

**DISTRICT OF COLUMBIA
Office of Administrative Hearings**

HARRY GURAL,

Tenant/Petitioner,

v.

EQUITY RESIDENTIAL MANAGEMENT

Housing Provider/Respondent

Case No.: 2016 DHCD TP 30,855

3003 Van Ness Street, N.W. Apt. S-707

**TENANT REPLY TO EQUITY RESIDENTIAL'S REPLY TO TENANT OPPOSITION TO EQUITY
RESIDENTIAL'S MOTION FOR SUMMARY JUDGMENT**

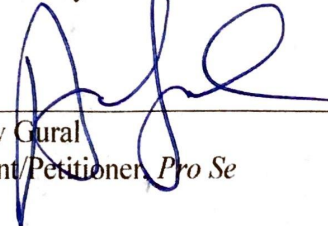
Acting *pro se*, I submit this brief reply to Equity Residential Management's ("Housing Provider") reply to my Opposition to its Motion for Summary Judgment. With the hearing set 10 days away on Jan. 13, I find it very peculiar that Equity Residential, a \$22 billion corporation, is still trying to deny me my right to have my case heard in court. In reply to Equity's recent plea to block the hearing, I would like to make the following points:

- 1) The facts of the case are clearly in dispute. Equity claims that my "rent" is \$288 more than I actually paid. I have bank statements to prove this. The statements show that last year I paid Equity \$1,830 per month. Equity claims that my rent was \$2,118, and it has attempted to base an annual increase on the false, higher amount. Yet Equity did not attempt to evict me last year when I paid the \$1,930 (\$1,830 plus \$100 for parking) that is on my bank statement. If the amount I paid was not the rent owed, Equity would have initiated eviction proceedings against me last year – yet it did not. The amount Equity claims as rent (\$2,118) is false.
- 2) Equity has attempted to charge me a rent increase based on this incorrect figure (\$2,118). It filed this false figure with the Rental Accommodations Division (RAD), and then sent me a RAD form which Equity itself filled out with the incorrect figure, creating the impression that the figure had been sanctioned by the RAD.

- 3) As the president of the Van Ness South Tenants Association, I can attest that Equity has used the same scheme on at least 60 other tenants residing at 3003 Van Ness. I have documentary evidence that Equity has claimed that other residents are paying well-over \$1,000 and as much as \$1,500 over the actual amount charged. Equity bases its subsequent rent increases on those falsified figures.
- 4) Equity's actions circumvent the Rent Control Reform Amendment Act of 2006," which clearly abolished rent ceilings. Equity uses the inflated figures reported to the Rental Accommodations Division to establish an effective rent ceiling. This is illegal.
- 5) The facts of the case are clearly in dispute, but the legal arguments are far from settled. Equity bases its claims on two OAH cases that cite practices in New York City – not Washington, DC – as precedent.
- 6) Contrary to what Equity claims, it did retaliate against me by submitting to credit reporting agencies false claims for rent supposedly owed even while I was paying the disputed amount into escrow in the Landlord and Tenant Branch of DC Superior Court. This caused my credit rating to drop.

I look forward to the opportunity to make my case before the Office of Administrative Hearings.

Respectfully submitted this January 5, 2017,



Harry Gural
Tenant/Petitioner, *Pro Se*

3003 Van Ness Street, N.W., Apt. S-707
Washington, D.C. 20008

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion and Memorandum of Points and Authorities in Support thereof was served on this 6th day of January by first-class mail, postage pre-paid upon:

Richard W. Luchs (D.C. Bar No. 243931)
Joshua M. Greenberg (D.C. Bar No. 489323)
Debra F. Leege (D.C. Bar No. 497380)
1620 L Street, N.W. Suite 900
Washington, DC 20036-5605



Harry Gural
Tenant/Petitioner, *pro se*

**DISTRICT OF COLUMBIA
Office of Administrative Hearings**

HARRY GURAL,
Tenant/Petitioner,

v.

SMITH PROPERTY HOLDINGS VAN NESS
L.P.,
Housing Provider/Respondent.

Case No.: 2016 DHCD TP 30,855
3003 Van Ness Street, N.W., Apt. S-707

**HOUSING PROVIDER'S REPLY TO MR. GURAL'S
OPPOSITION TO THE MOTION FOR SUMMARY JUDGMENT**

Housing Provider/Respondent Smith Property Holdings Van Ness L.P. ("Housing Provider"), by undersigned counsel, submits this brief reply to Mr. Gural's Opposition to the Motion for Summary Judgment. Housing Provider states:

1. Mr. Gural has not identified material facts in dispute. Instead, he has merely provided a differing analysis of the effect of the facts presented by the Housing Provider.
2. Upon the expiration of Mr. Gural's lease (the "Lease") on March 31, 2015 (Exhibit D to the Motion for Summary Judgment), Mr. Gural became a month-to-month tenant, by operation of law. That did not mean that Mr. Gural and the Housing Provider were no longer bound by the terms of the conditions of the previously agreed upon lease.
3. Furthermore, at the same time that the Lease expired, so did the \$278 concession. See Exhibit E to the Motion for Summary Judgment. Therefore, Housing Provider was no longer contractually obligated to accept \$1,770 as full payment for use of the Unit.

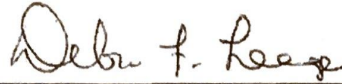
4. The definition of “rent” in D.C. Code § 42-3501.03(28) does not exist in a vacuum as Mr. Gural seems to suggest.¹ Mr. Gural’s bank records are not a smoking gun as he seems to suggest of the rent charged. Instead, this Court must consider the Lease itself. Here, the Housing Provider was contractually obligated by the Lease to provide a \$278 per month concession only from April 1, 2014 through March 31, 2015. The Housing Provider was also obligated by the Lease to provide certain related services and facilities. The Lease, in its entirety, defined other rights, obligations and responsibilities of each party. This included that Mr. Gural was only entitled to a reduced rent (the Concession) for a period of 12 months. As such, as of April 1, 2015, Housing Provider was entitled to demand that Mr. Gural was to pay \$2,048 as the concession that Mr. Gural had agreed to in the Lease had expired.

5. Mr. Gural has presented no evidence of an event within six months prior to the implementation of the rent increase, entitling him to a presumption of retaliation. Instead, Mr. Gural bases his retaliation claim on actions that are after the filing of this tenant petition or that he fails to identify when they occurred, including (i) testimony before the District of Columbia City Council and an (ii) an article in the City Paper. The City Council has not enacted the proposed legislation efforts.

¹ “Rent” is defined as “the entire amount of money, money’s worth, benefit, bonus, or gratuity demanded, received, or charged by a housing provider as a condition of occupancy or use of a rental unit, its related services, and its related facilities.” D.C. Code § 42-3501.03(28).

Respectfully submitted,

GREENSTEIN DELORME & LUCHS, P.C.



Richard W. Luchs (D.C. Bar No. 243931)

Debra F. Leege (D.C. Bar No. 497380)

1620 L Street, N.W.

Suite 900

Washington, DC 20036-5605

Telephone: (202) 452-1400

Counsel for Housing Provider/Respondent

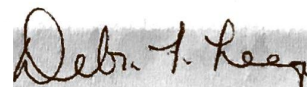
Dated: December 30, 2016

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Reply was served on this the 30 day of

December, 2016, by first class mail, postage pre-paid upon:

Harry Gural
3003 Van Ness Street, N.W.
Apt. S-707
Washington, D.C. 20008



Debra F. Leege

**DISTRICT OF COLUMBIA
Office of Administrative Hearings**

HARRY GURAL,

Tenant/Petitioner,

v.

EQUITY RESIDENTIAL MANAGEMENT

Housing Provider/Respondent.

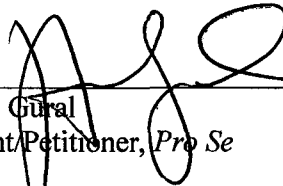
Case No.: 2016 DHCD TP 30,855

3003 Van Ness Street, N.W. Apt. S-707

TENANT OPPOSITION TO HOUSING PROVIDER'S MOTION FOR SUMMARY JUDGMENT

I ask this Court to deny Equity Residential Management's ("Housing Provider") Motion for Summary Judgment because the facts of the case are highly in dispute. In support hereof, I provide the attached Memorandum of Points and Authorities.

Respectfully submitted this November 4, 2016,



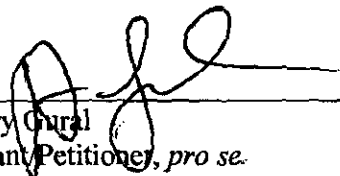
Harry Gural
Tenant/Petitioner, *Pro Se*

3003 Van Ness Street, N.W., Apt. S-707
Washington, D.C. 20008

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion and Memorandum of Points and Authorities in Support thereof was served on this 4th of November by USPS Priority Mail, postage pre-paid upon:

Richard W. Luchs (D.C. Bar No. 243931)
Joshua M. Greenberg (D.C. Bar No. 489323)
Debra F. Leege (D.C. Bar No. 497380)
1620 L Street, N.W. Suite 900
Washington, DC 20036-5605



Harry Gural
Tenant/Petitioner, *pro se.*

**DISTRICT OF COLUMBIA
Office of Administrative Hearings**

HARRY GURAL,

Tenant/Petitioner,

v.

EQUITY RESIDENTIAL MANAGEMENT

Housing Provider/Respondent.

Case No.: 2016 DHCD TP 30,855

3003 Van Ness Street, N.W. Apt. S-707

**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF
TENANT OPPOSITION TO HOUSING PROVIDER’S MOTION FOR SUMMARY JUDGMENT**

I, Harry Gural, the Tenant/Petitioner, acting *pro se*, hereby submit my Memorandum of Points and Authorities in opposition to the Housing Provider’s Motion for Summary Judgment. The facts of the case are highly in dispute.

