

**DISTRICT OF COLUMBIA
RENTAL HOUSING COMMISSION**



GABRIEL FINEMAN,	:	
	:	
Appellant /Tenant,	:	
	:	
V.	:	Case No.: 2016 DHCD TP 30,842
	:	3003 Van Ness Street, N.W., Apt. W-1131
	:	
	:	
SMITH PROPERTY HOLDINGS VAN NESS L.P.,	:	
	:	
Appellee/Housing Provider	:	
	:	

Notice of Appeal

Gabriel Fineman (the “**Tenant**”), hereby appeals the OAH’s decision and order of October 2, 2018 (the “**Decision**”) in favor of the Housing Provider (the “**Landlord**”) and asserts the following:

The Decision should be corrected and reversed for the following errors:

1. The Decision was based on arbitrary actions and conclusions of law not in accordance with the provisions of the Rental Housing Act (the “**Act**”) including:
 - a. The OAH choose to only examine the original Tenant Petition and the Motion for Summary Judgment on Remand and ignoring all of the facts and claims and arguments raised in the many briefs in the case before the OAH and at the RHC.
 - b. Although recognizing that the OAH has adjudication authority over adjudicated cases previously under the jurisdiction of the Rent Administrator, it arbitrarily chose not to

recognize cases arising from a “tenant complaint” (as opposed to a “tenant petition”) despite the fact that such cases are expressly subject to the Rent Administrator’s jurisdiction.¹

- c. Having recognized its jurisdiction in the “**Original Decision**” (the Order of March 16, 2017), OAH arbitrarily decided on remand that it had no jurisdiction after all.
- d. Despite the fact that the official RAD “Tenant Petition/Complaint” form filed by the Tenant included a checkbox checked by the Tenant that said that “The housing provider did not file the correct rent increase form with RAD,” the OAH decided that its authority to impose penalties was limited to ordering the rollback of rents, imposing fines, and awarding attorney’s fees, and that it had no authority to require that correct forms be filed or provide any other relief for this violation.
- e. It improperly relied on the inapposite Shuman case to conclude that it could not formulate a remedy.

2. The Decision was based on conclusions of law not in accordance with the provisions of the Act and a misstatement of fact that was unsupported by any evidence, including:

- a. Erroneously stating that the OAH does not have the authority to provide a remedy for the Tenant.²
- b. Erroneously stating that the case is moot.

¹ “The Rent Administrator shall have jurisdiction over those complaints and petitions arising under subchapters II, IV, V, VI, and IX of this chapter and title V of the Rental Housing Act of 1980 which may be disposed of through administrative proceedings.” D.C. Code § 42-3502.04(c) (emphasis added)

² “None of the enumerated powers cover the situation here - ordering a private entity to correct, re-issue and re-file government forms.” Decision, Page 8-10. This, of course, ignores three of the enumerated powers just quoted: (a) “(5) Issue interlocutory orders and orders”; (b) “(10) Perform other necessary and appropriate acts in the performance of his or her duties and properly exercise any other powers authorized by law”; and (c) “(13) Exercise any other lawful authority.”

- c. Erroneously stating that the OAH lacks subject matter jurisdiction.
 - d. Erroneously stating that the Tenant lacks standing.
 - e. Denying that it has the authority to require the Landlord to reissue the RAD forms because the Act does not include an express provision allowing an OAH judge to order a landlord to correct, re-issue, and re-file a form.
 - f. Erroneously holding that the Tenant lost his rights under the Act when he was forced out of his apartment by the Landlord.
 - g. Finding that “There does not appear to be any specific authorization to order an applicant to the RAD to do anything.” Decision, Page 10.³ This, of course, ignores the enumerated powers listed in the Decision and footnote 2, above.
 - h. Erroneously finding that there is no actual controversy because “Receiving a correct 2015 Form 8 does not serve any interest of his, other than perhaps an interest in feeling vindicated.”⁴
3. The Decision was based on findings of fact unsupported by substantial evidence on the record, including the following:
- a. Making statements in the Introduction and Procedural History section that were either untrue or distorted the history of the case. For example, stating that the Original Decision found that the Landlord did not willfully file false forms when it did not address

³ This raises the question of if there is any purpose to the OAH in rental housing cases.

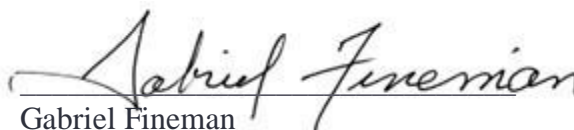
⁴ Decision, Page 11. This ignores the Tenant’s right to use these corrected filings as the basis for a claim for overcharged rent. It also ignores the right of the Tenant to file a claim (perhaps as part of a Petition) to enforce the Act as a “private attorney general.”

the question of willfulness at all, instead finding that, because the filings were correct, there were no false filings.⁵

WHEREFORE, Gabriel Fineman prays that: (a) the OAH judge's Final Order after Remand be Reversed and Remanded; and that (b) the OAH be directed to take such action as is necessary to implement the RHC decision in this case, including being ordered to direct the Landlord to deliver to the Tenant the corrected RAD for 8's and to file the corrected RAD for 9's.

Respectfully submitted,

Appellant/Tenant


Gabriel Fineman

Dated: October 22, 2018

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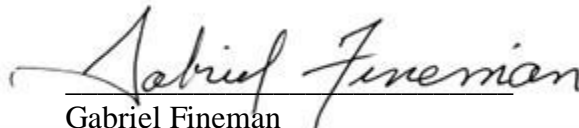
⁵ “I also conclude that Housing Provider did not intentionally file false documents after notice from Tenant of their alleged falsity. Housing Provider, in fact, did not file false documents.” Original Decision, Conclusions, Page 15

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Notice of Appeal was served on October 22, 2018,
by first class mail, postage pre-paid upon the attorney for the Housing Provider:

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