **Stanley Jackson** testified that the bill would on the whole strengthen protection of tenants, but suggested several amendments and clarifications and called upon the city to ensure that rent controlled apartments are matched with those residents most in need. He expressed concern that the impact of amending the vacancy high comparable method of calculating a rent ceiling increase has not yet beep adequately studied, and suggested that studies be made to ensure that limiting these increases would not encourage landlords to undertake condominium conversions instead.

Betty Sellers and **David Conn** appeared on behalf of the Tenant Action Network, which supports the proposed legislation, believing it will keep housing affordable for District residents. TAN believes that the proposed once per year increase of up to 10 percent will keep rent increases under control better than the current system, under which an increase of 5 percent of an inflated rent ceiling can be far greater than 10 percent, and is consistent with the normal limit on consumer price index increases in the existing rent control regulations of 10 percent per year.

Jonathan Strong of the Brandywine Tenants Association characterized the bill as less stringent than similar provisions in New York City's rent stabilization program, but an improvement over the status quo. He recommended that rent ceiling vacancy increases be calculated by reference to one percent of last rent charged, rather than one percent of the rent ceiling, and suggested that annual rent increases be limited to 7 percent or 1.5 times the consumer price index, whichever is lower, rather than the 10 percent in the bill.

K. David Meit testified on behalf of the Apartment and Office Building Association, with **W. Shaun Pharr, Nicola Y. Whiteman** and **Vincent M. Policy** present to assist with questions if needed. Mr. Meit argued that the legislation is too onerous to be practical and will encourage rental property owners to convert rental properties to condominiums rather than comply with the regulations. AOBA believes that the maximum increase in rent allowed by the turnover of vacant property should be 75 percent rather than the proposed 30 percent, and that the higher number will encourage more housing investment. AOBA also believes that the bill should also repeal the Unitary Rent Ceiling Adjustment Act, as they argue that the limits on combining rent ceiling adjustments would become unnecessary if this bill becomes law.

Dr. Barbara S. Kraft of the Quebec House Tenants Organization called for the Council

to protect the city's rent control regime in order to allow the District to protect senior citizens, students and residents on fixed income. These residents contribute to the city with volunteer efforts and help maintain the District's history and culture, but are at risk of being priced out of the District without rent control.

Denise Johnson of Borger Management presented the rental profile of the Normandie Apartments, where all 99 one- and two-bedroom units rent for between $500 and $1000, all utilities included.

Joyce Roberts of Borger Management presented the rental profiles of the Park Manor, Parkview and Crestview Apartments, where 43 percent of the tenants have lived in their units for more than ten years and 26 percent for more than 15 years. In these apartments, at least some units of every size, up to three-bedroom apartments, are available at less than $1000 per month, although only Park Manor has all of its one-bedroom units available in that price range.

Kevin Fitzgerald of the New Capitol Park Plaza Tenants Association testified that the degree to which rent ceilings have expanded faster than rents charged has given landlords motivation to ensure high rates of tenant turnover, and that replacing the 12 percent and vacancy highest comparable rules with the proposed 1 percent per year rent ceiling increase would still allow landlords to recover maintenance and repair costs. However, Mr. Fitzgerald argued that the current rent ceiling system is unnecessary complicated, and suggested either resetting all rent ceilings or doing away with the concept altogether and calculating rent increases based upon the previous rent charged.

Dorothy Miller of ANC Single Member District 2A05 discussed the fate of the Columbia Plaza apartment complex following George Washington University's purchase of an interest in the complex, and asked the Council to take action on behalf of the complex's longterm tenants.

Michael Sussman testified that, as a small landlord, he believes that the additional income a landlord can generate by using the current methods for calculating rent and rent ceiling increases upon vacancy is barely adequate to cover physical plant maintenance and upgrades and operating costs, especially given recent increases in heating costs. While a larger building can afford to carry some units at a loss and spread the extra cost over the remaining units, a smaller building cannot be competitive if too few units have to subsidize the rest, as the more expensive units will not attract tenants, ultimately encouraging condominium conversions and reducing the District's housing stock. Finally, he called upon the Council to impose a primary residency requirement for rent-controlled properties, arguing that the benefits of rent control should accrue to District residents.

Natalie LeBeau of the Tenant Anti-Displacement Program of Housing Counseling Services endorsed the bill as a progressive measures to protect and expand the rights of tenants in the District and maintain the District's cultural diversity.

Deborah Lindeman of ANC 3C presented a resolution from the ANC commissioners, who had voted 8-0 to endorse the bill, subject to suggestions that the concept of rent ceilings should be done away with and replaced with limits on rents charged and that the maximum an-

nual increases should be tied to the Washington DC cost of living index.