The request by Equity Residential Management (“Housing Provider”) to dismiss my case before it can be heard comes less than two weeks before the Court-ordered mediation, which is scheduled for November 16th. The date was set with the written agreement of the Housing Provider’s attorneys, Greenstein, DeLorme and Luchs. *See Exhibit A.*

Furthermore, Equity Residential, a \$22 billion corporation, cannot be prejudiced by allowing the case to be heard by the Court because I am paying the disputed \$297 per month into escrow under a Protective Order in Landlord and Tenant Court. *See Exhibit B.*

This case is at the center of an evolving controversy over Equity Residential’s efforts to circumvent DC rent control laws. These practices are currently under investigation. In

addition, legislation already has been introduced in the DC City Council that would make clear that Equity Residential's actions are illegal.

As the president of the Van Ness South Tenants Association, which represents tenants of the Equity Residential apartments at 3003 Van Ness, over 50 residents have told me that Equity Residential has demanded rent increases that far exceed the legal limit. Many tenants have asked for my help submitting Tenant Petitions against Equity Residential, but they are awaiting the results of my case before the Office of Administrative Hearings (OAH). Granting the Housing Providers' Motion for Summary Judgment effectively would strongly deter those residents from seeking justice in the OAH.

I. MATERIAL FACTS IN DISPUTE

In its Motion for Summary Judgment, Equity Residential Management claims that there is no disagreement about the material facts of the case. In fact, the most important facts in the case are highly in dispute.

- 1) Equity Residential claims that my monthly rent between April 1, 2015 and March 31, 2016 was \$2,118. However, Wells Fargo bank statements clearly show that I paid \$1,830 per month (plus \$100 parking) during that period. *See Exhibit C.*
- 2) There is no lease covering the period from April 1, 2015 to March 31, 2016. Equity Residential's Property Manager, Avis Duvall, has conceded in writing that no lease exists for that period. *See Exhibit D.*
- 3) Early this year, I negotiated rent for the period beginning April 1, 2015 with property manager Avis Duvall. The amount agreed upon was \$1,895. However, Equity demanded that in order to get this price I sign a lease stating that the monthly rent was \$2,192. When I refused to sign a lease, as it my right in the

District of Columbia, Equity sued me in Landlord and Tenant Court for the amount in dispute (\$297).

- 4) Equity Residential accepted \$1,830 as monthly rent for the entire period from April 1, 2015 to March 31, 2016, as evidenced in the Wells Fargo bank statements. If the Equity Residential contends that the monthly rent was \$2,118 it would have initiated legal action many months ago.
- 5) The rent (\$2,192) demanded by Equity Residential on RAD 8 form sent on January 15, 2016 amounts to a 19.8% increase over last year's rent (\$1,830). DC Code § 42–3502 permits a maximum increase of 2% plus the adjustment of general applicability (CPI), a total of 3.4%. The 19.8% increase demanded by Equity Residential is more than five times the legal limit.
- 6) In an affidavit for the Motion for Summary Judgment, Equity Residential property manager Avis Duvall swears under penalty of perjury that the Housing Provider submitted “true and accurate” copies of the Housing Provider’s Notice to Tenants of Adjustments in Rent Charged (RAD Form 8) in January 2015 and January 2016. However, the rent figures listed on both forms are significantly inflated and thus false. *See Exhibit E.*
- 7) The rent statute [DC Code § 42–3509.01(b)(2)] calls for a fine of \$5,000 for willfully making a false statement in a document filed under the Rent Control Reform Act.
- 8) The RAD 8 forms sent to the Tenant and submitted to the RAD are inaccurate and misleading because they include in the header the names and addresses of both the Housing Provider and the Rental Accommodations Division – the form

cannot simultaneously be from the RAD and from the Housing Provider. This gives the appearance that the figures on the form have been checked, authorized and issued by the city, when in fact these numbers are self-reported by Equity Residential and are significantly inflated and thus false. *See Exhibit E.*

- 9) In an affidavit submitted with the Motion for Summary Judgment, Equity Residential property manager Avis Duvall swears under penalty of perjury that the Housing Provider submitted “true and accurate” copies of the Certificate of Notice to RAD of Adjustments in Rent Charged (RAD Form 9) in January 2015 and February 2016. However, the rent figures listed on both forms are false. *See Exhibit F.*
- 10) The RAD 9 Forms submitted by Equity Residential in its Motion for Summary Judgment reveal that Equity systematically overstates the amount it receives in rent. The rents reported on the RAD Form 9 dated January 1, 2015 average approximately \$2,700. One-bedroom apartments at 3003 Van Ness rent for approximately between \$1,900 and \$2,000. *See Exhibit F.*
- 11) Equity reports to the Rental Accommodations Divisions rents for one-bedroom apartments that exceed \$3,500 – an unheard of amount in the Van Ness neighborhood. It then bases rent increases on these absurdly high figures. *See Exhibit G.*

II. ANALYSIS

- 1) The rent figures that Equity Residential submits to the Rental Accommodation Division are far in excess of the amount actually paid by the tenant. These inflated figures are effective rent ceilings.

- 2) Rent ceilings were “abolished” by the Rent Control Reform Act of 2006. DC Code § 42–3502.06 states that rent ceilings are “abolished.”
- 3) Equity Residential’s presentation of the facts and its analysis of the case rely heavily on the term “concession.” This term does not appear in the definitions in statute governing rent control, DC Code § 42-3501.03.
- 4) Equity Residential attempts to define the word “rent” as an effective rent ceiling that far exceeds what the tenant actually pays. The definition in the statute, DC Code § 42–3501.03 (28) states that “‘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.”
- 5) Equity Residential bases its arguments for effective rent ceilings and “rent concessions” on two OAH cases – *Pope vs. Equity Residential Management* and *Mary Jane Maxwell vs. Equity Residential Management*. The decision in the *Pope* case is not based on DC law, but on law and custom in New York City. It states that:

“The propriety of rent concessions has not been addressed by the District of Columbia Court of Appeals or the Rental Housing Commission in the context of the District’s rent control scheme. However, New York City, which is also rent controlled, has addressed rent concessions in the scheme of rent control. Although New York does not have any laws or regulations pertaining to rent concessions, there is a similar concept within its legislative framework called ‘preferential rent.’”

- 6) On the issue of rent ceilings and “rent concessions,” the *Maxwell* decision depends entirely on the *Pope* decision.

III. THE HOUSING PROVIDER’S POSSIBLE REASONS FOR RETALIATION

In its Motion for Summary Judgment, Equity Residential claims that its actions against me are not retaliatory in nature. However, I can provide ample evidence to demonstrate that they are retaliatory. Moreover, there are a number of reasons why Equity Residential seeks to retaliate against me:

- 1) I am the president of the Van Ness South Tenants Association and also one of the leading tenant advocates in the District of Columbia fighting against efforts by Equity Residential to circumvent DC rent control laws.
- 2) I have advised over 50 tenants of 3003 Van Ness on their rights under DC rent control laws, and have helped to negotiate lower increases for many of them.
- 3) If my efforts are successful in demonstrating that Equity Residential’s efforts to circumvent DC rent control are to be illegal, the corporation may lose tens of millions in revenue.
- 4) At the request of the Office of the Tenant Advocate, I appeared on a panel on “rent concessions” at the Tenants Summit on September 24, 2016. I explained in detail the method by which Equity Residential circumvents DC rent control laws and maintains effective rent ceilings.
- 5) I testified on the issue before the DC City Council’s Committee on Housing. I appeared at the hearing at the request of Chairwoman Anita Bonds, who is cosponsoring legislation to make it clear that DC rent control laws do not permit the establishment of effective rent ceilings.

- 6) I am one of the principal subjects of a City Paper expose on efforts by Equity Residential to circumvent DC rent control laws. *See Exhibit H.*

IV. RETALIATORY ACTION

In its Motion for Summary Judgment, Equity Residential states that “Mr. Gural alleges Housing Provider took retaliatory action against him in violation of D.C. Code § 42–3505.02 by enforcing concession language that Mr. Gural agreed to sign in his lease.” However, that is false—although my Tenant Petition does claim retaliation, but for the purposes of that short document provides no additional information.

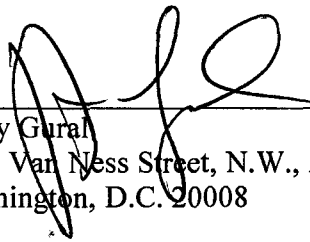
The following are three specific ways in which Equity Residential has retaliated against me.

- 1) Equity Residential’s Motion for Summary Judgment seeks to deny me the right to a hearing in the Office of Administration Hearings. There is no other court that has jurisdiction over specific issues regarding rent control.
- 2) Equity Residential has been charging me late fees on my account despite the fact that I am paying to it the legal rent, and in additions I am paying the disputed amount (\$297) under a Protective Order mandated by the Landlord and Tenant Court. *See Exhibit J.*
- 3) According to the Office of Personnel Management MyIDCare program, Equity Residential has claimed to credit agencies that I have not paid my rent. The OPM program reports that Equity Residential’s actions have lowered my credit score.

V. SUMMARY

The principal argument for denying Equity Residential's Motion of Summary Judgment is that the facts themselves are intensely disputed. It is my right to present my case in the Office of Administrative Hearings, and I look forward to the opportunity to appear before the Court and to answer any questions about these factual disputes. I respectfully request that the Court deny the Housing Provider's Motion of Summary Judgment and its attempt to prevent me from having my case heard in Court.

