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

DEBORAH POPE Tenant/Petitioner, v. EQUITY RESIDENTIAL MANAGEMENT, ALBAN TOWERS LIMITED PARTNERSHIP, Housing Providers/Respondents.	Case No.: 2014-DHCD-TP 30,612 *In re*: 3700 Massaschusetts Avenue, NW, #314

ORDER GRANTING PARTIAL SUMMARY JUDGMENT

I. Introduction

On December 10, 2014, Tenant/Petitioner Deborah Pope filed TP 30,612 alleging that Housing Provider/Respondent violated the Rental Housing Act of 1985 by (1) increasing her rent when her unit was not in substantial compliance with the housing regulations; (2) increasing her rent to an amount that exceeds the legally calculated rent; and (3) serving Tenant with an improper notice to vacate.

The parties appeared for mediation on January 20, 2015, which was unsuccessful. On February 3, 2015, Housing Provider filed a motion for summary judgment. On February 25, 2015, I ordered Tenant to file a response to the motion for summary judgment no later than March 23, 2015. On March 22, 2015, Tenant filed a response to the motion. On March 30, 2015, Housing Provider filed a reply to Tenant's response. On April 9 and April 29, 2015, Tenant also made unspecified filings, requesting to continue paying a lower rent.

II. Legal Standard

This matter is governed by the Rental Housing Act of 1985; substantive rules implementing the Rental Housing Act at 14 DCMR 4100 – 4399; the Office of Administrative Hearings Establishment Act at D.C. Official Code § 2-1831.03(b-1)(1), which authorizes OAH to adjudicate rental housing cases; the District of Columbia Administrative Procedure Act, D.C. Official Code §§ 2-501 *et seq.*; and the OAH procedural rules at 1 District of Columbia Municipal Regulations (DCMR) 2800 *et seq.* and 1 DCMR 2920 *et seq.*

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

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

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

> Summary judgment is appropriate only if no genuine issue of material fact exists and the movant is entitled to judgment as a matter of law. *GLM P'ship v. Hartford Cas. Ins. Co.*, 753 A.2d 995, 997-998 (D.C. 2000) (*citing Colbert v. Georgetown Univ.*, 641 A.2d 469, 472 (D.C. 1994) (*en banc*)). 'A motion for summary judgment is properly granted if (1) taking all reasonable inferences in the light most favorable to the nonmoving party, (2) a reasonable juror, acting reasonably, could not find for the non-moving party, (3) under the appropriate burden of proof.' *Kendrick*

v. Fox Television, 659 A.2d 814, 818 (D.C. 1995) (quoting *Nader v. de Toledano,* 408 A.2d 31, 42 (D.C. 1979)).

In deciding a motion for summary judgment, I construe the record in the light most favorable to the non-moving party (Tenant), resolving any doubt as to the existence of disputed facts against the movant (Housing Provider). *See Young v. Delaney*, 647 A.2d 784, 788 (D.C. 1994). The moving party has the burden of demonstrating the absence of a genuine issue of material fact. *Id.* It is not the court's function to resolve factual questions, but to determine whether there are any material factual issues. *Id.*

III. Material Facts Not in Dispute

1. The Housing Accommodation, known as "Alban Towers" is located at 3700 Massachusetts Avenue, NW, and is owned by Smith Property Holdings Alban Towers LLC and is managed by Equity Residential. The Housing Accommodation is a rent control property.

2. In an order dated March 6, 2001, the Rent Administrator approved a voluntary agreement for the Housing Accommodation which increased the rent ceiling for Tenant's unit (#314) to $3,340.

3. Tenant has resided in unit 314 since November 1, 2013. When Tenant signed a lease for the unit, the monthly rent was identified as $3,407, which included $3,357 for rent and a $50 monthly storage fee. Exhibit B.

4. The term of the lease was November 1, 2013, through October 31, 2014. Tenant was given a rent concession of $1,407 per month for one year so that she only had to pay

$1,955 per month. The lease states: "**Concessions:** Monthly Recurring Concession: $1,407/per month . . . The Total Monthly Rent shown above will be adjusted by these lease concession amounts." (emphasis in original) Exhibits A and B.

5. The lease also included a "Concession Addendum." The Addendum states that the "monthly recurring concession will expire and be of no further force and effect as of the expiration date show on the Term Sheet." Exhibit C. The expiration date on the Term Sheet is October 31, 2014. Exhibit A. The Addendum reserves the right to increase Tenant's rent annually and states that the concession is being given as an inducement to enter the lease.

6. On August 15, 2014, Housing Provider served Tenant with a "Notice to Tenants of Adjustment in Rent Charged" increasing Tenant's rent from $3,609 to $3,732 based on the 2014 CPI-W increase of 1.4% (plus 2%). Exhibit D. The increase was effective November 1, 2014.