Frederick Silvers of Bojan Management and Realty reported that utility costs have increased faster than the consumer price index; WAS A increased rates by 10 percent over the past two years, with a 6 percent increase pending, PEPCO raised rates 18 percent earlier in the year and Washington Gas by a total of 30 percent over the past year. When combined with additional maintenance costs on heating and cooling systems caused by heavy use during increasingly hot summers and cold winters, it is appropriate to raise rental rates faster than inflation. If landlords cannot raise rents on vacant apartments to market rate, they will have to pass the costs on to existing tenants by means of a hardship exception, which will fall most heavily on long-time residents, especially senior citizens.

Lin Dalton of the Somerset Tenants' Association testified that the STA is concerned that high rental costs are driving long-term Washington residents out of the city and encouraging rapid turnover of residential properties at the expense of community identity.

Campbell C. Johnson III of the Urban Housing Alliance felt that the rent control reform bill does not go far enough toward protecting tenants from excessive rent increases. He recommended that rent ceiling increases upon vacancy be limited to one percent of rent charged per year for up to ten years, rather than one percent of rent ceiling per year, and that rent increases should be capped at $50. He also recommended that DCRA actively monitor capital improvement increases to ensure these charges are rolled back when the underlying capital improvement is paid off.

Chad Hill of Homung Brothers testified that the proposed legislation would either encourage housing developers to increase rents more heavily on existing tenants to fund capital improvements and compensate for increased heating costs, or else drive housing developers into Virginia or Maryland. Rather than expand rent control, Mr. Hill suggested that DCRA revamp and expand its voucher programs, to be paid for by taxes on profits after investment in property, and give tax credits to property developers creating new affordable housing in currently vacant properties.

Karen Williamson of the Barclay Tenants Association testified that rental increases in her building, a moderate-income property when she moved there in 1975, have made it impossible for new moderate-income tenants to live in the property without either living together or receiving family assistance. By making it too challenging for moderate-income residents to live in the District, the District is driving away potential long-term residents and future homeowners while undermining the city's inclusiveness.

Jeffrey Gelman of Greenstein, DeLorme & Luchs and the District of Columbia Building Industry Association argued that the city's rent control law is inefficient, as it does not include a means test for participation, and that the proposed legislation does nothing to address this.

Stephanie Clipper reported that, based upon her experiences, some landlords have been encouraging high turnover by allowing necessary health, safety and maintenance work to go undone, and using the high turnover to dramatically increase rents without reinvesting the extra proceeds into the building.

Amy LeFaivre-Dolan ofQDC Property Management's The WestPark Apartments charged that the bill would destroy the economic rationale to keeping a rent controlled building in good order. She reported that operating expenses at WestPark have increased 20 percent faster than rental income over the past ten years, while real estate taxes have increased 10 percent over the past four years, and that any additional restrictions on rent increases will make it impossible to run a well-maintained rental property economically. She also reported that the current high comparable vacancy provisions make it possible to make large-scale capital improvements without seeking a capital improvement rent increase, ensuring that long-time residents see more of the benefits from rent control.

Jennifer Burger of the Legal Aid Society of the District of Columbia argued that the bill would eliminate the current temptation for landlords to leave a unit vacant for a year in order to take the vacancy high comparable rent adjustment, increasing the proportion of units occupied at any given time and thus expanding access to affordable housing.

Eric Von Salzen submitted a written statement on behalf of DARO Realty in which he credited the vacancy high comparable rule for rent increases as having been a key in the successes of the District's rent control regime, by encouraging landlords to properly maintain below-market units and buildings in the hope of charging market-rate rents later. Mr. Von Salzen expressed his belief that rent control should be chiefly for the benefit of existing tenants rather than incoming tenants, as the latter will only select housing they can currently afford while the former can be displaced from communities in which they have established roots by subsequent rent increases.

To protect existing tenants from condominium conversions or neglect of property by landlords, Mr. Von Salzen argued that the vacancy high comparable regime should be maintained, the 10 percent rate increase cap should not apply to new tenants and language in the bill needs to be amended to make it clear that higher rate increases can be permitted by the Rent Administrator or by voluntary agreement with tenants. Mr. Von Salzen also indicated that he believes the 10 percent annual rate increase cap would allow for the abolition of the Unitary Rent Ceiling Adjustment provision, which he feels is well-intended but too burdensome, and that an annual rate increase cap would remove the need to limit rent increases to once per year.

Rosemarie Flynn of the Gray Panthers appeared before the Committee to endorse the bill, which she characterized as a way of addressing rent ceilings that have risen out of control. She suggested that the legislation should require that a tenant be made aware of the grounds for a rent increase - whether the annual consumer price index adjustment or a previously unimplemented increase - and how much of an increase within the rent ceiling can still be applied to the rent charged. She also suggested extending the proposed $50 per month limit on monthly rent increases from capital improvements for senior citizens and the disabled to cover all rent increases for these types of tenants.