Respectfully submitted this 4th of November, 2016,



Harry Gural
3003 Van Ness Street, N.W., Apt. S-707
Washington, D.C. 20008

EXHIBIT A

Changing date for mediation

Inbox x



Harry Gural <harrygural@gmail.com>
to Joshua, Debra

Oct 21 (13 days ago) ☆



Josh and **Debra**,

I received a notice from OAH scheduling mediation for Nov. 8 at 1:30. I plan to be in Boston that day as well as Tuesday and Wednesday that week. Can we reschedule for Thursday? Anytime works for me.

...



Debra F. Leege
to me

Oct 21 (13 days ago) ☆



Mr. Gural:

I consent to a continuance of the mediation. However, I am not sure when the mediator at the Office of Administrative Hearings will be available. I am awaiting my client's availability but will be back in touch as soon as I have confirmation of schedules.

Debra

Debra Fischer Leege, Esq.
Greenstein DeLorme & Luchs, P.C.
1620 L Street, N.W., Suite 900
Washington, D.C. 20036
Telephone: [\(202\) 452-1400, x5426](tel:(202)452-1400)
Facsimile: [\(202\) 452-1410](tel:(202)452-1410)
E-Mail: df@gdllaw.com

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administrator@gdllaw.com

THANK YOU



Debra F. Leege
to Richard, me

Oct 21 (13 days ago) ☆



Mr. Gural:

I have checked with my clients. We are available on the following days:

November 10 (morning only), 11, 14-16, 29-30

Debra

From: Debra F. Leege
Sent: Friday, October 21, 2016 12:50 PM
To: 'Harry Gural'
Subject: RE: Changing date for mediation

...



Harry Gural <harrygural@gmail.com>
to Debra

Oct 21 (13 days ago) ☆



OK -- I'll request 10th in the am or 16th.

...

EXHIBIT B



SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION – LANDLORD AND TENANT BRANCH

FILED
IN OPEN COURT
MAY 19 2016
Superior Court
of the District of Columbia
Washington, D.C.

EQUITY RESIDENTIAL MANAGEMENT, LLC Plaintiff

versus

Case # 2016 LTB 010863

HARRY GURAL Defendant

Protective Order Information Sheet
(Judge Campbell)

The Court entered a Protective Order on the record on 5/19/2016

The Protective Order requires the Defendant to pay into the Court Registry the sum of \$ 297.00 by the 5th day of June and the sum of \$ 297.00 by the 5th day of each month thereafter during the pendency of this case.

Deposits to the Court Registry must be paid at the Landlord and Tenant Clerk's Office and may not be paid by mail. Deposits to the Court Registry must be made by any combination of CASH, MONEY ORDER, CASHIER'S CHECK, CERTIFIED CHECK, or ATTORNEY'S ESCROW ACCOUNT CHECK made payable to **Clerk, D.C. Superior Court.** The Court cannot accept personal checks.

Bring this form with you to the Landlord and Tenant Clerk's Office, Building B, 510 4th Street N.W., Rm. 110 each time you make a protective order payment. Go to Window #1 to process your protective order payment.

- This case has been continued to _____ for trial at _____ am/pm.
- This case has been continued to 9/19/2016 for Further Initial Hearing at 10:00 am.
- This case has been certified to the Civil Division for trial. You will receive a notice in the mail of your next court date and location.

OFFICE HOURS:

Monday through Friday	8:30 a.m. to 5:00 p.m.
Wednesday (for Protective Order payments only).....	6:30 p.m. to 8:00 p.m.
Saturday	9:00 a.m. to 12:00 noon

PLEASE DO NOT MAIL YOUR PROTECTIVE ORDER PAYMENTS!

- A copy of this form has been hand delivered/mailed to all Parties; **or**
- A copy of this form has been hand-delivered/mailed to Plaintiff; **and**
- A copy of this form has been hand-delivered/mailed to Defendant.

EXHIBIT C

Crown Account Regular

Account number: 1010025493649 ■ December 25, 2015 - January 28, 2016 ■ Page 1 of 3



HARRY D GURAL
3003 VAN NESS ST NW APT S707
WASHINGTON DC 20008-4711

Questions?

Available by phone 24 hours a day, 7 days a week:
Telecommunications Relay Services calls accepted

1-800-TO-WELLS (1-800-869-3557)

TTY: 1-800-877-4833

En español: 1-877-727-2932

華語 1-800-288-2288 (6 am to 7 pm PT, M-F)

Online: wells Fargo.com

Write: Wells Fargo Bank, N.A. (389)
P.O. Box 6995
Portland, OR 97228-6995

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Account options

A check mark in the box indicates you have these convenient services with your account(s). Go to wells Fargo.com or call the number above if you have questions or if you would like to add new services.

Online Banking	<input checked="" type="checkbox"/>	Direct Deposit	<input checked="" type="checkbox"/>
Online Bill Pay	<input checked="" type="checkbox"/>	Auto Transfer/Payment	<input checked="" type="checkbox"/>
Online Statements	<input checked="" type="checkbox"/>	Overdraft Protection	<input type="checkbox"/>
Mobile Banking	<input checked="" type="checkbox"/>	Debit Card	<input type="checkbox"/>
My Spending Report	<input checked="" type="checkbox"/>	Overdraft Service	<input type="checkbox"/>

Activity summary

Beginning balance on 12/25	██████████
Deposits/Additions	██████████
Withdrawals/Subtractions	██████████
Ending balance on 1/28	\$15,013.10

Account number: 1010025493649

HARRY D GURAL

Washington, DC account terms and conditions apply

For Direct Deposit use

Routing Number (RTN): 054001220

Overdraft Protection

This account is not currently covered by Overdraft Protection. If you would like more information regarding Overdraft Protection and eligibility requirements please call the number listed on your statement or visit your Wells Fargo store.



Transaction history

Date	Check Number	Description	Deposits/ Additions	Withdrawals/ Subtractions	Ending daily balance
12/28		Bill Pay Equity Residenti Recurringxxxxx07071 on 12-28		1,930.00	8,455.39
1/4		Recurring Transfer to Gural H Way2Save Savings Ref #Ope5Q6Q8VP xxxxxx6327		300.00	8,155.39
1/5		US Senate Fed Salary 123115 xxxxx2309 Harry Gural	3,539.50		
1/5		Fid Bkg Svc LLC Moneyline 160105 x01329207 Sck8D Harry D Gural	4,902.14		
1/5		Bill Pay Chase Card Servi on-Line XXXXXXXXXXXX75225 on 01-05		2,000.00	14,597.03
1/11		Bill Pay Verizon Wireless RecurringXXXXXXXXXX00001 on 01-11		153.22	14,443.81
1/15		Vanguard Buy Investment 011416 652268613212917 Harry D Gural		500.00	13,943.81
1/19		Bill Pay Rcn Cable RecurringXXXXXXXXX84104 on 01-19		122.21	13,821.60
1/20		US Senate Fed Salary 011516 xxxxx2309 Harry Gural	3,662.98		17,484.58
1/21	1517	Check		100.00	
1/21	151	Check		41.48	17,343.10
1/26		Bill Pay Equity Residenti Recurringxxxxx07071 on 01-26		1,930.00	15,413.10
1/28	1518	Check		50.00	
1/28	1515	Check		200.00	
1/28	1516	Check		50.00	
1/28	1519	Check		100.00	15,013.10
Ending balance on 1/28					15,013.10

Totals **\$12,104.62** **\$7,476.91**

The Ending Daily Balance does not reflect any pending withdrawals or holds on deposited funds that may have been outstanding on your account when your transactions posted. If you had insufficient available funds when a transaction posted, fees may have been assessed.

Summary of checks written (checks listed are also displayed in the preceding Transaction history)

Number	Date	Amount	Number	Date	Amount	Number	Date	Amount
151	1/21		1516	1/28	50.00	1518	1/28	50.00
1515 *	1/28	200.00	1517	1/21	100.00	1519	1/28	100.00

* Gap in check sequence.

Monthly service fee summary

For a complete list of fees and detailed account information, please see the Wells Fargo Fee and Information Schedule and Account Agreement applicable to your account or talk to a banker. Go to wellsfargo.com/feefaq to find answers to common questions about the monthly service fee on your account.

Fee period 12/25/2015 - 01/28/2016	Standard monthly service fee \$12.00	You paid \$0.00
How to avoid the monthly service fee	Minimum required	This fee period
Have any ONE of the following account requirements		
· Average daily balance	\$1,500.00	\$13,243.00 <input checked="" type="checkbox"/>
· Monthly automatic payment to a Wells Fargo home mortgage	1	0 <input type="checkbox"/>
· Combined balances in linked accounts, which may include	\$2,500.00	\$33,274.55 <input checked="" type="checkbox"/>
- Average daily balances in checking and savings accounts		
· Combined balances in linked accounts, which may include	\$5,000.00	\$0.00 <input type="checkbox"/>
- Average daily balances in time accounts and FDIC-insured retirement accounts		
· Combined balances in linked accounts, which may include	\$5,000.00	\$0.00 <input type="checkbox"/>
- Outstanding balances in consumer installment loans		
- Line amount in credit cards and consumer lines of credit		

EXHIBIT D

EMAIL EXCHANGE WITH AVIS DUVALL (EQUITY BUILDING MANAGER) RE: HARRY GURAL'S LEASE

Copy of my lease

Inbox x



Harry Gural <harrygural@gmail.com>

May 3 ☆



to Avis ▾

Avis,

Could you please send me a copy of my last year's lease? I remember that at the time it was necessary to do an online digital signature but that a copy of the lease couldn't be downloaded. However, I am told that by law you must provide me with a copy of the lease. Could you please send me a copy today?

Many thanks,

Harry



Avis Duvall <aduvall@eqr.com>

May 3 ★



to me ▾

Hello Harry,

In reviewing your lease history, I see we sent you a 12 month lease on 2/17/15, and you viewed it on 3/28/15. We re-sent the lease to you on 4/9/15, and due to it not being signed you were sent an email on 4/16/15 stating the lease envelope was voided. As a month to month resident you are not required to sign a new lease.

