DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION

RH-TP-16-30,842

In re: 3003 Van Ness Street, N.W., Unit W-1131

Ward Three (3)

GABRIEL FINEMAN
Tenant/Appellant

v.

SMITH PROPERTY HOLDINGS VAN NESS LP
Housing Provider/Appellee

ORDER DENYING RECONSIDERATION

March 13, 2018

SPENCER, CHAIRMAN: This case is on appeal to the Rental Housing Commission ("Commission") from a decision and order issued by the Office of Administrative Hearings ("OAH")[1] based on a petition filed in the Rental Accommodations Division ("RAD") of the District of Columbia Department of Housing and Community Development ("DHCD"). The applicable provisions of the Rental Housing Act of 1985 ("Act"), D.C. Law 6-10, D.C. OFFICIAL CODE §§ 42-3501.01 - 3509.07 (2012 Repl.), the District of Columbia Administrative Procedure Act ("DCAPA"), D.C. OFFICIAL CODE §§ 2-501 - 510 (2012 Repl.), and the District of Columbia Municipal Regulations ("DCMR"), 1 DCMR §§ 2800-2899 (2016), 1 DCMR §§ 2920-2941 (2016), 14 DCMR §§ 3800-4399 (2004) govern these proceedings.

[1] OAH assumed jurisdiction over tenant petitions from the Rental Accommodations and Conversion Division ("RACD") of the Department of Consumer and Regulatory Affairs ("DCRA") pursuant to the OAH Establishment Act, D.C. OFFICIAL CODE § 2-1831.01 - 1831.03(b-1)(1) (2012 Repl.). The functions and duties of RACD were transferred to DHCD by § 2003 of the Rental Housing Operations Transfer Amendment Act of 2007, D.C. Law 17-20, D.C. OFFICIAL CODE § 42-3502.04B (2012 Repl.).

I. PROCEDURAL HISTORY

The full procedural history of this case is set forth in the Commission's decision and order issued on January 18, 2018: Fineman v. Smith Property Holdings Van Ness LP, RH-TP-1630,842 (RHC Jan. 18, 2018) ("Decision and Order") at 2-14. On July 12, 2016, tenant/appellant Gabriel Fineman ("Tenant"), residing in the housing accommodation at 3003 Van Ness Street, N.W. ("Housing Accommodation") Unit W-1131, filed tenant petition 2016-DHCD-TP 30,842 ("Tenant Petition") against Smith Property Holdings Van Ness LP ("Housing Provider"). In the Tenant Petition, the Tenant claimed that the Housing Provider violated the Act by serving him with notice of a rent increase ("RAD Form 9") that did not state the correct amount of "rent charged," and that the corresponding filing with RAD ("RAD Form 8") (jointly, "RAD Forms") also contained the same error. *See* Tenant Petition at 2; R. at Tab 1.

The Tenant and Housing Provider both moved for summary judgment, and on March 16, 2017, Administrative Law Judge Ann C. Yahner ("ALJ") issued a final order, denying the Tenant's Motion for Summary Judgment, granting the Housing Provider's Cross-Motion, and dismissing the Tenant Petition with prejudice. Fineman v. Smith Property Holdings Van Ness LP, 2016-DHCD-TP 30,842 (OAH Mar. 16, 2017) ("Final Order"); R. at Tab 16. The parties did not dispute that the Tenant's leases for the rental unit provided that the "monthly apartment rent" was over $3,100, but a separate clause provided a "monthly recurring concession" that reduced the amount the Tenant was actually responsible for paying to approximately $2,200. *Id.* at 4-5. The ALJ concluded that "a housing provider can interpret the term 'current rent charged' and 'prior rent' on the RAD Forms to refer to the amount a housing provider can charge that is the maximum legally authorized rent." *Id.* at 15.

The Tenant appealed, and, following briefing and oral argument, the Commission issued its Decision and Order reversing the Final Order and remanding this case. Decision and Order at

37. The Commission determined that the Act is ambiguous in its use of the phrase "rent charged" as either a maximum legal rent or the rent actually demanded or received from a tenant. *Id.* at 22-26. This ambiguity arises in part from the Rent Control Reform Amendment Act of 2006 (D.C. Law 16-145; 53 DCR 4889) ("2006 Amendments"), which abolished "rent ceilings" as the primary mechanism of the Act's rent stabilization provisions ("Rent Stabilization Program"). *Id.* at 19. The Commission reviewed the legislative history of the 2006 Amendments, specifically the report issued by the Committee on Consumer and Regulatory Affairs ("Committee"). *See* Council of the District of Columbia, Committee on Consumer & Regulatory Affairs, Addendum to the Committee Report, Bill 16-109 "Rent Control Reform Amendment Act of 2006" (2006) ("2006 Committee Report").

The Commission concluded that the Act does not permit a housing provider to use the RAD Forms to preserve a maximum legal rent in excess of what is actually charged. Decision and Order at 31-32. Reviewing the lease agreements between the Housing Provider and Tenant, the Commission found no basis in the conduct of business between the parties to treat the higher amount of rent stated in the leases and on the RAD Forms as having ever been an actual "condition of occupancy or use of [the] rental unit." *Id.* at 35-36 (quoting D.C. OFFICIAL CODE § 42-3501.03(28) (2012 Repl.)).

The Housing Provider filed a timely motion for reconsideration on February 6, 2018 ("Motion for Reconsideration"). On February 7, 2018, the Commission, *sua sponte*, issued an order extending the time for the Tenant to file any opposition and for the Commission to decide the Motion for Reconsideration. The Tenant filed a timely opposition ("Tenant's Opposition").[2]

[2] The Commission notes that the Tenant's Opposition is dated February 22, 2018, and the certificate of service states that it was mailed by first class mail on February 22, 2018, to the Housing Provider. On the afternoon of Tuesday, February 27, 2018, the Clerk of the Court received the Tenant's Opposition from an employee of the mail room of

II. DISCUSSION

The Commission's rules provide that a motion for reconsideration of a decision and order "shall set forth the specific grounds on which the applicant considers the decision and order to be erroneous or unlawful." 14 DCMR § 3823.2. In the Motion for Reconsideration, the Housing Provider asserts that there are three major reasons that the Commission's Decision and Order should be reversed or modified:

> 1. The first issue is whether under the [Act], as amended by the [2006 Amendments], there can exist a maximum legal rent which is greater than the amount actually paid by the tenant.
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> 2. The second issue is whether the Act requires increases to be calculated on the amount the tenant pays rather than based on the maximum legal rent.
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> 3. The third issues is whether the Commission's decision affects Voluntary Agreements and Petition-based increases granted by the Rent Administrator or the Office of Administrative Hearings. The Commission's decision cannot be interpreted to mean that a housing provider must take an entire increase or lose it, as to voluntary agreements and petition-based increases.

Motion for Reconsideration at 2. The Commission addresses the Housing Provider's arguments on each issue in turn.

A. Whether, under the Act, there can exist a maximum legal rent that is greater than the amount actually paid by a tenant.

In its Decision and Order, the Commission determined that the phrase "rent charged" in the Act and, accordingly, on the RAD Forms, generally refers to and should be interpreted in accordance with the statutory definition of "rent," meaning the amount of money "demanded, received, or charged by a housing provider as a condition of occupancy or use of a rental unit."

