

**DISTRICT OF COLUMBIA  
OFFICE OF ADMINISTRATIVE HEARINGS**

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DAMEIAN MARTIN  
Tenant/Petitioner

v.

WILLIAM A. GASKINS  
Housing Provider/ Respondent

Case No.: 2011-DHCD-TP 30,036  
*In re:* 1218 U St, SE, Unit 1

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**FINAL ORDER**

Tenant/Petitioner Dameian Martin (“Tenant”) filed a tenant petition asserting violations of the Rental Housing Act of 1985 (the “Rental Housing Act” or the “Act”). Tenant and Housing Provider William A. Gaskins (“Housing Provider”) appeared at a hearing on June 23, 2011. I conclude that Tenant has proven that Housing Provider violated the Act, as discussed below. I award Mr. Martin \$2,173.50, including interest, and I roll back his rent to \$600 per month as of July 1, 2011.

**I. INTRODUCTION**

On February 2, 2011, Mr. Martin filed Tenant/Petition (“TP”) 30,036, with the Rent Administrator in the Rental Accommodations Division (“RAD”) of the Department of Housing and Community Development (“DHCD”). The petition alleged the following violations by Housing Provider of the Rental Housing Act at the Housing Accommodation, 1218 U Street, SE, Unit 1 — that: (1) Tenant’s rent was increased by an amount larger than the Act allowed.

(2) Housing Provider failed to file the correct rent increase forms. (3) The rent charged filed with the Rent Administrator exceeded the legally-calculated rent for the Rental Unit. (4) Housing Provider served Tenant a notice to vacate in violation of Section 501 of the Act D.C. Official Code § 42-3505.01.

On June 23, 2011, I presided at a hearing at which Mr. Martin and Mr. Gaskins testified. Petitioner's Exhibits ("PX") 100 through 106 were received in evidence. Respondent's Exhibits ("RX") 200 through 204 were received in evidence.<sup>1</sup> Based on the testimony of the witnesses, the exhibits, and the record as a whole, I make the following Findings of Fact and Conclusions of Law.

## **II. FINDINGS OF FACT**

1. On February 18, 1986, following passage of the Rental Housing Act of 1985, Housing Provider William Gaskins filed a registration statement for the Housing Accommodation here, 1218 U Street, SE. The registration listed five apartments in the building. PX 101. In 2000, Mr. Gaskins filed a Certificate of Election of Adjustment of General Applicability, recording increased rents for five units in the building. PX 103.

2. In 2003 Dorothy M. Williams filed a Claim of Exemption for the property, claiming an exemption on the grounds that the Housing Accommodation had four or fewer units. PX 102. The Claim of Exemption listed Ms. Williams as the only person having a direct or indirect interest in the Housing Accommodation. *Id.* Notwithstanding Ms. Williams's representation

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<sup>1</sup> A list of the exhibits received in evidence is set forth in the Appendix to this Final Order.

that she was the sole owner of the property, the claim form attached a certification signed by Mr. Gaskins that the Housing Accommodation was in compliance with the Rental Housing Regulations. *Id.*

3. On October 1, 2006, Mr. Gaskins, as landlord, entered into one-year lease with Tenant Dameien Martin for Apartment 1 of the Housing Accommodation at a rent of \$600 per month. PX 104. The lease provided that: “Tenant is responsible for the payment of all utilities except for the following — Light and Cooking Gas — which shall be paid by Landlord.” *Id.* “Light and Cooking Gas” was inserted in a blank in the lease form. In practice, the parties did the opposite of what the lease provided. Mr. Gaskins paid for gas to heat the building. Mr. Martin paid for cooking gas and electricity.

4. Neither the lease nor any other written notice advised Mr. Martin that a Claim of Exemption had been filed for the Housing Accommodation.

5. Mr. Martin paid his rent steadily through the beginning of 2008 with only an occasional late payment. Beginning in March 2008, his payments became more erratic, with frequent late payments. RX 201. Mr. Martin lost his job in September 2009, and stopped paying rent beginning in December 2009. *Id.* On July 1, 2010, Mr. Gaskins received a \$6,000 check from the District of Columbia Department of Human Services Emergency Rental Assistance Program, which Mr. Gaskins credited to Mr. Martin through July 2010, RX 201, 202. Mr. Martin made no further rent payments through the date of the hearing. RX 201.