IV. Conclusions of Law

At issue in this case is the proper rent level for Tenant's unit and the legality of the rent concession. I will first address the rent concession issue. Rent concessions are not specifically addressed in the Rental Housing Act, however, they are commonly utilized in the District of Columbia and other areas as a means to induce new leases. The propriety of rent concessions has also 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." Preferential rent is an amount of rent that a landlord agrees to charge, which is lower than the legal regulated rent the landlord could lawfully collect under the Rent Stabilization Law. *Les Filles Quartre, LLC v. McNeur*, 798 N.Y.S.2d 899, 901-02 (2005); *See* 9 NYCRR § 2501.2. New York case law has clarified that a 2003 amendment to the Rent Stabilization law making rent preferences revocable upon a renewal or upon a vacancy was not intended to change the law of contracts and to preclude parties to a lease from agreeing that tenants would be charged a preferential rent, during the term of their occupancy. *Romero v. New York State Div. of Hous. and Cmty Renewal,* 16 Misc.3d 484, 842 N.Y.S.2d 213 (2007). The specific terms of the lease are given precedence by the courts over the general rent stabilization provisions governing renewal lease terms and preferential rents. *Les Filles Quartre LLC*, 798 N.Y.S.2d at 902. For example, if the lease agreement contains a clause stating that the preferential rent shall continue for the term of the tenancy, as opposed to the term of the lease, then the preferential rent cannot be terminated for that entire tenancy. *See e.g., 448 West 54th Street Corp. v. Doig-Marx*, 784 N.Y.S.2d 292 (2004) (finding that landlord was prohibited from offering tenant a renewal lease which calculated renewal increase based on the legal regulated rent, as opposed to the preferential rent provided for in the lease, where lease rider provided that tenant would be charged a preferential rent during the term of the tenant's occupancy). In this case, Tenant's lease and the rent concession was for a term of one year and Housing Provider exercised its discretion to terminate the concession at the end of one year.

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.

I am unable to determine from the submissions whether the rent Tenant was charged when she signed her lease exceeding the legally calculated rent. Although Housing Provider submitted a voluntary agreement that was approved in 2001, Housing Provider did not establish when or how the voluntary agreement increase was implemented or that it provided Tenant with the required disclosures pursuant to D.C. Official Code § 42-3502.22. In addition, the rent in Tenant's lease was identified as $3,357, but the rent increase notice increased Tenant's rent from $3,609 to $3,732. Therefore, I grant Housing Provider summary judgment on the issue of the validity of the rent concession, but there is insufficient evidence regarding the proper rent level to determine whether the rent increase exceeded the legally calculate rent. Therefore, a hearing will be held on that issue and on Tenant's allegations that the rent was increased when the Housing Accommodation was not in substantial compliance with the housing regulations, and that Housing Provider served Tenant with an improper notice to vacate.

In its reply to Tenant's response to the motion for summary judgment, Housing Provider argued that Tenant failed to put Housing Provider on notice of any alleged housing code violations that exist and I agree. Tenant's petition and motion fail to identify any housing code violations. A petition must give a defending party fair notice of the grounds upon which a claim is based. *Parreco v. D.C. Rental Hous. Comm'n*, 885 A.2d 327, 334 (D.C. 2005). Therefore,

Tenant is ordered to supplement her petition by filing a statement of housing code violations that existed on the date the rent was increased.

Therefore, it is, this **8th day of July, 2015**:

ORDERED, that Housing Provider's motion for summary judgment is **GRANTED IN PART**; and it is further

ORDERED, that no later than **August 3, 2015**, Tenant shall file a supplement to her tenant petition setting forth with specificity any housing code violations that existed when her rent was increased. Failure to file a supplement will result in the allegation being dismissed ; and it is further

ORDERED, that a separate Case Management Order will be issued scheduling a hearing for **September 8, 2015, at 9:30 a.m.** at the Office of Administrative Hearings, 441 4th Street, N.W., Suite 450 North (the fourth floor on the north side of the building), Washington, D.C.

Erika L. Pierson
Principal Administrative Law Judge

Certificate of Service:

By First-Class Mail (Postage Prepaid):

Deborah Pope
3700 Massaschusetts Avenue, NW, #314
Washington, DC 20016

Richard Luchs, Esquire
Debra Leege, Esquire
Greenstein, Delorme & Luchs
1620 L Street, NW
Suite 900
Washington, DC 20036

I hereby certify that on July 9, 2015 this document was caused to be served upon the parties listed on this page at the addresses listed and by the means stated.

Natasha Jackson
Clerk / Deputy Clerk