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the District government building in which the Commission's offices are located. The Tenant's Opposition was contained in a U.S. Postal Service envelope with a receipt for mailing on February 22, 2018, with express delivery by noon on Friday, February 23, 2018. Although it is unclear whether the delay in delivery to the Commission's office was due to the U.S. Postal Service or the mail room, it appears to the Commission that the Tenant is not at fault for the late arrival of the Tenant's Opposition. Accordingly, the Commission will treat the Opposition as timely filed.

Decision and Order at 31 (quoting D.C. OFFICIAL CODE § 42-3501.03(28) (2012 Repl.)). The Housing Provider's primary assertion of error is that, under the Act, "[t]he term 'rent' and the term 'rent charged' (or maximum legal rent) are two different concepts, . . . the former of which ('rent') may be less than the maximum amount." Motion for Reconsideration at 6.

1. Plain Meaning and Statutory Context

The Commission reviewed the statutory text and found the phrase "rent charged" to be used in several different contexts, some which suggested a "maximum legal rent," some which suggested the actual money demanded or received, and some which could mean either. Decision and Order at 22-26. One notable source of ambiguity in the phrase "rent charged," as used in the Act, is that the statutory definition of "rent" itself includes money "charged." D.C. OFFICIAL CODE § 42-3501.03(28) (2012 Repl.). While the distinction between rent "demanded" and rent "received" is plain,[3] various dictionary definitions of "charged" (as a transitive verb relating to money) do not clearly reveal an independent meaning of the word in this context, particularly from the word "demanded." For example:

- "To set or ask (a given amount) as a price . . . To hold financially liable : demand payment from" – WEBSTER'S NEW COLLEGE DICTIONARY at 192 (3d ed. 2005);
- "To demand a fee; to bill" – BLACK'S LAW DICTIONARY at 248 (8th ed. 1999).

[3] *See, e.g.,* Kapusta v. D.C. Rental Hous. Comm'n, 704 A.2d 286, 287 (D.C. 1997) ("Thus the Commission's order for a 'rent refund' of money demanded but never received comports with the language of the statute."); Palmer v. Clay, RH-TP-13-30,431 (RHC Oct. 5, 2015) ("a tenant also does not need to prove that unlawful rent was knowingly demanded so long as the rent was knowingly received by a housing provider").

The Housing Provider quotes Akassy v. William Penn Apartments, LP, 891 A.2d 291, 300 (D.C. 2006) (citing Kapusta, 704 A.2d at 287), to suggest that "rent" only means the amount a housing provider "charges or demands, rather than the amount that the tenant actually pays." *See* Motion for Reconsideration at 16-17. The holding of neither case is so broad: Kapusta, 704 A.2d at 287, held that rent not paid was nonetheless subject to a "refund" as a remedy for an unlawful demand; in Akassy, 891 A.2d at 300, where a lease was silent on the amount of rent owed, the Court interpreted the contractual term "rent" to incorporate future rent increases as may be permitted by the Act.

- "To subject or make liable (a person, estate, etc.) to a pecuniary obligation or liability . . . To impose, claim, demand, or state as the price or sum due *for* anything . . . *to charge a person a certain sum (for* a service or thing sold)." – Oxford English Dictionary, http://www.oed.com/view/Entry/30688?rskey=cMfwyl&result=3 (last visited Mar. 9, 2018);

- "To ask a price for something" – Cambridge English Dictionary, https://dictionary.cambridge.org/us/dictionary/english/charge (last visited Mar. 9, 2018);

- "To impose a financial burden on . . . to impose or record as a financial obligation . . . to fix or ask as fee or payment . . . to ask payment of (a person)" – Merriam-Webster, https://www.merriam-webster.com/dictionary/charge (last visited Mar. 9, 2018);

- "To impose or ask as a price or fee . . . to hold liable for payment" – Dictionary.com, http://www.dictionary.com/browse/charge (last visited Mar. 9, 2018);

See 1618 Twenty-first St. Tenants' Ass'n v. Phillips Collection, 829 A.2d 201, 203 (D.C. 2003) ("In finding the ordinary meaning, the use of dictionary definitions is appropriate in interpreting undefined statutory terms." (internal quotations omitted)). Based on the ordinary meaning of the word "charged," it therefore appears to the Commission that the phrase "rent charged" should generally be understood to mean "rent" as defined in the Act. *See* Decision and Order at 31.[4]

The Housing Provider first argues that the phrase "rent charged" is not ambiguous because it was directly substituted for the phrase "rent ceiling" by the 2006 Amendments. Motion for Reconsideration at 3. The Commission is not persuaded that this makes the phrase

[4] As explained in the Decision and Order, the Commission also found that "rent charged" as used in case law prior to 2006 and in the legislative history of the 2006 Amendments was consistently used to mean the actual rent demanded from or paid by a tenant, as opposed to the "rent ceiling" of a rental unit, even though the unmodified word "rent" was also used in the same manner. Decision and Order at 27-28 (citing 2006 Committee Report and Winchester Van Buren Tenants Ass'n v. D.C. Rental Hous. Comm'n, 550 A.2d 51, 53 (D.C. 1988)).

unambiguous; to the contrary, the one-for-one substitution is another major source of ambiguity in the amended Act.[5]

In the phrase "rent ceiling," "ceiling" was a noun, modified by the adjective "rent," telling the reader what kind of legal "ceiling" was being applied to a rental unit. In the phrase "rent charged," on the other hand, "rent" is a noun, modified by the adjective "charged," telling the reader what the nature of the "rent" being regulated is. As the Commission noted in its Decision and Order, the 2006 Amendments made few changes to the grammatical context of the new phrase "rent charged" when replacing "rent ceiling." Decision and Order at 21-22; *see, e.g.*, D.C. OFFICIAL CODE § 42-3502.10(c)(3) (2012 Repl.) ("The rent increase shall not be calculated as part of either the base rent or rent charged of a tenant when determining the amount of rent charged.").

The Housing Provider also maintains that, as a result of the one-for-one substitution, "whatever rent was being charged on the effective date of the [2006 Amendments] (August 5, 2006) effectively became the *new base rent* from which future rent adjustments are to be calculated." Motion for Reconsideration at 3 (emphasis added). "Base rent," however, is a defined term in the Act, meaning "that rent legally charged or chargeable on April 30, 1985, for the rental unit which shall be the sum of rent charged on September 1, 1983, and all rent increases authorized for that rental unit[,]" and the 2006 Amendments did not alter that definition. D.C. OFFICIAL CODE § 42-3501.03(4) (2012 Repl.).[6] As the Commission's

[5] Although several section of the Act were rewritten in large part, a dozen separate sections of the Act were included in a sweeping replacement of the phrase "'rent ceiling' wherever it appears." *See* D.C. Law 16-145 § 2(a).