Please let me know if I can be of further assistance.

Sincerely,

Avis

Avis DuVall
General Manager

3003 Van Ness
3003 Van Ness Street NW
Washington, DC 20008
[202.244.7811](tel:202.244.7811) Office [202.244.1881](tel:202.244.1881) Fax

EquityApartments.com
Equity Residential – *how home should feel*

Our goal is to ensure that every resident is very satisfied.

EMAIL EXCHANGE WITH AVIS DUVALL (EQUITY BUILDING MANAGER) RE: HARRY GURAL'S LEASE



Harry Gural <harrygural@gmail.com>

May 3 ☆



to Avis ▾

Avis,

Thanks for your note. I am looking for a printed or PDF copy of my **lease** covering April 2015 to March 2016. I don't want a link to an electronic copy that can't be downloaded -- I would like an actual copy of the **lease**, either physical or PDF.



Avis Duvall <aduvall@eqr.com>

May 3 ★



to me ▾

Hello Harry,

I'm sorry, but you never signed a **lease** covering April 2015 to March 2016. We issued a 12 month **lease** term one but it was never signed and subsequently voided. As shared, we don't require residents that are month to month sign a **lease**. You also currently don't have a **lease** signed covering 2016 to 2017.



EXHIBIT E

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

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

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

Harry Gural
3003 Van Ness Street, N.W. Apt # S0707
Washington, DC 20008

Date: 01/15/2015

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

Dear Tenants(s):

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

Your current rent charged is:	\$ <u>2,048</u>
The dollar adjustment in your rent charged is:	\$ <u>70</u>
The percentage adjustment in your rent charged	<u>3.40</u> %
Your new rent charged is:	\$ <u>2,118</u>
The effective date is:	<u>04/01/2015</u>

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

Under section 206(b) and 208(h) of the Act (D.C. OFFICIAL CODE §§ 42-3502.06(b) & 42-3502.08(h)(2) (Supp. 2008), the increase in rent charged is based on the increase in the Consumer Price Index (CPI-W). For tenants qualified under the Act as elderly or disabled, the maximum increase in rent charged is the lesser of the CPI-W percentage, or 5% of the current allowable rent charged. For other tenants, the maximum percentage increase in rent charged is the CPI-W percentage plus 2%, but the total increase shall not be more than 10% of the current allowable rent charged. The Rental Housing Commission (RHC) determines the annual adjustment of general applicability in the rent charged established by Section 206(b) for each Rental Unit, which shall be equal to the change during the previous calendar year in the Washington, D.C. Standard Metropolitan Statistical Area (SMSA) Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W). The CPI-W percentage published by the Rental Housing Commission for May 2014 through April 2015 is 1.4%.

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

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

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

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

Harry Gural
3003 Van Ness Street, N.W. Apt # S0707
Washington, DC 20008

Date: 01/15/2016

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

Dear Tenants(s):

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

Your current rent charged is:	\$ <u>2,118</u>
The dollar adjustment in your rent charged is:	\$ <u>74</u>
The percentage adjustment in your rent charged	<u>3.50</u> %
Your new rent charged is:	\$ <u>2,192</u>
The effective date is:	<u>04/01/2016</u>

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

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

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

EXHIBIT F



RAD Date Stamp

Internal Use Only

C/O current:

yes no n/a

BBL current: yes no

Reg. current: yes no

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

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

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

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

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

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

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

3. My business telephone number and email address are:

202-971-7065, rgrealy@eqr.com

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

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

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

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

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

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

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

Smith Property Holdings Van Ness L.P.

Housing Provider's Printed Name

Housing Provider's Signature

Gene Santomartino, Agent For Housing Provider

01/15/2015

Date:

RECEIVED
 2015 JAN 27 PM 2 00
 HRA-DHCD
 RENTAL
 ACCOMMODATIONS
 DIVISION

APPENDIX OF NOTICES OF ADJUSTMENT IN RENT CHARGED

(with Continuation Page)

Unit No.	Tenant(s) Name(s)	Prop. Rental	New Rent	Dollar Change	Percent Change	Section of Act	Date Tenant Served with Notice	Effective Date of Rent Adjustment	13(a)(2) Rental Unit No.	Type of Service (No. is below)
S0107	Chris Prismo, Sarita Perales	2624	2713	89	3.4	208(h)(2)	01/15/2015	04/01/2015		4
S0217	Nicholas Serrano, Yulia Danilina	2258	2335	77	3.4	208(h)(2)	01/15/2015	04/01/2015		4
S0220	Benjamin McKee, Alanna Tievsky	2995	3097	102	3.4	208(h)(2)	01/15/2015	04/12/2015		4
S0221	Cheryl Thoren	2192	2267	75	3.4	208(h)(2)	01/15/2015	04/05/2015		4
S0407	Bradley Erickson, Anne Limowski	3175	3283	108	3.4	208(h)(2)	01/15/2015	04/25/2015		4
S0417	Jeff Reisman	2339	2419	80	3.4	208(h)(2)	01/15/2015	04/30/2015		4
S0501	Elizabeth Rekowski, Melanie Jones	3721	3848	127	3.4	208(h)(2)	01/15/2015	04/19/2015		4
S0505	Phuong Nguyen, Hoang Do	2158	2231	73	3.4	208(h)(2)	01/15/2015	04/04/2015		4
S0519	Patricia Villaruz	2484	2568	84	3.4	208(h)(2)	01/15/2015	04/11/2015		4
S0612	Hesham Khedr, Sozan Elshamy	2326	2405	79	3.4	208(h)(2)	01/15/2015	04/07/2015		4
S0613	Charles Titus	2398	2480	82	3.4	208(h)(2)	01/15/2015	04/01/2015		4
S0623	Kathy Chiao, Alexandra Bonagura	3060	3164	104	3.4	208(h)(2)	01/15/2015	04/28/2015		4
S0707	Harry Gural	2048	2118	70	3.4	208(h)(2)	01/15/2015	04/01/2015		4
S0723	Sofia Melendez	1886	1950	64	3.4	208(h)(2)	01/15/2015	04/28/2015		4
S0923	Ara Salerian	2583	2671	88	3.4	208(h)(2)	01/15/2015	04/09/2015		4
S1008	Carolina Acosta, Ernesto Gordillo	2723	2816	93	3.4	208(h)(2)	01/15/2015	04/01/2015		4
W0111	Hyman Cole	1705	1729	24	1.4	208(h)(2)	01/15/2015	04/01/2015		4
W0125	Darryl Sester, Robert Heffernan	2365	2445	80	3.4	208(h)(2)	01/15/2015	04/18/2015		4
W0202	Thomas McGinty	2973	3074	101	3.4	208(h)(2)	01/15/2015	04/01/2015		4
W0218	Couroche Kalantary, Giilda Kurdi	2129	2201	72	3.4	208(h)(2)	01/15/2015	04/01/2015		4
W0320	Kristen Freeman, Douglas Johnson	2118	2190	72	3.4	208(h)(2)	01/15/2015	04/01/2015		4
W0332	G Keefe, S Garza, J Karsten, E St John	4616	4773	157	3.4	208(h)(2)	01/15/2015	04/26/2015		4
W0403	Yongmo Ahn	2520	2606	86	3.4	208(h)(2)	01/15/2015	04/07/2015		4

APPENDIX OF NOTICES OF ADJUSTMENT IN RENT CHARGED

(with Continuation Page)

Unit No.	Tenant(s) Name(s)	Priority Rent	New Rent	Dollar Change (\$)	Percent Change (%)	Section of Act	Date Tenant Served with Notice	Effective Date of Rent Adjustment	213(a)(2) Rental Unit No.	Type of Service (No. is below)
W0409	Lorin Shirwani, Julie Grysavage, Robert Gibson	3310	3423	113	3.4	208(h)(2)	01/15/2015	04/26/2015		4
W0511	Embassy Lebanese, Carla Jazzar	2365	2445	80	3.4	208(h)(2)	01/15/2015	04/01/2015		4
W0523	Karen Reinauer	2829	2925	96	3.4	208(h)(2)	01/15/2015	04/05/2015		4
W0604	Marie Brodeur	3179	3287	108	3.4	208(h)(2)	01/15/2015	04/25/2015		4
W0631	Navneet Jaswal, Sandeep Mahajan	3200	3309	109	3.4	208(h)(2)	01/15/2015	04/09/2015		4
W0707	Priya Chopra	2211	2286	75	3.4	208(h)(2)	01/15/2015	04/19/2015		4
W0716	Nicolas Viggolo, Maria Smaldone	3179	3287	108	3.4	208(h)(2)	01/15/2015	04/19/2015		4
W0727	Jeffrey Stevenson Jr.	2874	2972	98	3.4	208(h)(2)	01/15/2015	04/01/2015		4
W0731	Martin Keeney	2811	2907	96	3.4	208(h)(2)	01/15/2015	04/19/2015		4
W0807	Larissa Da Silva	1766	1826	60	3.4	208(h)(2)	01/15/2015	04/01/2015		4
W0825	Chinese Embassy	2365	2445	80	3.4	208(h)(2)	01/15/2015	04/08/2015		4
W0905	Erin Lindgren, Claude Warzecha	3007	3109	102	3.4	208(h)(2)	01/15/2015	04/26/2015		4
W0908	Kathryn Berlin, Anne Drury, Alexis Niekamp	3228	3338	110	3.4	208(h)(2)	01/15/2015	04/01/2015		4
W1016	Friedrich Kretschmer, Viola Kretschmer	2855	2952	97	3.4	208(h)(2)	01/15/2015	04/01/2015		4
W1108	Michael Nagle, Kyle Byrd	3551	3672	121	3.4	208(h)(2)	01/15/2015	04/04/2015		4
W1111	Veronice Holt	2214	2289	75	3.4	208(h)(2)	01/15/2015	04/01/2015		4
W1123	Ivana Horvathova, Edward Levin	3224	3334	110	3.4	208(h)(2)	01/15/2015	04/19/2015		4
W1125	Abby Harvey, Daniel Carlson	2365	2445	80	3.4	208(h)(2)	01/15/2015	04/05/2015		4