The full testimonies of these public witnesses are appended to this report and incorporated into the record.

Public Roundtable on the Possible Ramifications of the

Elimination of Rent Ceilings in the District of Columbia

On Friday, March 31,2006, in the Council Chamber of the historic Wilson Building, the Committee on Consumer and Regulatory Affairs received five and a half hours of testimony on the possible ramifications of eliminating rent ceilings from the District's rent control system.

DCRA Director Patrick Canavan and Michael Hodge of the Office of the Deputy Mayor for Planning and Economic Development testified that rent ceilings have been difficult to administer and understand and have failed to protect tenants. Eliminating rent ceilings and calculating caps on rent increases based upon rent charged would make for a better system. The government witnesses supported capping rent increases at CPI for tenants who currently have rents within 20 percent of the rent ceiling and remain in the same unit and also supported a set- aside program for lower-income tenants. While they endorsed substitute Bill 16-457 as a good beginning for reforming rent control, they acknowledged that the bill still needs work and looked forward to continued dialogue with Chairperson Graham.

Public witnesses included a number of tenant advocacy organizations, including the Tenant Action Network (TAN), the D.C. Tenant Advocacy Coalition (TENAC), and representatives of tenants associations from throughout the city. They generally testified that rent ceilings, though flawed, could be made to work for tenants rather than against them. They called for ending the abusive vacancy high comparable rent ceiling adjustment, and enhancing the enforcement powers of tenants and the Rent Administrator. They testified that the Substitute Bill 16-457 does neither and in fact weakens both the substantive and the procedural aspects of the rent control law. They pointed out that although the Substitute purports to eliminate rent ceilings, instead it keeps them when they benefit landlords, namely to maximize vacancy rent increases, and eliminates them when they benefit tenants.

Through the course of the tenant testimony, it became clear that the rent ceiling as it currently operates benefits some tenants but not others. Any rent charged increase on a unit for which the rent charged is at or near the rent ceiling is generally no greater than the CPI. This is because no other rent ceiling adjustment is available for the landlord to implement to increase the rent charged. But on a unit for which the rent ceiling significantly exceeds the rent charged, the landlord may impose a rent charged increase of virtually any amount. This is because the landlord has as many rent increase options as he has rent ceiling adjustments. Some tenants complained of landlord threats to increase the rent by as much as $800 unless the tenant selected the renewal lease option preferred by the landlord. Even this "favorable" option would mean a rent increase of $200 or more. The current law permits this where the landlord has preserved and previously not implemented rent ceiling adjustments, usually "vacancy high comps," in these amounts. It is also more likely that a tenant subject to these types of increases will also be subject to two rent increases in the same year, which the current law allows.

Despite having indicated their intention to appear and testify, the Apartment and Office Building Association (AOBA), representing housing providers, did not do so and thus were unavailable to answer questions. In a written statement, AOBA stated that rent ceilings have rarefy operated so as to limit rent increases. While anticipating revenue losses due to the elimination of the vacancy high comparable rent ceiling mechanism, most of AOBA's membership believes that

the Substitute will provide for enough savings due to the reduction in paperwork to compensate for that loss. They believe that tenants also benefit by way of the elimination of the carry-over of unused annual and vacancy rent charged increases that the current system allows.

VII. COMMITTEE REASONING

The reasoning for Bill 16-109 as passed by the full Council is discussed above.

VIII. FISCAL IMPACT

The fiscal impact statement, as required by section 602 (c) (3) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(3)), is included as Attachment 8 to this report.

IX. IMPACT ON EXISTING LAW

The "Rent Control Reform Amendment Act amends various sections of Title II of the Rental Housing Act of 1985 (D.C. Code §§ 42-3502.01 *etseq.),* and adds 2 new sections, as described in the section-by-section analysis.

X. ATTACHMENTS

1. Office of the Inspector General, "Review of Housing Provider Filings at the Rental Accommodations and Conversion Division of the Department of Consumer and Regulatory Affairs," December 12, 2005.
2. DC Fiscal Policy Institute, "New Census Data Show DCs Affordable Housing Crisis is Worsening," September 13, 2005.
3. Fannie Mae Foundation and the Urban Institute, Introduction and Chapter 4, "Narrowing
Rental Options," Housing in the Nation's Capital 2005, November 2005.
4. Bill 16-457 as introduced with referral.
5. Notice of a public hearing on Bill 16-457.
6. Public Hearing Testimony.
7. Amendment in the Nature of a Substitute to Bill 16-109.
8. Fiscal Impact Statement for Bill 16-109.
9. Rent Control FAQs

DISTRICT OF COLUMBIA
Office of Administrative Hearings

GABRIEL FINEMAN, Tenant/Petitioner, V. SMITH PROPERTY HOLDINGS VAN NESS L.P., Housing Provider/Respondent	Case No.: 2016 DHCD TP 30,842 3003 Van Ness Street, N.W., Apt. W-1131 Administrative Law Judge: Ann C. Yahner

STATEMENT OF MATERIAL FACTS NOT IN DISPUTE

1. Smith Property Holdings Van Ness L.P is the owner of the residential rental accommodation located at 3003 Van Ness Street, N.W. in Washington, D.C. (the "Housing Accommodation"). [Point 1 in the Statement of Material Facts Not in Dispute in Housing Provider's Opposition (Statement in the Opposition).]