[6] The full text of D.C. OFFICIAL CODE § 42-3501.03(4) (2012 Repl.) provides:

> "Base rent" means that rent legally charged or chargeable on April 30, 1985, for the rental unit which shall be the sum of rent charged on September 1, 1983, and all rent increases authorized for

implementing regulations have explained since 1986, "[t]he 'base rent' for each rental unit covered by the Rent Stabilization Program on the effective date of the Act [was] the rent ceiling for the unit as of April 30, 1985[.]" 14 DCMR § 4201.1; 33 D.C. Reg. 1336, 1384 (Mar. 7, 1986). Where no rent ceiling could be established, the regulations expressly adopted the rent actually charged as the "base rent," converting that amount into a rent ceiling. *See* 14 DCMR § 4201.3, .4. In this context, the Commission cannot discern any clear intent from the statutory language to establish a "new base rent" as of the effective date of the 2006 Amendments.

Section 206(a) of the Act provides that "no housing provider of any rental unit subject to this chapter may charge or collect rent for the rental unit in excess of the amount computed by adding to the base rent not more than all rent increases authorized after April 30, 1985, for the rent unit." D.C. OFFICIAL CODE § 42-3502.06(a) (2012 Repl.). The Housing Provider argues, that this computation, starting from the 1985 base rent, "proves beyond doubt that there was no intent on the part of the Council to require that rents be re-established periodically at the amounts that tenants are asked to pay." Motion for Reconsideration at 3.[7]

The Commission is not persuaded that the plain language of § 206(a) is free from any doubt as to the Council's intent. The final sentence of that section, relied upon by the Housing Provider, was, and remains, the defining computation of a rent ceiling. *See* D.C. OFFICIAL CODE § 42-3501.03(29) (2012 Repl.) ("'Rent ceiling' means that amount defined in or computed under

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> that rental unit by prior rent control laws or any administrative decision issued under those laws, and any rent increases authorized by a court of competent jurisdiction.

[7] The Commission notes that no issue has been raised in this case with regard to whether or when a housing provider might be "periodically" required to file a lower amount of rent charged with the Rent Administrator. The Tenant's claims arise only from the filing and service of RAD Forms 8 and 9 in September 2015, before his (actual) rent was increased from $2,169 to $2,375, on which the "current rent charged" space reflected a rent of $3,114. *See* Final Order at 4-5; R. at Tab 16.

§ 42-3502.06."). Nonetheless, the same subsection begins by providing that "[r]ent ceilings are abolished." D.C. OFFICIAL CODE § 42-3502.06(a) (2012 Repl.).

The Housing Provider further argues that the Commission erred by reading the phrase "rent charged" "in isolation," rather than as part of the Act as a whole. Motion for Reconsideration at 3-4 (citing James S. Parreco & Son v. D.C. Rental Hous. Comm'n, 567 A.2d 43, 49 n.9 (D.C. 1987)).[8] However, reading the Act as a whole is how the Commission found that the phrase is used inconsistently. Decision and Order at 22-26. Moreover, as the Commission noted, the terms "rent," "rent charged," "rent ceiling," and "rent adjustment" have long been used ambiguously and inconsistently in the Act. Decision and Order at 20-21; *see, e.g.*, Winchester Van Buren Tenants Ass'n v. D.C. Rental Hous. Comm'n, 550 A.2d 51, 54 (D.C. 1988) (Act "necessarily contains serious inconsistencies and ambiguities in language and meaning"). The Housing Provider, on the other hand, insists that the usage in the final sentence of § 206(a) and the first sentence of § 206(b), to compute and "establish" a maximum rent level that cannot be exceeded, control the meaning of every other use of the term, without regard to differing contexts elsewhere in the Act or the overarching purposes of the 2006 Amendments. *See* Motion for Reconsideration at 4-5.

In the remainder of the Act, several cross-references to § 206(a) use different terminology in describing this computation. As the Housing Provider notes, and relies on particularly, § 206(b) describes the annual adjustment of general applicability as an adjustment "in the rent

[8] The Housing Provider also asserts, quoting Parreco, 567 A.2d at 44, that the Commission has "read into an unambiguous statute language that is not there . . . to make it more 'equitable' or 'fair[,]'" Motion for Reconsideration at 13-14. In that case, the Commission interpreted the phrase "amount of interest paid . . . on a mortgage or deed of trust on a housing accommodation" to mean only interest on a loan that "is devoted to or invested in the particular housing accommodation[.]" Parreco, 567 A.2d at 45. The District of Columbia Court of Appeals ("DCCA") found that the plain language of the Act did not include any basis for the Commission to impose an additional restriction on the purpose of an interest-incurring mortgage or deed of trust. *Id.* at 49-50.

charged *established* by subsection (a) of this section." D.C. OFFICIAL CODE § 42-3502.06(b) (2012 Repl.) (emphasis added).[9] On the other hand, § 208(f), states that "[a]ny notice of an adjustment under § 42-3502.06 shall contain a statement of the *current rent*, the *increased rent*, and the utilities covered by *the rent* which justify the adjustment or other justification for the *rent increase*," suggesting that "rent charged" is generally synonymous with "rent." D.C. OFFICIAL CODE § 42-3502.08(f) (2012 Repl.). Section 208(h), which provides additional detail on the adjustment of general applicability authorized by § 206(b), uses the phrases "increase in the *amount of rent* charged" and "percentage of the *current allowable rent* charged;" it is ambiguous whether these references are to a maximum legal rent or to the current actual rent, so long as the current rent was not arrived at through past unlawful increases. D.C. OFFICIAL CODE § 42-3502.08(h)(2) (2012 Repl.) (emphasis added). However, § 205(g), which was substantially rewritten by the 2006 Amendments, refers to § 208(h) to require a housing provider to file a "copy of the *rent increase* notice given to the tenant for a *rent increase* under § 42-3502.08(h)(2)," without any suggestion that § 208(h)(2) allows increases in a maximum legal rent. D.C. OFFICIAL CODE § 42-3502.05(g)(1)(A) (2012 Repl.).[10]

The Housing Provider additionally asserts that § 208(g) and (h) of the Act reflect that the "rent charged" is established *for a rental unit*, and that the Commission fundamentally erred by

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[9] Although the 2006 Amendments changed the phrase "rent ceiling" to "rent charged," in § 206(b), the word "established" remains in place. D.C. OFFICIAL CODE § 42-3502.06(b) (2001).