EXHIBIT G

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

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

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

Date: 07/19/2016

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

Dear Tenant(s):

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

Your current rent charged is:	\$ 3,400
The dollar adjustment in your rent charged is:	\$ 68
The percentage adjustment in your rent charged	2.00 %
Your new rent charged is:	\$ 3,468
The effective date is:	10/28/2016

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

Under section 206(b) and 208(h) of the Act (D.C. OFFICIAL CODE §§ 42-3502.06(b) & 42-3502.08(h)(2) (Supp. 2008), the increase in rent charged is based on the increase in the Consumer Price Index (CPI-W). For tenants qualified under the Act as elderly or disabled, the maximum increase in rent charged is the lesser of the CPI-W percentage, or 5% of the current allowable rent charged. For other tenants, the maximum percentage increase in rent charged is the CPI-W percentage plus 2%, but the total increase shall not be more than 10% of the current allowable rent charged. The Rental Housing Commission (RHC) determines the annual adjustment of general applicability in the rent charged established by Section 206(b) for each Rental Unit, which shall be equal to the change during the previous calendar year in the Washington, D.C. Standard Metropolitan Statistical Area (SMSA) Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W). The CPI-W percentage published by the Rental Housing Commission for May 2016 through April 2017 is 0%.

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

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

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

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

Date: 05/19/2016

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

Dear Tenants(s):

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

Your current rent charged is:	\$ 3,616
The dollar adjustment in your rent charged is:	\$ 72
The percentage adjustment in your rent charged	2.00 %
Your new rent charged is:	\$ 3,688
The effective date is:	08/08/2016

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

Under section 206(b) and 208(h) of the Act (D.C. OFFICIAL CODE §§ 42-3502.06(b) & 42-3502.08(h)(2) (Supp. 2008), the increase in rent charged is based on the increase in the Consumer Price Index (CPI-W). For tenants qualified under the Act as elderly or disabled, the maximum increase in rent charged is the lesser of the CPI-W percentage, or 5% of the current allowable rent charged. For other tenants, the maximum percentage increase in rent charged is the CPI-W percentage plus 2%, but the total increase shall not be more than 10% of the current allowable rent charged. The Rental Housing Commission (RHC) determines the annual adjustment of general applicability in the rent charged established by Section 206(b) for each Rental Unit, which shall be equal to the change during the previous calendar year in the Washington, D.C. Standard Metropolitan Statistical Area (SMSA) Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W). The CPI-W percentage published by the Rental Housing Commission for May 2016 through April 2017 is 0%.

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

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

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

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

Date: 06/20/2016

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

Dear Tenants(s):

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

Your current rent charged is:	\$ <u>3,546</u>
The dollar adjustment in your rent charged is:	\$ <u>71</u>
The percentage adjustment in your rent charged	<u>2.00</u> %
Your new rent charged is:	\$ <u>3,617</u>
The effective date is:	<u>09/10/2016</u>

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

Under section 206(b) and 208(h) of the Act (D.C. OFFICIAL CODE §§ 42-3502.06(b) & 42-3502.08(h)(2) (Supp. 2008), the increase in rent charged is based on the increase in the Consumer Price Index (CPI-W). For tenants qualified under the Act as elderly or disabled, the maximum increase in rent charged is the lesser of the CPI-W percentage, or 5% of the current allowable rent charged. For other tenants, the maximum percentage increase in rent charged is the CPI-W percentage plus 2%, but the total increase shall not be more than 10% of the current allowable rent charged. The Rental Housing Commission (RHC) determines the annual adjustment of general applicability in the rent charged established by Section 206(b) for each Rental Unit, which shall be equal to the change during the previous calendar year in the Washington, D.C. Standard Metropolitan Statistical Area (SMSA) Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W). The CPI-W percentage published by the Rental Housing Commission for May 2016 through April 2017 is 0%.

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

EXHIBIT H



Landlords Exploit D.C. Rent Control Laws, Jacking Up Prices After 'Concessions' Expire

Rent ploys

[Andrew Giambrone](#)

Sep. 1, 2016 8:30 a.m.

Pat Remick is bracing herself for a battle with her landlord.

A senior who qualifies for limited rent increases under D.C. law, she moved into 3003 Van Ness Apartments in 2012. The residential complex sits between the law schools of Howard University and the University of the District of Columbia in leafy Ward 3, and is composed of two highrises linked by a ground-floor lobby. It's in a prime location—a five-minute walk from both the Van Ness-UDC Metro station and Rock Creek Park—and contains roughly 600 units, ranging from studios to two-bedrooms.

Built in the 1970s, the rent-controlled property has perks to boot: spacious rooms, a 24-hour fitness center, even an Olympic-size pool. And it's relatively affordable for the tony ward.

Or at least it purports to be.

Remick learned this the hard way over time. While the former homeowner hopes to hold onto her one-bedroom apartment, she's grown tired of rent negotiations with Equity Residential, the company that owns 3003 Van Ness. "They become more stressful year after year," she explains.

Remick and half a dozen other tenants interviewed say Equity has a misleading practice of offering annual "concessions," or discounts, on units, subject to its discretion. The custom undermines the meaning of "rent control," residents say: It's not what they signed up for.

District law limits increases for rent-controlled units to 2 percent plus the Consumer Price Index—a measure of inflation—once a year, and to the CPI alone for disabled or elderly tenants like Remick. She received a lease-renewal letter last September, when the CPI was set at 1.5 percent (today it's 0 percent). So Remick anticipated a new rent of \$2,030 a month, or 1.5 percent above the \$2,000 she'd been paying. But the company's memo, containing the letterheads of Smith Property Holdings—an Equity affiliate—and the Department of Housing and Community Development, showed a “new rent charged” of \$2,783, effective at the end of December. Shocked by the new figure, Remick fought to get her rent lowered to \$2,030 a month. She threatened to file a tenant petition with the city if Equity didn't reassess.

“I find this to be a ridiculous exchange we have every year,” Remick says. “It's all a charade. I don't understand how a building can claim it's rent-controlled when it's not related to payments.”

That's the crux of an ongoing dispute between the tenants of 3003 Van Ness and Equity, a \$24 billion company founded by business mogul **Sam Zell**. Equity has more than 300 properties boasting upwards of 85,000 apartment units across the U.S., including Boston, New York, Seattle, San Francisco, and D.C. Its corporate office declined to comment.

Harry Gural, who heads the property's tenant association, alleges that Equity “outmaneuvers” those unfamiliar with concessions, which he believes the company applies illegally. He suspects that the practice is “fairly widespread” within the District, equating it to a “bait-and-switch” scheme and “false advertising.” Gural says more than 30 units at 3003 Van Ness have contacted him about rent negotiations. There are probably many more going through the motions with Equity who are too afraid, uninformed, or old to push back, he adds.

On Equity's webpage for 3003 Van Ness, rents and floor plans are depicted side-by-side. Scroll down further and Equity disclaims, “Quoted rent may include a concession.” It doesn't specify how steep that discount would be, or from what value it would be subtracted. Tenants say those figures generally come up at the point of lease signing. Many agree to go through with the agreement when management tells them a higher, non-discounted rent is merely a formality or for internal purposes. Months later, renewal letters like the one Remick received describe that figure as a tenant's “current rent charged,” which Equity uses to calculate a percentage “adjustment.”

This modification often results in renewal rates that are hundreds of dollars—and in some cases over \$1,000—above the monthly rent a resident pays. Usually, that's when an anxious or irked renter contacts the company, and negotiations begin. Although savvy tenants can achieve rent increases that fall within “2 percent plus CPI” of their payments, others aren't as fortunate.

“The key issue here is what the word ‘rent’ means,” Gural explains. “99.9 percent of the people out there think it's what you pay every month—or what they take out of your bank

account every month. Equity says it's what they wish it were, to have head room. People are getting screwed."

To corroborate Equity's rent policies, *City Paper* called the 3003 Van Ness leasing office as a prospective tenant. The property has "maximum rents that can be charged on an apartment," an agent says, some of which are "way beyond what the market would bear." When that's the case, Equity offers concessions that reduce rent payments. "What you see [on the website] is absolutely what you would pay," she says. For example, a one-bedroom advertised with a rent of \$1,950 a month (utilities included) has a maximum of \$2,352, so Equity would offer a \$402 concession on it for one year. Such discounts are determined "based on the market," the agent notes. But she's unable to provide an average or median concession amount, adding that "at least 75 percent of the apartments" at 3003 Van Ness receive "competitive" ones.

Asked about future lease renewals, the agent says any increases would apply to the "maximum rent." A tenant could "come and talk to us and we can figure out what kind of concession we can give" after receiving a renewal notice from Equity two to three months before a lease expiration.

In communications with tenants, Equity has argued that it isn't doing anything illegal by offering concessions, a practice that's becoming more common, housing advocates say. But a difference in interpretation of the District's rent control laws seems to be at play.

Joel Cohn, legislative director for the D.C. Office of the Tenant Advocate, says rent-concession cases have formed a "groundswell" over the past several years, involving a "gray area" of laws governing rent control. So far, though, decisions by the Office of Administrative Hearings, D.C.'s small-claims court, haven't favored tenants. And OAH's rulings don't set precedent.

Still, if such a case were to come on appeal, Cohn believes there's a strong argument "that is yet to be heard in full that some rent concessions are operating as de facto rent ceilings."