2. Equity Residential Management, L.L.C. manages the Housing Accommodation. [Point 2 of the Statement in the Opposition.]

3. Pursuant to a lease agreement commencing on December 22, 2014 and expiring on December 21, 2015 (the "2014 Lease), Petitioner Gabriel Fineman leased Unit W-l131 at the Housing Accommodation. Exhibit 1, 2014 Lease. [Point 3 of the Statement in the Opposition]

4. The 2014 Lease states that Petitioner is entitled a monthly recurring concession of $945 per month (the "Concession"). [Point 5 of the Statement in the Opposition]

5. The 2014 Lease includes a Concession Addendum which further explains the Concession. [Point 6 of the Statement in the Opposition]

6. On September 18, 2015, Housing Provider sent Mr. Fineman a notice that his rent would be increased from $3,114 to $3,161 effective December 22, 2015. [Point 7 of the Statement in the Opposition]

7. On September 22, 2015, Housing Provider filed a Certificate of Notice to RAD of Adjustment in Rent Charged. It identified that effective December 22, 2015, the rent for the Unit increased by $47 from $3,114 to $3,161. [Point 8 of the Statement in the Opposition.]

8. On or about October 7, 2016 Tenant sent Housing Provider a notice to correct the RAD form 8 and that request was never answered. [Exhibit D and Exhibit A of the Motion.]

9. Pursuant to a lease agreement commencing on December 22, 2015 and expiring on December 21, 2016 (the "2015 Lease), Petitioner Gabriel Fineman leased Unit W-l131 at the Housing Accommodation. [Attachment to the Petition.]

10. The 2015 Lease states that Petitioner is entitled a monthly recurring concession of $946 per month (the "Concession"). [Attachment to the Petition.]

11. The 2015 Lease also includes a Concession Addendum with the same language as the 2014 Lease. [Exhibits 2 and 4 of the Opposition.]

12. Tenant allowed the Housing Provider to debit his bank account monthly and paid the amount demanded by the Housing Provider. [Exhibit E and Exhibit A of the Motion and Section ii.B (second paragraph) of the Opposition.]

13. 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 forms 8 and 9:

> "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)]

[Footnote 1 in section ii.B of the Opposition.]

NOTE: The Petitioner did not agree with points 4 and 10 (amount of monthly rent) of the Statement of Material Facts Not in Dispute in Housing Provider's Opposition (Statement in the Opposition)

14. The Housing Provider claimed to have charged the Petitioner the Actual Rent, and it never claimed that the Lease Defined Rent was actually charged (a concession of zero). The amount charged should be assumed to not be in dispute. [Reply, IV 2 a]

15. There was no objection by the Housing Provider to the Plaintiff's claim of an incorrect form 8 or any assertion that the "Current Rent Charged" reported on this form was correct. The invalidity of the form 8 notice should be assumed to not be in dispute. [Reply, IV 2 b]

16. Housing Provider has failed to correct its form 8 despite notice that it was incorrect. The unwillingness of the Housing Provider to correct its incorrect notice should be assumed not to be in dispute. [Reply, IV 2 c]

17. The amount of rent charged could be induced from the actions of the Housing Provider because the amount that the Housing Provider demanded from the Petitioner's bank, received by ACH transfer and charged to the Petitioner's account each month was the amount of Actual Rent and not the amount of the Lease Defined Rent. The Housing Provider did not object to that methodology and it should be assumed to not be in dispute. [Reply, IV 2 f]

18. The amount of rent charged could be deduced by the actions of the Housing Provider when it went into Landlord Tenant Court to evict tenants and use the Actual Rent and not the Lease Defined Rent as the tenant's rent. The Housing Provider did not object to that methodology and it should be assumed to not be in dispute. [Reply, IV 2 g]

19. The issuance of the incorrect form 8 and the filing of the incorrect form 9 was done as a willful act that calls for a penalty to be assessed by the adjudicator. The Housing Provider did not object to this claim of the false filing being a willful act or to the analysis in the Motion un-

der the Relief Section or the information in the Affidavit. The willfulness of the Housing Provider's false filings should be assumed to not be in dispute. [Reply, IV 2 h]

Respectfully submitted,

Dated: February 13, 2017

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