[10] Additionally, § 205(g)(1)(B) requires notice, following a vacancy adjustment, of "the calculation of the initial rent charged in the lease (based on increases during the preceding 3 years)." D.C. OFFICIAL CODE § 42-3502.05(g)(1)(B) (2012 Repl.). As the Commission noted in its Decision and Order, vacancy adjustments, authorized by § 213(a) of the Act, do not fit within the normal use of the term "rent charged" because they are based on the lack of a tenant from whom rent can be demanded or received. Decision and Order at 22. The use of the phrase "initial rent charged *in the lease*" in § 205(g)(1)(B) further supports the reading Commission's reading of the phrase "rent charged" as meaning rent actually paid by a tenant as a condition of occupancy. That the "initial rent" must be "calculated . . . based on increases during the preceding 3 years" naturally follows from the premise that prior rents charged carry forward to limit what may legally be charged to a subsequent tenant after a vacancy.

reading the phrase in reference to the rent charged *to a tenant.* Motion for Reconsideration at 14. The Housing Provider maintains that the Commission's interpretation "is something which has never been the case and the Act does not provide after the 2006 Amendments." *Id.* First, it is not readily apparent, grammatically or within the defined terms of the Act, that there is a meaningful difference between the "rent charged for a rental unit" and the rent charged to a tenant "as a condition of occupancy or use of a rental unit." *See* D.C. OFFICIAL CODE § 42-3501.03(28); *see also* Oxford English Dictionary, *supra* at 6 ("*to charge a person a certain sum (for* a service or thing sold)"). Second, the Housing Provider's assertion that "rent charged" has never meant what a tenant pays is contradicted by precedent before the 2006 Amendments, *see* Winchester Van Buren, 550 A.2d at 53 ("rent is what the tenant actually has to pay . . . the rent charged must be within the rent ceiling"); Sawyer Prop. Mgmt. of Md., Inc. v. D.C. Rental Hous. Comm'n, 877 A.2d 96, 103 (D.C. 2005) ("where the rent ceiling exceeds the rent charged by the sum of multiple unimplemented adjustments, a provider will not be able to raise the rent all the way to the rent ceiling in one fell swoop"), and by the usage of the term within the legislative history of the 2006 Amendments, *see* 2006 Committee Report at 26 ("calculating caps on rent increases based upon rent charged would make for a better system").

For these reasons, the Commission is not persuaded that the Motion for Reconsideration should be granted based on the plain meaning of "rent charged" or the context of its uses in the Act.

2. Legislative Purposes and Consequences for Regulated Rents

The Housing Provider asserts that the Commission's Decision and Order will result in "constantly fluctuating upward and downward rent charged." Motion for Reconsideration at 4. The Housing Provider similarly describes this as a "use it or lose it" approach. *Id.* at 5, 6, 8, 10-

12.[11] These arguments presuppose that the Rent Stabilization Program, following the abolition of rent ceilings, operates primarily by establishing a maximum legal limit on rent, rather than limiting the amount of rent increases. The Housing Provider notes that that is "how the rent control law and Section 206 have always worked." *Id.* at 5. Although that was undoubtedly true while rent ceilings were in effect, it is also apparent, from the Commission's review of the full text of the Act and the legislative history of the 2006 Amendments, that the Council intended the Rent Control *Reform* Amendment Act of 2006 to substantially alter the way in which rents are regulated. *See* Decision and Order at 22-31.

Specifically, § 208(h)(2) of the Act expressly provided, prior to the 2006 Amendments, that a housing provider, when increasing the rent charged for a rental unit, was allowed:

> [A]t his or her election, [to delay] the implementation of any rent ceiling adjustment, or [to implement] less than the full amount of any rent ceiling adjustment. A rent ceiling adjustment, or portion thereof, which remains unimplemented shall not expire and shall not be deemed forfeited or otherwise diminished.

D.C. OFFICIAL CODE § 42-3502.08(h)(2) (2001). The equivalent provision, now found at § 208(g)(1), continues the prohibition on rent increases greater than the amount of any one legal

[11] *See also* Motion for Reconsideration at 18, quoting Missionary Sisters of the Sacred Heart, Ill. v. N.Y. State Div. of Hous. & Cmty. Renewal, 724 N.Y.S.2d 742, 287 (N.Y. App. Div. 2001) ("Moreover, requiring the tenant to pay a temporarily discounted rent cannot be said to constitute a waiver of a benefit provided by the [N.Y. Rent Stabilization] Code."). As noted by the court in Missionary Sisters, § 2521.2(b) of the New York Rent Stabilization Code (9 N.Y.C.R.R.) provides:

> Where the *legal regulated rent* is established and a *rent lower than the legal regulated rent is charged and paid* by the tenant, upon vacancy of such tenant, the legal regulated rent previously established plus the most recent applicable guidelines increases, plus such other rent increases as are authorized pursuant to section 2522.4 of this Title [Adjustment of legal regulated rent], may be charged a new tenant.

724 N.Y.S.2d at 286 (alterations court's). As the Commission noted in its Decision and Order, the Act does not contain any explicit distinction between the "legal regulated rent" of a rental unit and the "rent charged" to a tenant, as found in the New York Rent Stabilization Code. Decision and Order at 28 n.20.

basis for adjustment, but no longer refers to delayed implementation or non-forfeiture. D.C. OFFICIAL CODE § 42-3502.08(g)(1) (2012 Repl.).[12]

Moreover, the Housing Provider notes that "[n]othing in the rent control law prohibits a housing provider from having a tenant pay less than the maximum." Motion for Reconsideration at 5. As the Commission noted in its Decision and Order, the question presented by this case:

> [I]s not whether the Housing Provider and Tenant were free to enter into a contract below the rent level that could have otherwise legally been charged, but what the effect of such a contract is on the Housing Provider's future obligations to file and serve notice of the "rent charged" as regulated by the Act and, by implication, how much any future rent increases may be.

Decision and Order at 36 n.27 (distinguishing Wilson v. D.C. Rental Hous. Comm'n, 159 A.3d 1211 (D.C. 2017), and Double H Hous. Corp. v. David, 947 A.2d 38 (D.C. 2008)).[13] Nothing in the Commission's interpretation of the Act in this case "prohibits" a housing provider from reducing the rent charged to a tenant. If the rent charged for a unit is "constantly fluctuating upward and downward," it is due to the agreement of a housing provider to accept a lesser amount of rent, and its decision to implement all or merely a portion of any authorized rent increase.

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[12] D.C. Official Code § 42-3502.08(g) (2012 Repl.) provides, in relevant part:

> (g) The amount of rent charged for any rental unit subject to this subchapter shall not be increased until a full 12 months have elapsed since any prior increase; provided that:
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> (1) An increase in the amount of rent charged shall not exceed the amount of any single adjustment pursuant to any on section of this subchapter[.]

[13] The Housing Provider's asserts that Double H cannot be distinguished on the grounds that it involved a rental unit exempt from rent stabilization. Motion for Reconsideration at 18 (quoting Double H. Hous. Corp., 947 A.2d at 43 ("basic freedom to contract . . . ought not to be summarily dismissed as obsolete even under our modern statutory rental housing law")). In that case, the DCCA declined to find implicit rent regulation in the eviction control provisions of the Act. The Commission is satisfied that its interpretation of the Act's Rent Stabilization Program is a thoroughly reasoned restriction on permissible rent increases that effectuates the Council's intent, as shown by the history of the 2006 Amendments, rather than a "summary" dismissal of the freedom to contract.

The Housing Provider argues, nonetheless, that, once filed, authorized increases in the rent charged are "preserved and vested," citing Sawyer Prop. Mmgt., 877 A.2d 96. Motion for Reconsideration at 6. As described in Sawyer, the Act and implementing regulations specifically provided, prior to the 2006 Amendments, that rent *ceiling* adjustments, once "taken and perfected" by filing the proper forms with the Rent Administrator, did not expire and could be implemented later as rent charged increases. 877 A.2d at 108.[14] Following the abolition of rent ceilings and the elimination of the statutory language against forfeiture in 2006 (after Sawyer was decided), the Act no longer expressly establishes that past rent increases become "preserved and vested" bases for future rent increases. *See* D.C. OFFICIAL CODE § 42-3502.08(g), (h) (2012 Repl.).