6. Non-payment of rent was not the only source of tension between Mr. Martin and Mr. Gaskins. Mr. Martin was a young tenant in a building whose other residents were seniors. Other

tenants complained about noise in Mr. Martin's apartment and a heavy traffic of visitors coming and going. Although the lease prohibited pets without consent of the landlord (PX 104), Mr. Martin kept a pit bull that, in turn, had puppies.

7. On August 22, 2009, Mr. Gaskins served Mr. Martin with a Tenant Notice of Increase in General Applicability, raising Mr. Martin's rent from \$600 to \$700 as of October 1, 2009. PX 100. Although the Notice contained a place to insert the percentage CPI-W (Consumer Price Index for Urban Wage Earners and Clerical Workers), the insert was left blank. The CPI-W for calendar year 2009 was 4.8%. 56 D.C. Reg. 1770 (Feb. 20, 2009). At the same time, Mr. Gaskins raised the rents to other tenants in the building.

8. In the fall of 2010 Mr. Martin continued to fail to pay rent and Mr. Gaskins talked to him about vacating the apartment. Mr. Martin declined. In December 2010 or January 2011, Mr. Gaskins served Mr. Martin with a Notice to Cure Violation of Tenancy or Vacate, filed with the Rent Administrator on January 6, 2011. PX 106. The Notice demanded payment of \$2,800 for rent due from August 1, 2010, to November 1, 2010, at a rate of \$700 per month.

9. Following receipt of the notice to vacate or cure, Mr. Martin filed this tenant petition on February 2, 2011.

### III. CONCLUSIONS OF LAW

#### 1. Housing Provider failed to register the property properly.

All rental housing in the District of Columbia, with a few narrow exceptions, is subject to the requirements of the Rental Housing Act of 1985, D.C. Official Code § 42-3501– 3509. Housing providers must register each housing accommodation. D.C. Official Code § 42-3502.05(f). They are required to document any rent increases by filing a copy of the rent increase notice and a schedule of rent increases with the Rent Administrator. D.C. Official Code § 42-3502.05(g). Housing providers are prohibited from increasing rents unless the housing accommodation is properly registered. D.C. Official Code § 42-3502.07(a)(1)(B). The District of Columbia Court of Appeals (Court of Appeals) has approved these requirements, noting that: “Reporting requirements play an essential role in ensuring compliance with the rent laws. The failure to timely file reports and amended registration statements can seriously impede, if not prevent, appropriate enforcement action by depriving the Administrator of information which is needed to determine if a violation has occurred.” *Charles E. Smith Mgmt., Inc. v. D.C. Rental Hous. Comm'n*, 492 A.2d 875, 878 (D.C. 1985).

The most recent registration document in the record here is a Registration/Claim of Exemption Form filed on August 6, 2003, by Dorothy M. Williams, who listed herself as both owner and property manager and listed herself as the sole person having a direct or indirect

interest in the property. PX 102.<sup>2</sup> Although Ms. Williams registered as the Housing Accommodation's owner in 2003, Mr. Gaskins executed the lease, as landlord, with Mr. Martin in October 2006, signed the Tenant Notice of Increase of General Applicability as owner on August 22, 2009, and testified as the owner at the hearing. Mr. Gaskins never explained why the 2003 Registration/Claim of Exemption Form had been filed in Ms. Williams's name.

Based on this evidence, I conclude that the property was not properly registered. The most recent registration filing indicated that the Housing Accommodation was owned by Dorothy Williams, although Mr. Gaskins continued to hold himself out as owner, collected the rent, and entered into the lease with Mr. Martin. Because Mr. Gaskins was the true owner of the property, the most recent registration form on file with the Rent Administrator should have reflected his status as owner. Since the Housing Accommodation was not properly registered, Mr. Gaskins could not legally impose any rent increase in 2009. D.C. Official Code § 42-3502.07(a)(1)(B).