Rent ceilings were abolished in 2006 as part of housing reforms spearheaded by **Jim Graham**, then Ward 1 Councilmember. Before that, landlords had to report two numbers to the District for rent-controlled units: the ceiling, or maximum allowable rent, and "rent charged," what a tenant paid each month. But because of loopholes that permitted owners to raise prices on these units, the discrepancies between the two were "getting so wildly large that tenants were being subject to huge increases," Cohn recalls. For instance, one dubbed the "vacancy high comparable" allowed landlords to bump up a given unit's rent to that of a similar unit when a vacancy occurred. Legal increase thresholds for units that become vacant are now lower.

"Say there's a grandma in one unit with a low rent ceiling, and another [separate] unit with a lot of turnover—students tended to be there, say—where the rent ceiling would be way, way above the rent charged," Cohn explains. "Within one fell swoop of grandma

vacating her unit, the rent charged to that unit would jump to a much higher rent, leading to an instant loss of affordability.”

Cohn notes that owners use concessions as leverage during lease negotiations. While tenants have a right to go month-to-month after their first year, many of them feel pressured into signing annual leases with significant rent increases when an owner threatens to “whammy” them by reducing or eliminating concessions. “Rent control is supposed to mean that the rent increase is going to be manageable and predictable,” Cohn says, adding that concessions can “violate the letter and spirit” of D.C.’s laws. The facts that the term “rent concession” doesn’t show up in the books, and that “rent charged” isn’t explicitly defined, benefit landlords.

A 2011 report by the Urban Institute found that up to 80,000 housing units across approximately 4,800 properties in the District were “potentially subject to rent control.” Of those properties, 5.4 percent were located in Ward 3 (where 3003 Van Ness sits), the lowest share in D.C. Still, about a fifth of the rent-controlled buildings in that ward had 51 or more units—larger than those in other parts of the city.

All that’s to say that rent concessions affect thousands of D.C. residents. As Gural and **Shirley Adelstein**—a neighborhood commissioner who lives at 3003 Van Ness—point out, rents based on purported maximum numbers could be generating substantial profits for owners in the aggregate. “It often takes some time for people to become aware of what’s going on,” says the ANC commissioner, who moved into the Equity property two years ago. “People would contact Harry or me—or both of us—in a real state of stress and despair not knowing what to do because the increase that was proposed would have essentially priced them out of their home.”

(Over the weekend, Adelstein got a renewal letter showing a more than \$1,000 increase in the rent she and her husband pay for their one-bedroom-plus-den unit. They plan to negotiate.)

One fix to the alleged distortions in prices at rent-controlled buildings could be an official investigation into owners’ policies and practices. Another would be a legislative clarification of existing laws. A spokeswoman for Ward 3 Councilmember **Mary Cheh** says her office is drafting a pertinent bill.

Meanwhile, residents are losing patience. **Nick** and **Katie Pettet** plan to leave 3003 Van Ness for another building in the neighborhood, less than a year after settling in. The newlyweds says they intend to file a tenant petition with the District, seeking to recoup some of their relocation expenses, after Equity tried raising their payments from a little under \$1,800 a month to \$1,930. According to documentation the two provided, Equity was basing that increase on a rent adjustment up to \$3,468: precisely 2 percent above a “current rent charged” of \$3,400.

At most, the Pettets were expecting a monthly uptick of \$35 a month, not an effective 9-percent jump. Like other tenants, it seemed impossible to them that their one-bedroom

could be worth \$3,400. Though they've enjoyed living at 3003 Van Ness with their cat, they say they're fed up.

"We just wanted to get out and not deal with this anymore," Nick says, citing "financial and ethical" reasons. As a matter of principle, the couple notes, Equity betrayed their trust by brushing off their appeals to D.C. law during days of back-and-forth with the leasing office.

"We didn't feel we could sign and say, 'We agree with what you're doing,'" Katie adds. "Then, what leverage would you have the next time?"

"The outcome we would like to see is that landlords raise rent based on the rent you pay, not just some other number," she explains. "We feel taken advantage of, but we know we'll be OK."

EXHIBIT I

WELCOME
Harry Gural

YOUR HOME
3003 Van Ness
Building: S Apartment: 0707

[CHANGE PASSWORD](#) | [LOGOUT](#)

[CONTACT US](#)

Home

Payments

Service

myCommunity

Bulletin Board

myAccount

myRewards

Refer A Friend

[PROFILE](#) [LEASE](#) [EXTRAS](#) [STATEMENT](#) [RENEWAL](#) [DIGITAL DOCS](#)

Account Information

Beginning Period: 03/2010 Ending Period: 12/2016 Current Balance: \$2,361.00 [View Current Statement](#)
Move-In Date: 3/6/2010

We're missing
important info.

Please update
your profile.



Resident Statement Detail


DATE	TYPE	DESCRIPTION	CHARGES/ DEPOSITS	PAYMENTS/ CREDITS	BALANCE
3/23/2016	Check	#012200240025797		1,995.00	-1,995.00
4/1/2016	Monthly Reserved Parking	April Charge	100.00		-1,895.00
4/1/2016	Monthly Apartment Rent	April Charge	2,192.00		297.00
4/6/2016	Late Fee	Auto Late Fee	44.55		341.55
4/13/2016	Check	#012200240026803		15.00	326.55
4/13/2016	Monthly Parking	Guest Parking	15.00		341.55
4/25/2016	Check	#012200240033873		1,995.00	-1,653.45
5/1/2016	Monthly Apartment Rent	May Charge	2,192.00		538.55
5/1/2016	Monthly Reserved Parking	May Charge	100.00		638.55
5/6/2016	Late Fee	Auto Late Fee	89.10		727.65
5/13/2016	Monthly Parking	Guest Parking	15.00		742.65
5/16/2016	Monthly Parking	Guest Parking	15.00		757.65
5/24/2016	Check	#012200240059690		1,995.00	-1,237.35
6/1/2016	Check	#012200240081159		45.00	-1,282.35
6/1/2016	Monthly Apartment Rent	June Charge	2,192.00		909.65
6/1/2016	Monthly Reserved Parking	June Charge	100.00		1,009.65
6/6/2016	Late Fee	Auto Late Fee	131.40		1,141.05

6/24/2016	Check	#012200240027026		1,995.00	-853.95
7/1/2016	Monthly Apartment Rent	July Charge	2,192.00		1,338.05
7/1/2016	Monthly Reserved Parking	July Charge	100.00		1,438.05
7/6/2016	Late Fee	Auto Late Fee	175.95		1,614.00
8/1/2016	Monthly Apartment Rent	August Charge	2,192.00		3,806.00
8/1/2016	Monthly Reserved Parking	August Charge	100.00		3,906.00
8/6/2016	Late Fee	Auto Late Fee	343.80		4,249.80
9/1/2016	Monthly Apartment Rent	September Charge	2,192.00		6,441.80
9/1/2016	Monthly Reserved Parking	September Charge	100.00		6,541.80
9/2/2016	Check	#012200240060090		1,995.00	4,546.80
9/6/2016	Check	#012200240048527		1,995.00	2,551.80
9/6/2016	Late Fee	Auto Late Fee	328.80		2,880.60
9/26/2016	Check	#34083		1,995.00	885.60
10/1/2016	Monthly Apartment Rent	October Charge	2,192.00		3,077.60
10/1/2016	Monthly Reserved Parking	October Charge	100.00		3,177.60
10/6/2016	Late Fee	Auto Late Fee	309.60		3,487.20

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion and Memorandum of Points and Authorities in Support thereof was served on this the 25th day of October, 2016, by first class mail, postage pre-paid upon:

Harry Gural
3003 Van Ness Street, N.W.
Apt. S-707
Washington, D.C. 20008



Debra F. Leege

**DISTRICT OF COLUMBIA
Office of Administrative Hearings**

HARRY GURAL,

Tenant/Petitioner,

v.

SMITH PROPERTY HOLDINGS VAN NESS
L.P.,

Housing Provider/Respondent.

Case No.: 2016 DHCD TP 30,855
3003 Van Ness Street, N.W., Apt. S-707

**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF
HOUSING PROVIDER’S MOTION FOR SUMMARY JUDGMENT**

Housing Provider/Respondent Smith Property Holdings Van Ness L.P. ("Housing Provider"), by undersigned counsel, submits its memorandum of points and authorities in support of its Motion for Summary Judgment. In support thereof, Housing Provider states as follows:

I. THE CLAIMS ALLEGED

On May 12, 2016, Tenant/Petitioner Harry Gural ("Mr. Gural" or "Petitioner") had filed an earlier tenant petition, TP 30,818 (the "First Tenant Petition") alleging that (i) his rent increase was larger than the increase allowed by any provision of the Rental Housing Act of 1985, D.C. Code §§ 42-3501.01, et seq. (the "Act"); (ii) the Housing Provider did not file the correct rent increase forms with the RAD; (iii) the rent ceiling exceeds the legally-calculated rent for the unit; and (iv) the rent charged is in excess of the rent ceiling for my Rental Unit. In the Complaint Details, Petitioner states that:

My rent last year (April 1, 2015-March 31, 2016) was \$1,830. Equity Residential claims that my monthly rent beginning in April 2016 will be \$2,192.

DC rent control laws allow a maximum increase of 2% plus the CPI-W, which was 1.5% last year. The maximum allowable legal increase should thus be $\$1,830 \times 3.5\% = \$1,895$.

However, Equity is demanding an increase of \$362 monthly (\$1298 over the legal limit.). This increase is 19.8% - more than five times the legal maximum of 3.5%.....

As the President of the Van Ness South Tenants Association, I have talked to many other residents who have also been demanded by Equity Residential to pay rent increases that vastly exceed what is allowed in DC law. In some cases, residents have been told that they must pay more than \$1,000 monthly over the maximum allowable increase. They have also been told that they must sign new leases, which is not true under DC rent control laws.