The Housing Provider additionally quotes language from a draft committee print of a version of the "Rent Control Reform Amendment Act of 2006," which was apparently provided to the Housing Provider's counsel's law firm by a staff member of DCRA prior to the committee print being finalized or the completion of a full committee report. Motion for Reconsideration Exhibit 5 ("April 13th Draft"). In quoted part, the draft bill provides that "[a]ny unimplemented portion of [the annual adjustment of general applicability] during the applicable year shall not be carried over to a subsequent year." Motion for Reconsideration at 5. The Housing Provider argues that the absence of this language from subsequent versions reflects a deliberate choice by the Council to allow preservation of rent adjustments. Motion for Reconsideration at 6.

[14] Although the relevant regulatory provisions, especially 14 DCMR § 4204 (Adjustments in Rent Ceiling Generally) have not been updated since the 2006 Amendments, those rules are clearly superseded by the 2006 Amendments in that rent ceilings no longer exist, except to the extent that § 206(a) of the Act expressly preserves certain rent ceiling adjustments that were previously approved by the Rent Administrator, as bases to increase the rent charged at a later date. *See* D.C. Official Code § 42-3502.06(a) ("Rent ceilings are abolished, except that the housing provider may implement, in accordance with § 42-3502.08(g), rent ceiling adjustments pursuant to petitions and voluntary agreements approved by the Rent Administrator prior to August 5, 2006.").

The April 13th Draft, in the section quoted by the Housing Provider, identifies itself as Bill 16-457. April 13th Draft at 4. The 2006 Amendments, D.C. Law 16-145, were introduced as Bill 16-109, the "Tenants' Rights to Information Act of 2005." 2006 Committee Report at 2. The 2006 Committee Report notes that the legislative process which resulted in the 2006 Amendments began with the introduction of Bill 16-457. *Id.* at 3. The report also reflects that a committee print of Bill 16-457 was approved on March 16, 2006, but reconsidered by the Committee on June 8, 2006, following a series of stakeholder meetings "in a successful effort to reach consensus." *Id.* at 5, 19-20.[15]

The 2006 Committee Report does not indicate why the elements of that consensus legislation were moved as an amendment in the nature of a substitute to Bill 16-109, rather than Bill 16-457. *See id.* at 5, 20. Further, the bill text included in the 2006 Committee Report reflects a substantially different organization from the April 13th Draft. Moreover, the 2006 Committee Report does not directly discuss any amendment to either bill that added, removed, or modified similar language to the quoted part of the April 13th Draft. Based on its review of the official legislative history of the 2006 Amendments, the Commission cannot determine when or why the specific, quoted language was either added to or removed from any of the rent control-related bills under consideration by the Council at that time.

The Commission observes, however, that the 2006 Committee Report, discussing the testimony presented at the March 31, 2006, public roundtable on "Possible Ramifications of the Elimination of Rent Ceilings in the District of Columbia" refers to a statement submitted by the

[15] The Council's Legislative Information Management System does not include any committee print for Bill 16-457. *See* http://lims.dccouncil.us/Legislation/B16-0457. The Tenant's Opposition appears to accept the validity of Exhibit 5 to the Motion for Reconsideration as the text of Bill 16-457 as marked-up and approved by the Committee on March 16, 2006. The Commission makes no determination on whether the April 13th Draft was the final form of Bill 16-457 after the Committee acted, but the Commission in any case finds it unpersuasive as legislative history for the reasons stated herein.

Apartment and Office Building Association, "representing housing providers," which asserted that tenants would "benefit by way of the elimination of the carry-over of unused annual and vacancy rent charged increases that the current system allows." 2006 Committee Report at 27; *see also id.* at 19 (stating that final version of Bill 16-109 "would make the greatest changes in favor of tenants and affordable housing since 1985"). The legislative history formally adopted by the Council therefore appears to actually endorse the forfeiture of annual and vacancy adjustments that are not implemented when first eligible. *Cf.* Sawyer Prop. Mgmt., 877 A.2d at 109.

Finally, the Housing Provider's proposed reading of "rent charged" as a maximum legal limit would have the result of deregulating increases in actual rents entered into by contract. *See* Motion for Reconsideration at 15-16 (asserting that changes to rent levels by "private agreements" are outside the Commission's jurisdiction). As the Commission described in its Decision and Order at 29-30, this was largely the way the Act functioned prior to 1993: the Act established a rent ceiling for a rental unit, and increases in the rent actually charged were not limited (except as to timing) so long as the rent ceiling was not exceeded. *See* Winchester Van Buren, 550 A.2d at 53; Unitary Rent Ceiling Adjustment Amendment Act of 1992, effective March 16, 1993 (D.C. Law 9-191; D.C. OFFICIAL CODE § 42-3502.08(h) (2001)) ("Unitary Adjustment Act"). But the 2006 Committee Report demonstrates that the abolition of rent ceilings was meant to limit increases in rent actually charged and to prevent a housing provider from accumulating an array of large rent increase options, as was previously permitted. *See* 2006 Committee Report at 26 ("the landlord may impose a rent charged increase of virtually any amount . . . where the landlord has preserved and previously not implemented rent ceiling adjustments"); *see also id.* at 18 (because 83% of rental units had rent ceilings above the rent

charged, "the large majority of tenants under the rent stabilization program face a situation where rent increases are uncertain and worrisome"). As is well-established in the District of Columbia, the words of a statute are to be construed to effectuate its purpose. Peoples Drug Stores, Inc. v. District of Columbia, 470 A.2d 751, 754 (D.C. 1983).[16]

The Housing Provider asserts, on the other hand, that the purpose of the Act is set forth in an earlier Commission decision, Borger Mgmt., Inc. v. Godfrey, TP 20,116 (RHC Sept. 4, 1987). In that decision, the Commission found that tenants were better protected from rapidly rising rents if housing providers were permitted to delay implementation of rent ceiling adjustments and raise the rent charged for a rental unit by the full, available amount later, rather than restricting rent charged increases to the amount of a single rent ceiling adjustment in any six-month period. *Id.* (quoted in Motion for Reconsideration at 16).[17] That decision was affirmed by the DCCA in Winchester Van Buren, 550 A.2d at 52-53, as a reasonable interpretation of the text of the Act. The Council disagreed with the Commission's view, and the holding the Housing Provider recites from Godfrey was effectively overturned by the Unitary Adjustment Act. *See* 2006 Committee Report at 16-17 (citing Winchester Van Buren). Accordingly, it is

[16] The Housing Provider additionally concedes that the maximum legal rent of $3,274 that it seeks to preserve in this case "under no circumstances can be considered typical of low and moderate income housing" that the Act expressly seeks to protect. Motion for Reconsideration at 5 n.4; D.C. OFFICIAL CODE § 42-3501.02(1) (2012 Repl.). It is not clear why this should persuade the Commission to interpret the Act in a manner that would permit a tenant to be faced with unaffordable rent increases for a rental unit that is covered by the Rent Stabilization Program.