## **2. Housing Provider failed to implement a proper rent increase.**

In addition to the reporting requirements, the Act restricts the amounts by which housing providers may raise the rents in rent controlled units and sets conditions for implementing any rent increase. Once the initial lease has expired, housing providers ordinarily may increase rents only once a year through an adjustment of general applicability. D.C. Official Code § 42-3502.06(b). The maximum adjustment is computed by adding 2% to an allowable percentage increase promulgated by the Rental Housing Commission as of May 1 of each year.

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<sup>2</sup> The form attached a certification of compliance, signed by Mr. Gaskins, certifying that the property was in compliance with the District of Columbia Housing Regulations. But Mr. Gaskins was not listed as an owner anywhere else in the form.

The Commission's figure is derived from the Washington, D.C. Standard Metropolitan Statistical Area Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W). *Id.* The maximum permissible annual adjustment in 2009 was 6.8%, derived from a CPI-W of 4.8%. 56 D.C. Reg. 1770 (Feb. 20, 2009).

Housing Provider's Tenant Notice of Increase of General Applicability, dated August 22, 2009, gave notice of a raise in Mr. Martin's rent from \$600 to \$700, an increase of 16.67%. The permissible increase, 6.8%, was \$41. Thus, even if the property had been property registered, the 2009 rent increase was still illegal.

In addition to asserting that the August 2009 rent increase was illegal, Mr. Martin also testified that he had paid for light and gas in violation of the lease provisions. But he presented no bills or other documentation to support his assertion, nor could he recall the specific amounts that he paid. I credit Mr. Gaskins's testimony, corroborated by a Washington Gas statement (RX 203), that he paid for gas to heat the apartment, an apparent contradiction of the lease provision in which the parties may have mistakenly required the landlord to pay for the utilities that the tenant was supposed to cover. In the absence of any specific testimony or any documents showing that Mr. Martin was billed for or paid for utilities that he was not liable for under the lease, I conclude that he failed to prove that he is entitled to any award for reduction of services.<sup>3</sup>

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<sup>3</sup> Mr. Martin did not check the box for a claim for reduction of services or facilities in the tenant petition. Because I find that he did not prove this allegation, I will not reach the question of whether the tenant petition gave Housing Provider sufficient notice of the claim to comply with due process. *See Parreco v. D.C. Rental Hous. Comm'n*, 885 A.2d 327, 334 (D.C. 2005) ("A petition must give a defending party fair of the grounds upon which a claim is based so that the defending party has the opportunity to adequately prepare its defense and thus ensure that the claim is fully and fairly litigated").

**3. Housing Provider did not prove that he was exempt from rent control regulation as a small landlord.**

On August 6, 2003, Dorothy Williams filed an Registration/Claim of Exemption Form for the Housing Accommodation here, claiming an exemption from the rent control provisions of the Rental Housing Act because the owner held or operated four or fewer rental units. PX 106. The Act provides that certain properties may be exempt from the Act's rent stabilization provisions. D.C. Official Code § 42-3502.05(a). These include rental units "in any housing accommodation of 4 or fewer units," provided that the housing accommodation is: (1) owned by not more than four natural persons; who (2) have no interest in any other rental unit in the District of Columbia; and (3) file a claim of exemption statement with the Rent Administrator. D.C. Official Code § 42-3502.05(a)(3). A valid exemption relieves the housing provider from regulation under D.C. Official Code § 42-3502.05(f) through 42-3502.19, except for D.C. Official Code § 42-3502.17, relating to security deposits. As a consequence, owners of exempt units are not bound by the rent control limitations or documentation requirements of the Act. They may raise rents at any time by any reasonable amount, and are not required to record their rent increases with the Rent Administrator.

But, despite the 2003 filing, Mr. Gaskins fails to qualify for the exemption here for a number of reasons:

(1) The Act requires that any change in the ownership of the exempted housing accommodation must be reported in writing to the Rent Administrator within 30 days. Because Ms. Williams certified that she was the owner of the property in the 2003 filing, and the record

contains no evidence of a subsequent filing reflecting Mr. Gaskins's ownership, Mr. Gaskins failed to comply with the requirements of the Act.