I have clear records, both in my specific case and in that of others. I can clearly show that in my case Equity Residential submitted incorrect figures for my rent to the DC Rental Accommodations (sic) Division.

There is some urgency to this tenants petition because Equity Residential has filed against me in Landlord & Tenant Court. This is because for the current year (April only thus far) I paid Equity the maximum amount I owe by law (\$1,895), but I have not paid the additional \$298 Equity demands of me, which exceeds the legal limit. The LNT case number is 10863-16.

After Equity filed a Motion for Summary Judgment in the First Tenant Petition, Mr. Gural filed an Opposition, as well as a Motion for Voluntary Dismissal of the First Tenant Petition. In his filing, Mr. Gural provided a substantive response to the Motion for Summary Judgment but then, relying upon OAH Rule 2817.1 stated

I also request voluntary dismissal without prejudice of my tenant petition because I likely will pursue remedy through the District of Columbia Superior Court's Civil Division. I plan to pursue my case in Superior Court because some of the issues case [sic] lie outside the scope of the Rental Housing Act. A suit in Superior Court may provide the most direct path to relief.

I respectfully request voluntary dismissal without prejudice under OAH Rule 2817.1, so that I may seek remedy in a forum that may grant equitable relief.

Answer to Housing Provider Motion for Summary Judgment and Tenant/Petitioner Motion for Voluntary Dismissal Under OAH Rule 2817.1 at 3.

Consequentially, on July 28, 2016, a Final Order was issued, dismissing the First Tenant Petition. See Exhibit A, Final Order. Accordingly, on August 23, 2016, Housing Provider filed a

Motion to Vacate the *Drayton* Stay in the Landlord & Tenant court. On August 30, 2016, Mr. Gural filed an Opposition to the Motion to Vacate. In that opposition, Petitioner advised that he had filed a new tenant petition. See Exhibit B, Opposition. That same day, Mr. Gural had filed the instant tenant petition “the New Tenant Petition” alleging that (i) his rent increase was larger than the increase allowed by any provision of the Rental Housing Act of 1985, D.C. Code §§ 42-3501.01, et seq. (the “Act”); (ii) the Housing Provider did not file the correct rent increase forms with the RAD; (iii) The Housing Provider had taken retaliatory action against him; and (iv) a Notice to Vacate had been served on him. In the Complaint Details, Petitioner explained that he had dismissed the First Tenant Petition on advice of counsel to pursue remedies in other forums. However, as there was the pending Motion to Vacate the *Drayton* Stay, he was filing another tenant petition.

The Housing Provider has not issued a Notice to Vacate to Mr. Gural. Exhibit C.

II. FACTUAL BACKGROUND

A. The Lease and the Housing Accommodation.

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"). See Exhibit C, Affidavit of Avis DuVall. Equity Residential Management, L.L.C. manages the Housing Accommodation. *Id.* Petitioner has resided at the Housing Accommodation since March 2010. *Id.* Pursuant to a lease agreement commencing on April 1, 2014 and expiring on March 31, 2015 (the "Lease"), Petitioner leased Unit S-0707 (the “Unit”). A copy of the Lease is attached hereto as Exhibit D. The Lease identifies that the monthly rent is \$2,148, including \$2,048 for the apartment rent and \$100 for reserved parking. *Id.* The Lease identifies that tenant is entitled a monthly recurring concession of \$278 per month (the “Concession”). *Id.* The Lease includes a Concession Addendum which further explains the Concession. A copy of the Concession Addendum is attached as Exhibit E. It states:

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

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

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

On January 15, 2015, Housing Provider sent notice to Tenant that the rent for the unit would be increasing from \$2,048 to \$2,118 effective April 1, 2015. A copy of the Notice of Rent Increase is attached as Exhibit F. Thereafter, on January 27, 2015, Housing Provider filed a Certificate of Notice of Rent Increase with the District of Columbia's Rental Accommodations Division. A copy of the Certificate of Notice of Rent Increase is attached as Exhibit G. After the Lease expired, the Housing Provider agreed to an extension of the concession even though Petitioner was now a month-to-month tenant and the Concession Addendum no longer applied. Exhibit C. Petitioner received a concession of \$288 per month from April 1, 2015 through March 31, 2016. *Id.* The concession was not extended beyond March 31, 2016. *Id.*

On January 15, 2016, Housing Provider sent notice to Tenant that the rent for the unit would be increasing from \$2,118 to \$2,192 effective April 1, 2016. A copy of the Notice of Rent Increase is attached as Exhibit H. Thereafter, on February 2, 2016, Housing Provider filed a Certificate of Notice of Rent Increase with the District of Columbia's Rental Accommodations Division. A copy of the Certificate of Notice of Rent Increase is attached as Exhibit I.

III. STANDARD FOR GRANTING SUMMARY JUDGMENT

The District of Columbia Office of Administrative Hearings (“OAH”) Rule 2828.1 provides, “Motions for summary adjudication or comparable relief may be filed in accordance with Rule 2812.” OAH Rule 2812 provides instructions for the filing of motions, generally, but it does not specifically address the standard to determine whether summary judgment is appropriate. Where a procedural rule is not specifically addressed by the OAH Rules, the Office of Administrative Hearings may rely upon the District of Columbia Superior Court Rules of Civil Procedure as persuasive authority. See OAH Rule 2801.2.

District of Columbia Superior Court Rule of Civil Procedure 56 provides that summary judgment is appropriate if there is “no genuine issue as to any material fact and the moving party is entitled to a judgment as a matter of law.” See also *Musa v. Continental Ins. Co.*, 644 A.2d 999, 1001-02 (D.C. 1994). Only disputes over facts, viewed in the light most favorable to the non-moving party, which might legitimately affect the outcome of a trial are “material” under Rule 56. See *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 250 (1986) (There is no issue to be decided at trial unless there is sufficient evidence favoring the non-moving party for the finder of fact to return a verdict for that party.); see also *Barnstead Broadcasting Corp. v. Offshore Broadcasting Corp.*, 886 F.Supp. 874, 878 (D.C. Cir. 1995) (Disputed material facts are those that might affect outcome of the suit under governing law.); *Clayton v. Owens-Corning Fiberglass Corp.*, 662 A.2d 1374, 1381 (D.C. 1995).

Respondent may discharge its burden of showing the absence of any genuine issues of material fact by demonstrating an absence of evidence to support Petitioners’ case. See *Celotex Corp. v. Catrett*, 477 U.S. 317, 325 (1986) (The burden on the moving party “may be discharged by ‘showing’ – that is, pointing out to the [Court] – that there is an absence of evidence to support the nonmoving party’s case.”); *Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574 (1986)

(Summary judgment is warranted in cases where the nonmoving party can produce no direct evidence on essential elements of its claim.).

IV. ANALYSIS

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

The use of a concession does not invalidate the higher, legal rent for a unit. *Maxwell v. Equity Residential Management, LLC*, 2015-DHCD-TP 30,704 (OAH April 22, 2016); *Pope v. Equity Residential Management, et al*, 2014-DHCD-TP 30,612 (OAH July 8, 2015). In both cases, the Administrative Law Judge ruled that the use of a concession was valid and the language of the concession was identical to the concession that Mr. Gural agreed to in the Lease. In *Pope*, the Administrative Law Judge ruled:

In the District of Columbia, rent concessions are also used to offer rent controlled units at or below market value while preserving a higher legal rent level that can be charged later. There are many arguments to be made that such concessions are contrary to the abolishment of rent ceilings. Prior to the Act's amendment in 2005, a Housing Provider was able to reserve future rent increases by increasing the "rent ceiling" for a unit while actually charging a lower rent. The rent ceiling permitted a housing provider to later implement rent increases in amounts that were higher than the annual increase of general applicability. However, there is nothing in the Rental Housing Act that prohibits a housing provider from offering rent concessions as long as the rent charged does not exceed the legally authorized rent that is on file with the Rental Accommodations Division.

It is well established that leases are to be construed as contracts. *Sobelsohn v. Am. Rental Mgmt. Co.*, 926 A.2d 713 (D.C. 2007). This jurisdiction adheres to an "objective" law of contracts, meaning that "the written language embodying the terms of an agreement will govern the rights and liabilities of the parties . . . unless the written language is not susceptible of a clear and definite undertaking." *Id.* at 718. Contracts should "generally be enforced as written, absent a showing of good cause to set it aside, such as fraud, duress, or mistake." *Akassy v. William Penn Apts Ltd P'ship*, 891 A.2d 291, 298 (D.C. 2006)(quoting *Camalier & Buckley, Inc., v. Sandoz & Lamberton, Inc.*, 667 A.2d 822, 825 (D.C. 1995)). Therefore, a tenant and a housing provider are free to contract to rental terms as long as those terms are not contrary to the law. In this case, Tenant knowingly

signed the lease agreeing to pay the lower rent amount as a concession for one year.

Tenant argues that she did not understand that the concession would expire, that Housing Provider falsely advertised the rent for the unit at the lower price, and that the paperwork regarding the concession was confusing. These however, are not issues governed by the Rental Housing Act, but amount to a contractual dispute. If Tenant believes she was fraudulently induced into signing the lease, that the terms of the lease are somehow ambiguous, or that there was no meeting of minds, she must seek a remedy through D.C. Superior Court's Civil Division which has the jurisdiction to resolve equitable disputes. The jurisdiction of this administrative court is limited to applying the Rental Housing Act and I find that the rent concession was not in violation of the Rental Housing Act. That however, does not end the inquiry as Tenant alleges that the rent increase exceeded the legally calculated rent for her unit.

A copy of the decision in *Pope* is attached as Exhibit J. The analysis in *Pope* was adopted by the Administrative Law Judge in *Maxwell*. A copy of the decision in *Maxwell* is attached as Exhibit K.