[17] The Housing Provider quotes, in relevant part, the following from Godfrey, TP 20,116, with respect to the purpose of the then-applicable version of § 208(g) of the Act:

> If housing providers were forced to limit rent increases to the amount of a single rent ceiling adjustment within any six month period they would have a strong incentive to immediately raise the rent to the new rent ceiling as soon as the ceiling increase was authorized. The statutory purpose of protecting tenants would not be well served if the present practice was discontinued whereby housing providers frequently postpone raising the rent in response to a ceiling increase, in whole or in part, for business reasons. They do this knowing that the rent may be increased to the new rent ceiling at a later time of their own choosing so long as at least 180 days have elapsed since any prior increase in rent. In the interim, tenants maintain the benefit of the lower existing rents.

clear to the Commission that the statutory purpose asserted by the Housing Provider is contrary to the Council's intent since the adoption of the Unitary Adjustment Act and was unchanged by the 2006 Amendments.

Finally, the Commission notes the Housing Provider's contention that the Commission "is not empowered" to reconcile ambiguity within the Act by referring to its statutory purposes and legislative history, as was done in the Decision and Order. Motion for Reconsideration at 13. A substantial body of precedent from the DCCA is to the contrary. *See, e.g.,* Wilson, 159 A.3d at 1214-16; Levy v. D.C. Rental Hous. Comm'n, 126 A.3d 684, 688 (D.C. 2015); United Dominion Mgmt. Co. v. D.C. Rental Hous. Comm'n, 101 A.3d 426, 429-430 (D.C. 2014); Dorchester House Assocs. Ltd. P'ship v. D.C. Rental Hous. Comm'n, 938 A.2d 696, 702 (D.C. 2007); Sawyer Prop. Mgmt., 877 A.2d at 102-03; Tenants of 738 Longfellow Street, N.W. v. D.C. Rental Hous. Comm'n, 575 A.2d 1205, 1213 (D.C. 1990); Winchester Van Buren, 550 A.2d at 55; Marshall v. D.C. Rental Hous. Comm'n, 533 A.2d 1271, 1275 (D.C. 1987); De Levay v. D.C. Rental Accommodations Comm'n, 411 A.2d 354, 359 (D.C. 1980).

The Housing Provider asserts that the Commission erred by failing to construe the Act "strictly" because it is in derogation of common law. Motion for Reconsideration at 13 (citing Columbia Plaza Tenants Ass'n v. Antonelli, 462 A.2d 433, 437 (D.C. 1983)). However, the Commission's review of the legislative history and the position taken by the Housing Provider with respect to the Tenant's rent levels, reveals that construing "rent charged" to operate only as a maximum legal rent would have a largely similar effect to the rent ceiling system abolished by the 2006 Amendments. Decision and Order at 26-31. Moreover, it is not readily apparent that the Housing Provider's preferred reading is the stricter construction, in light of the statutory definition of "rent" and the ordinary meaning of "charged." *See supra* at 5-6. The Commission

is satisfied that, even assuming that the Housing Provider's reading is the stricter construction, it would be necessary to imply that the Act, in most uses, regulates the rent *actually* charged *to a tenant* in order to effectuate its purposes. *See* Antonelli, 462 A.2d at 437 (condition of good faith bargaining in statutory right of refusal "must be deemed to be implied lest the statute become illusory").

B. Whether the Act Required Increases to be Recalculated on the Amount the Tenant Pays Rather Than on the Maximum Legal Rent.

The Housing Provider maintains that the Act requires permissible rent increases to be calculated based on an established and preserved maximum legal rent that may be charged for a rental unit. Motion for Reconsideration at 6-7. For the reasons just stated, the Commission remains unpersuaded that the Act establishes and preserves a maximum legal rent; the Act instead directly regulates increases to the rent actually demanded or received from a tenant, and calculations accordingly shall be based on that "amount of money, money's worth, benefit, bonus, or gratuity." D.C. OFFICIAL CODE § 42-3501.03(28) (2012 Repl.).

The Housing Provider argues that "the amount payable by the Tenant pursuant to a private agreement" is not the basis for any legal determination under the Act. Motion for Reconsideration at 7. The Commission determines, to the contrary, that such an amount squarely falls within the statutory definition of "rent" and, therefore, comes under the Act's restrictions on and reporting of increases in the "rent charged" to a tenant for a rental unit. D.C. OFFICIAL CODE § 42-3501.03(28) (2012 Repl.); *see also* Decision and Order at 34-35; Marguerite Corsetti Trust v. Segreti, RH-TP-06-28,207 (RHC Sept. 18, 2012) (reasoning that a property owner's grandson was her tenant because he paid her money and provided her services that constituted rent); Worthington v. Sipper, TP 21,118 (RHC Mar. 23, 1990) (determining that both employer/employee and landlord/tenant relationship existed due, in part, to payment of rent

through services by employee/tenant); *cf.* Wilson, 159 A.3d at 1215-16 (general "financial stability" for housing provider not a "benefit" that constitutes additional "rent" under the Act).[18]

C. Whether Voluntary Agreements and Petition-based Rent Adjustments May Be Preserved by a Housing Provider.

While conceding that this case does not involve a voluntary agreement or petition-based rent adjustment, the Housing Provider asserts that the provisions of the Act authorizing certain rent adjustments with prior administrative approval support its reading of § 206(a) as establishing a maximum rent that exists irrespective of the rent actually demanded or received from a tenant. Motion for Reconsideration at 7. The Commission similarly reviewed the sections of the Act relating to such rent adjustments in its Decision and Order but found that their plain language is ambiguous as to whether a housing provider may preserve a maximum legal rent, rather than compute all rent increases on the rent actually charged for a rental unit. Decision and Order at 25-26.

The Housing Provider specifically argues that hardship petitions, authorized by § 212 of the Act, illustrate that "rent charged" is a preserved legal maximum because, pursuant to § 206(a), "any unimplemented rent charged increase pursuant to a petition or voluntary agreement" is counted towards the "maximum possible rental income"[19] when determining the

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[18] The Housing Provider additionally asserts that the Commission engaged in fact finding by analyzing the terms of the lease agreement between the Tenant and Housing Provider. Motion for Reconsideration at 2 n.1 & 7 n.6. However, this case is on appeal from the granting of the Housing Provider's Cross-Motion for summary judgment, which recites the relevant terms of the lease and includes a copy of the lease as an attachment. R. at Tab 11. A motion for summary judgment asserts that there are no material facts in dispute. *See* 1 DCMR § 2819.1; Parcel One Phase One Assocs., LLP v. Museum Square Tenants Ass'n, 146 A.3d 394, 398-99 (D.C. 2016). Moreover, interpretation of a contract is a question of law, and reading an actual copy of a contract or materials incorporated therein is not fact-finding. *See, e.g.,* District of Columbia v. D.C. Pub. Serv. Comm'n, 963 A.2d 1144, 1154 (D.C. 2009).

[19] D.C. OFFICIAL CODE § 42-3501.03(20) (2012 Repl.) provides, in relevant part, that "'[m]aximum possible rental income' means the sum of the rents for all rental units in the housing accommodation, whether occupied or not[.]" As the Commission noted in its Decision and Order, the use of "rents" in this definition was previously determined to refer to rent ceilings, rather than the usual meaning of "rent" as the amount of money actually demanded or received. Miller v. Tenants of 2869 28th St., N.W., HP 20,605 (RHC Sept. 20, 1991).

rate of return on a housing accommodation. Motion for Reconsideration at 7-8. In context, the quoted sentence follows directly from the language preserving petition-based and voluntary agreement-based rent ceiling increases filed or approved prior to the effective date of the 2006 Amendments to be implemented as rent charged adjustments at a later time. D.C. OFFICIAL CODE § 42-3502.06(a) (2012 Repl.).[20] It is plain that the phrase "unimplemented rent charged increase pursuant to a petition or voluntary agreement" at least refers to those rent ceiling petitions and applications filed before August 5, 2006.

Further, as a practical matter, final administrative action to approve a petition or application for a rent adjustment will often not be taken on a predictable schedule, due to the variables of the hearing, appeal, and judicial review processes. Accordingly, there are undoubtedly times, under the current law, where a housing provider will have received administrative approval for a rent increase but will be prohibited from implementing it, due to either a term lease agreement or the prohibition on increasing rents more than once every 12 months. *See* D.C. OFFICIAL CODE § 42-3502.08(e), (g) (2012 Repl.). Section 206(a)'s reference to hardship petitions thus also clarifies that, if the housing provider files a hardship petition before implementing the previously-approved rent adjustment, the earlier adjustment is counted as "possible" income. Given these two readily apparent purposes of the quoted language, the Commission is not persuaded that the use of the phrase "any unimplemented rent charged

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[20] D.C. OFFICIAL CODE § 42-3502.06(a) (2012 Repl.) provides, in relevant part:

> Rent ceilings are abolished, except that the housing provider may implement, in accordance with § 42-3502.08(g), rent ceiling adjustments pursuant to petitions and voluntary agreements approved by the Rent Administrator prior to August 5, 2006. Petitions and voluntary agreements pending as of August 5, 2006, shall be decided pursuant to the provisions of this subchapter in effect prior to August 5, 2006, and may be implemented in accordance with § 42-3502.08(g). In considering a hardship petition pursuant to § 42-3502.12, any unimplemented rent charged increase pursuant to a petition or voluntary agreement approved by the Rent Administrator shall be included in the maximum possible rental income.

increase pursuant to a petition" demonstrates an overarching legislative purpose to allow housing providers to indefinitely preserve any and all rent increases, as the Housing Provider asserts the Act must be read.[21]

The Housing Provider also argues that hardship petitions must be computed based on a preserved maximum rent level and that to do otherwise "would raise a serious Constitutional infirmity in the rent control law." Motion for Reconsideration at 10-11. A hardship petition, if approved, "allow[s] additional increases in rent which would generate no more than a 12% rate of return." D.C. OFFICIAL CODE § 42-3502.12(a) (2012 Repl.).[22] It is not clear what constitutional deficiency the Housing Provider perceives where a property owner elects to not collect the full rent increases permitted by law, nor what would prohibit the owner, having done so and thus failing to make a 12% return, from simply filing a new hardship petition the following year in lieu of the adjustment of general applicability. *See* 14 DCMR § 4209.2;[23] District Intown Props., LP v. District of Columbia, 198 F.3d 874, 878-79 (D.C. Cir. 1999)

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[21] This case does not present a question of, and the Commission does not address, whether any time limit is placed on a housing provider's implementation of a rent adjustment following its administrative approval or whether it remains necessary to "perfect" such adjustments, as was required of rent ceilings adjustments by 14 DCMR § 4204.9.

[22] Although § 212(a) has consistently referred to "a rent adjustment" and "increases in rent," the Act, prior to the 2006 Amendments, clearly stated in other sections that a hardship petition was a request for a rent *ceiling* increase. D.C. OFFICIAL CODE § 42-3502.07 (2001); *see also* Miller, HP 20,605 (determining that "maximum possible rental income" referred to rent ceilings).

[23] 14 DCMR § 4209.2 provides:

> A housing provider shall be eligible to file a hardship petition if either of the following requirements are met:
>
> (a) Nine (9) months have elapsed since the filing of any prior hardship petition under § 212 of the Act or prior rent control laws; or
>
> (b) Nine (9) months have elapsed since the implementation of any increase of general applicability under § 206(b) of the Act or prior rent control laws.

(landlord failed to demonstrate rent stabilization provisions of the Act had interfered with "reasonable investment-backed expectations" in property).[24]

With respect to capital improvement, service and facility, and substantial rehabilitation petitions and voluntary agreements, the Housing Provider flatly asserts that a "use it or lose it" rule should not be applied to such rent adjustments. Motion for Reconsideration at 10-11. As described *supra* at 13, the issue presented in this case is what rent level must be used to calculate and give notice of rent increases where a housing provider has voluntarily reduced the rent charged below the amount previously filed. Moreover, as the Commission noted in its Decision and Order at 31, there may be particular circumstances which require a specific instance of the phrase "rent charged" to mean something other than the actual rent demanded or received from a tenant. No such circumstances are presented in the record.

For example, the Housing provider has not asserted that the "rent charged" it claimed on the RAD Forms was based on a previously-implemented capital improvement surcharge for which it had not yet recovered all costs. *See* Motion for Reconsideration at 10. Nor has it claimed that the Tenant was bound by a voluntary agreement. *See* Motion for Reconsideration at 11-12. The Commission therefore cannot resolve at this time whether any such rent increase might validly be preserved on the RAD Forms notwithstanding a reduction in the rent actually charged. *See* Cafritz Co. v. D.C. Rental Hous. Comm'n, 615 A.2d 222, 228 n.5 (D.C. 1992)

[24] *See also* Lucas v. S.C. Coastal Council, 505 U.S. 1003, 1015-19 (1992) (regulatory taking occurs when property owner deprived of "all economically beneficial uses" of land); Yee v. City of Escondido, 503 U.S. 519, 538-39 (1992) (rent control ordinance did not constitute "permanent physical occupation" of owner's property); Pennel v. City of San Jose, 485 U.S. 1, 13 (1988) (petition process that balanced hardships to tenants and landlords did not deprive landlords of a "fair rate of return on their investment"); Penn Cent. Transp. Co. v. New York City, 438 U.S. 104, 124 (1978) (taking may be found where regulation "has interfered with distinct investment-backed expectations").

("To keep opinions within reasonable bounds precludes writing into them every limitation or variation which might be suggested by the circumstances of cases not before the Court.").

With respect to the legislative intent behind the use of the phrase "rent charged" in the petition-based and voluntary agreement-based adjustment provisions of the Act, the Housing Provider directs the Commission to the executive summary of a legislative proposal by then-Mayor Williams that was transmitted to Chairperson Graham on February 6, 2006, while the Committee was considering the bills that would become the 2006 Amendments ("Williams Letter").[25] In the letter, Mayor Williams noted that the Committee was considering abolishing rent ceilings. Williams Letter at 1. The Mayor proposed, instead, that rent ceilings be "frozen and . . . never increase" and be eliminated "over time." Williams Letter, Executive Summary at 1. It is not readily apparent from the executive summary what the full implications of this proposal were or might have been, but nothing in that two-page document suggests that the phrase "rent charged," as it is used, was meant to operate in the same manner as rent ceilings, frozen or otherwise. *Id.* at 1-2.