In this case, the Lease the Parties entered into an agreement which provided Petitioner a one year concession. See Exhibit D. Housing Provider was not bound to continue providing the concession thereafter. *Washington v. UIP Property Management, et al*, 2011-DHCD-TP 30,151 (OAH August 20, 2013) (Housing Provider permitted to provide a concession to tenant to fulfill requirements of a settlement agreement, while identifying the higher rent amount to RAD). See also *In the Matter of Missionary Sisters of the Sacred Heart, III v. N.Y. State Div. of Hous. & Community Renewal*, 283 A.D.2d 284, 289 (N.Y. App. Div. 1st Dep't 2001) (Concession did not obviate the terms of the lease agreement as it was clear, but the concession permitted the tenant to pay less for a specific period of time); *In the Matter of Century Operating Corp. v. Popolizio*, 60 N.Y.2d 483 (N.Y. 1983). At the conclusion of that year, Housing Provider continued to provide a concession to Petitioner, even though it was no longer required. Exhibit C. Effective April 1, 2016, Housing Provider ceased providing the voluntary concession. *Id.*

As discussed in *Pope*, there is no prohibition against providing for an adjustment in rent, but limiting the impact of that adjustment to a tenant. The Office of Administrative Hearings and the Rent

Administrator have both approved Voluntary Agreements and settlement agreements whereby significant rent increases are imposed on new tenants but not existing tenants through the use of concessions. See, e.g., *In re: Petition for Rent Adjustment based on 70% Voluntary Agreement*, 2012-DHCD-VA 11,016 (OAH June 19, 2012) (“Voluntary Agreements can increase rent charged for future tenants while providing current tenants with a rent concession.”); *In re: Voluntary Agreement Petition for Rent Adjustment WRF 1921 Kalorama Road, LP*, VA No. 08-011 (RAD May 7, 2009), at page 5; *In re: Infinity UIP Kenyon Acquisitions, LLC*, VA 11,001A (RAD January 11, 2011) (citing at page 3 to 14 DCMR 4204.1); *In re Park Manor Joint Venture*, VA 11-020 (RAD March 30, 2012). The use of concessions is permitted by District of Columbia law and therefore it did not reduce the legal rent, but instead reduces the amount paid by the Petitioner during the concession period. Accordingly, the tenant petition should be dismissed with prejudice.

B. Petitioner Cannot Prevail on His Claim that the Rent Increase was Larger than Permitted Under the Rental Housing Act.

Petitioner’s challenge must fail. The Housing Provider filed both the 2015 and the 2016 Certificate of Notice of Rent Increase with the Rental Accommodations Division prior to the implementation of that increase (Exhibits G and I). The 2015 Certificate shows that the rent for the Unit was increased by 3.4%, effective April 1, 2015 from \$2,048 to \$2,118. The 2016 Certificate shows that the rent for the Unit was increased by 3.5%, effective April 1, 2016 from \$2,118 to \$2,182. Since concessions are permitted, the filing itself is proper and this claim should be dismissed.

C. Petitioner Cannot Prevail on His Claim of Retaliation

Mr. Gural alleges Housing Provider took retaliatory action against him in violation of D.C. Code § 42-3505.02 by enforcing the concession language that Mr. Gural agreed to in his lease and once Mr. Gural voluntarily dismissed the First Tenant Petition, moving for the dismissal of the *Drayton* stay in the Landlord & Tenant Branch. D.C. Code §42-3505.02 provides that:

No housing provider shall take any retaliatory action against any tenant who exercises any right conferred upon the tenant by this chapter, by any rule or order issued pursuant to this chapter, or by any other provision of law. Retaliatory action may include any action or proceeding not otherwise permitted by law which seeks to recover possession of a rental unit, action which would unlawfully increase rent, decrease services, increase the obligation of a tenant, or constitute undue or unavoidable inconvenience, violate the privacy of the tenant, harass, reduce the quality or quantity of service, any refusal to honor a lease or rental agreement or any provision of a lease or rental agreement, refusal to renew a lease or rental agreement, termination of a tenancy without cause, or any other form of threat or coercion.

Id. (*emphasis added*). Thus, in order to prevail on a claim of retaliation, he must, at a minimum, make a threshold showing that: (i) he exercised a right conferred upon him by law; and (ii) Housing Provider's actions are not otherwise permitted by law. Mr. Gural can do neither.

As articulated in Section IV.A, Mr. Gural and the Housing Provider agreed when the Lease was signed to the concession language. Therefore, Housing Provider was entitled to enforce the concession language that Mr. Gural agreed to in the lease. The D.C. Court of Appeals address this very issue in *Double H Housing Corp. v. David*, 947 A.2d 38, 41-42 (D.C. 2008)

Double H's brief focuses on the following issue: whether a landlord, entitled to increase the rent charged to its month-to-month tenant, may require the tenant to execute a new lease agreement as a condition of receiving a discount from the otherwise applicable rent increase. We agree with Double H that a landlord may do so, absent circumstances that would support a finding that the tenant was effectively coerced into abandoning the month-to-month tenancy that he was entitled to maintain under District of Columbia law (specifically, D.C. Code § 42-3505.01).

... [§ 42-3505.01] does not, however, mandate that any continued tenancy must be month-to-month or preclude the landlord and tenant from agreeing to a new or renewed lease.... We therefore cannot agree that Double H was precluded from offering to charge David a discounted rent amount if he signed a new lease but charging him a higher monthly rent if he continued his month-to-month tenancy. ' To hold otherwise would, we think, encroach on the landlord's - and tenant's - "basic freedom to contract as he will," which we have said remains one of the "rather basic rights incident to the ownership of property [that] ought not to be summarily dismissed as obsolete" even under our modern statutory rental housing law. *Goodman v. District of Columbia Rental Hous. Comm'n*, 573 A.2d 1293, 1297 (D.C. 1990) (quoting *White v. Allan*, 70 A.2d 252, 255 (D.C. 1949)).

A party is entitled to a *Drayton* stay when there is a pending tenant petition as rent issues arising under the Rental Housing Act are within the primary jurisdiction of the Rent Administrator rather than the Landlord and Tenant Branch. *Drayton v. Poretsky Management, Inc.*, 462 A.2d 1115 (D.C. 1983); *Akassy v. William Penn Apartments LP*, 891 A.2d 291, 305 n. 18 (D.C. 2006). As Mr. Gural had voluntarily dismissed the First Tenant Petition, Housing Provider was within its right to seek to vacate the *Drayton* stay. For these reasons, Housing Provider has demonstrated that none of its actions were retaliatory in nature and were “otherwise permitted by law.”

D. Petitioner Cannot Prevail on His Claim that a Notice to Vacate Had Been Served

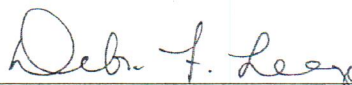
As the record is devoid of evidence of the issuance of a Notice to Vacate to the Petitioner, this claim must be dismissed without further consideration. See Exhibit C.

V. **CONCLUSION**

For the foregoing reasons, Housing Provider’s Motion for Summary Judgment should be granted and the tenant petition should be dismissed with prejudice.

Respectfully submitted,

GREENSTEIN DELORME & LUCHS, P.C.



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Counsel for Housing Provider/Respondent

Dated: October 25, 2016

**DISTRICT OF COLUMBIA
Office of Administrative Hearings**

HARRY GURAL,

Tenant/Petitioner,

v.

SMITH PROPERTY HOLDINGS VAN NESS
L.P.,

Housing Provider/Respondent.

Case No.: 2016 DHCD TP 30,818
3003 Van Ness Street, N.W., Apt. S-707

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"). Exhibit C, Affidavit of Avis DuVall.
2. Equity Residential Management, L.L.C. manages the Housing Accommodation. *Id.*
3. Pursuant to a lease agreement commencing April 1, 2014 and expiring on March 31, 2015 (the "Lease"), Petitioner Harry Gural leased Unit S0707 (the "Unit"). Exhibit D, Lease.
4. The Lease identifies that the monthly rent is \$2,148, including \$2,048 for the apartment rent and \$100 for reserved parking. *Id.*
5. The Lease states that Petitioner is entitled a monthly recurring concession of \$278 per month (the "Concession"). *Id.*
6. The Lease includes a Concession Addendum which further explains the Concession. It states:

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

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

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

Exhibit C, Concession Addendum.

7. When the Lease expired, the Housing Provider continued to provide a concession through March 31, 2016 to Mr. Gural even though he was a month-to-month tenant and the concession had expired. Exhibit C.

8. Mr. Gural received a \$288 per month concession from April 2015 through March 2016. *Id.*

9. On January 15, 2015, Housing Provider sent Mr. Gural a notice that his rent would be increased from \$2,048 to \$2,118 effective April 1, 2015. Exhibit F.

10. On January 27, 2015, Housing Provider filed a Certificate of Notice to RAD of Adjustment in Rent Charged. It identified that effective April 1, 2015, the rent for the Unit increased by \$70 from \$2,048 to \$2,118. Exhibit G.

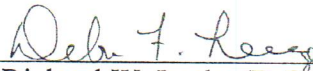
11. On January 15, 2016, Housing Provider sent Mr. Gural a notice that his rent would be increased from \$2,118 to \$2,192 effective April 1, 2016. Exhibit H.

12. On February 2, 2016, Housing Provider filed a Certificate of Notice to RAD of Adjustment in Rent Charged. It identified that effective April 1, 2016, the rent for the Unit increased by \$74 from \$2,118 to \$2,192. Exhibit I.

13. A Notice to Vacate has not been issued to Mr. Gural since he moved into the Unit on April 1, 2014.

Respectfully submitted,

GREENSTEIN DELORME & LUCHS, P.C.



Dated: October 25, 2016

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