The Housing Provider focuses specifically on a statement in the Williams Letter that the "petition processes and voluntary agreement programs remain intact." *Id.* at 2 (emphasis Housing Provider's). It is clear from the plain language of the Act that the *process* for requesting approval of rent increases other than the vacancy and general applicability adjustments was left in place by the 2006 Amendments. *See* D.C. OFFICIAL CODE § 42-3502.16 (2012 Repl.). Both the Williams Letter and the final text of the 2006 Amendments, however, made a key,

[25] The Housing Provider attached two copies of the Williams Letter to its Motion for Reconsideration: the first is part of Exhibit 1 and includes a cover letter from Mayor Williams to Chairperson Graham; the second, Exhibit 6, includes only the executive summary. The Commission herein refers to the more complete version included in Exhibit 1. No copy of any bill text is included with the Williams Letter, nor is a bill number provided. Neither Bill 16-457 nor Bill 16-109 were introduced at the request of the Mayor.

substantive change to the nature of the requested adjustments: rent ceilings were, respectively, proposed to be frozen and ultimately abolished. *See* Williams Letter Executive Summary at 1; D.C. Law 16-145 § 2(a) ("Sections . . . 210(c) and (h), 211, 212(c), 214(a), 215(a)(1) and (c), . . . are amended by striking the phrase 'rent ceiling' wherever it appears and inserting the phrase 'rent charged' in its place.") & (e) ("Unless the increase in the amount of rent charged is implemented pursuant to section 210, 211, 212, 214, or 215 . . . ").[26]

The Housing Provider also asserts that the RAD form used to implement rent adjustments that was adopted at the time the 2006 Amendments went into effect (attached as Exhibit 7 to the Motion for Reconsideration) demonstrates that petition-based and voluntary agreement-based rent increases may be preserved. Motion for Reconsideration at 8-9. That form stated, in relevant part, "If any such authorized increase is partially implemented now, the balance may be implemented later." Motion for Reconsideration at 9 & Exhibit 7.[27] This language is substantially similar to the language in § 206(a) for calculating the maximum possible rental income in a hardship petition, as discussed *supra* at 20-21. For the same reasons stated above,

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[26] The Housing Provider also asserts that Exhibit 1 to its Motion for Reconsideration contains "a wealth of citations to the statements by key Councilmembers" that petitions and voluntary agreements "remained unaffected" by the 2006 Amendments. However, the Housing Provider does not point to or directly quote any specific statement in the voluminous attachment. The majority of Exhibit 1 is, aside from the Williams Letter and the 2006 Committee report, not contemporaneous statements from legislators or witnesses before the Council, but legal arguments sent on the letterhead of the Housing Provider's counsel's firm some years later.

Some of that argumentation references a Council hearing on October 25, 2005 (the several hundred-page transcript of which is attached as Exhibit 3), at which Chairperson Graham states that the petition process is not being changed. *See* Motion of Reconsideration at 2 n.2, Exhibit 1 (letter dated Feb. 8, 2012, from Vincent Mark J. Policy, Esq.) at 2. These references to the October 25, 2005, hearing are unpersuasive. First, the hearing predates the March 17, 2006, public roundtable on "Possible Ramifications of the Elimination of Rent Ceilings" and the subsequent stakeholder meetings, and the Council does not appear to have discussed rent ceiling abolition in the context of petitions at that time. *See* 2006 Committee Report at 20-25. Second, as with the Williams Letter, any reference to preserving the *process* for petitions does not overcome the plain language of the 2006 Amendments in changing the *substantive effect* of the petition-based rent adjustments.

[27] The Commission notes that the equivalent RAD Form 8, as it appears in the record, does not contain this sentence. *See* Tenant's Motion for Summary Judgment, Exhibit B; R. at Tab 10.

the Commission is not persuaded that this language relates to the issue in this case of whether a rent level previously filed or the rent actually charged must be used for computing and filing lawful rent increases. *See supra* at 21-22.

Finally, the Housing Provider asserts that the prohibition on rent increases in excess of the amount of any single, legal basis provided by the Rent Stabilization Program demonstrates that petition-based and voluntary agreement-based rent increases do not need to be implemented all at once. Motion for Reconsideration at 9-10; D.C. OFFICIAL CODE § 42-2502.08(g)(1) (2012 Repl.). Again, no assertion has been made in this case that the Housing Provider was attempting to increase the Tenant's rent based on a partially implemented rent adjustment, nor did the Commission state in its Decision and Order that the Housing Provider was required to raise and maintain the Tenant's rent at a certain level. The fundamental question with respect to the meaning of "rent charged" in the Act and the implementing RAD Forms is whether a housing provider is permitted to preserve a maximum legal limit irrespective of the rent actually demanded or received from a tenant. *See* Final Order at 9-10; R. at Tab 16; Notice of Appeal at 1-2; Housing Provider's Brief at 9; Decision and Order at 16, 31; Motion for Reconsideration at 3, 14-15.

III. CONCLUSION

For the foregoing reasons, the Commission determines that the Housing Provider's Motion for Reconsideration does not demonstrate that the Commission's Decision and Order was erroneous or unlawful. 14 DCMR § 3823.2. The Commission's review of the plain language, statutory context, and legislative history of the Act and the 2006 Amendments reflects the Council's intent to regulate rents actually charged to tenants for rental units covered by the Rent Stabilization Program, rather than to establish a maximum legal rent without regulation of rent increases below that amount. *See supra* at 4-19. Accordingly, the Housing Provider was

required to complete the RAD Forms for rent increases using the amount of money that was an actual condition of the Tenant's occupancy or use of the rental unit. D.C. OFFICIAL CODE § 42-3501.03(28) (2012 Repl.). The Commission is not persuaded that the plain language, legislative purposes, or other canons to statutory construction with respect to the petition-based and voluntary agreement-based rent adjustments demand a different interpretation of "rent charged" than the actual rent. *See supra* at 20-26. The Housing Provider's further arguments with respect to the procedures for implementing or delaying, in whole or in part, such rent increases are not raised on this record and the Commission will not address them at this time.

SO ORDERED.

MICHAEL T. SPENCER, CHAIRMAN

DIANA HARRIS EPPS, COMMISSIONER

JUDICIAL REVIEW

Pursuant to D.C. OFFICIAL CODE § 42-3502.19 (2012 Repl.), "[a]ny person aggrieved by a decision of the Rental Housing Commission . . . may seek judicial review of the decision . . . by filing a petition for review in the District of Columbia Court of Appeals. Petitions for review of the Commission's decisions are filed in the District of Columbia Court of Appeals and are governed by Title III of the Rules of the District of Columbia Court of Appeals. The court may be contacted at the following address and telephone number:

D.C. Court of Appeals
Office of the Clerk
430 E Street, N.W.
Washington, D.C. 20001
(202) 879-2700

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing **ORDER ON RECONSIDERATION** in RH-TP-16-30,842 was served by first-class mail, postage prepaid, on this **13th day** of **March, 2018,** to:

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