(2) The Rental Housing Commission has repeatedly held that: "A landlord's mere assertion [of exemption] . . . contained in a claim of exemption will be insufficient to satisfy a landlord's burden of proof of exemption." *Munonye v. Hercules Real Estate Servs.*, RH-TP-07-29,164 (RHC July 7, 2011) at 16 (*quoting Goodman v. D.C. Rental Hous. Comm'n*, 573 A.2d 1293, 1297 (D.C. 1990)). Here, the filing of the exemption is inherently suspect because Mr. Gaskins's earlier 1986 filing described the Housing Accommodation as having five rental units. PX 101. At the hearing, Mr. Gaskins presented no evidence to demonstrate that he qualified for the small landlord exemption. Nor did he contend that he qualified for the exemption.

(3) Even when a housing provider qualifies for the small landlord exemption, the housing provider cannot take advantage of the exemption unless he or she gives the tenant timely written notice of the exempt status of the housing accommodation. D.C. Official Code § 42-3502.05(d); 14 DCMR 4101.6. *See Levy v. Carmel Partners, Inc.*, 2012 D.C. Rental Hous. Comm'n LEXIS 8, RH-TP-06-28,830 (RHC Mar. 19, 2012) at 8. Here, the lease contained no notice that the Housing Accommodation was exempt from rent control. PX 104. Nor was there any evidence that Mr. Gaskins gave Mr. Martin written notice that the property was exempt before Mr. Martin signed the lease.

It follows that the Housing Accommodation here was not exempt from rent control.

**4. Housing Provider failed to file proper forms with the Rent Administrator.**

In addition to raising Mr. Martin's rent by an illegal amount, Mr. Gaskins's 2009 rent increase notice failed to provide required information or to follow the prescribed procedure for documenting the rent increase. The rent increase form that Mr. Gaskins used contains a line to insert the amount of the CPI-W. This line was left blank. The Rental Housing Regulations require that a housing provider serve the tenant with a Certificate of Election of Adjustment of General Applicability that specifies "the amount of the adjustment elected to be taken and the prior and new rent ceiling for each unit." 14 DCMR 4204.10(b). Rent ceilings were abolished in 2006, three years before Mr. Gaskins implemented the rent increase. But his failure to specify the percentage amount of the CPI-W in the form was a failure to specify the "amount of the adjustment elected to be taken," and it prevented Mr. Martin from determining whether the 16.67% rent increase was permissible. In addition, there was no evidence that Mr. Gaskins filed a copy of the Notice of Increase of General Applicability with the Rent Administrator within 30 days, as the Act and regulations require. D.C. Official Code § 42-3502.05(g)(A); 14 DCMR 4204.10(c). Thus, Mr. Gaskins failed to file the proper rent increase forms with the Rent Administrator.

**5. Tenant failed to prove that housing provider filed a notice to vacate that violated the provisions of the Act.**

Section 501 of the Rental Housing Act, D.C. Official Code § 42-3505.01, prescribes requirements that housing providers must follow before any tenant may be evicted. The Act provides that: "No tenant shall be evicted from a rental unit for any reason other than for nonpayment of rent unless the tenant has been served with a written notice to vacate which meets the requirements of this section." D.C. Official Code § 42-3505.01(a). The requirements include a statement detailing the reasons for the evictions and, for properties that are required to

be registered, a statement that the housing accommodation is registered with the Rent Administrator. A copy of the notice must be served on the Rent Administrator. *Id.*

Here, Mr. Gaskins served Mr. Martin with a notice to vacate that complied with the requirements of the Act. PX 106. It explained that the tenant violated the lease by not paying rent. A copy was served on the Rent Administrator, and the notice included a registration number for the property, although the registration number was not the number that was assigned to Ms. Williams's claim of exemption, PX 102.

More significantly, the sole allegation in Mr. Gaskins's notice was that Mr. Martin had failed to pay \$2,800 in back rent. PX 106. The notice requirements of Section 501 of the Rental Housing Act apply only to evictions "for any reason other than for nonpayment of rent." D.C. Official Code § 42-3505.01(a). Because Mr. Gaskins's demand that Mr. Martin vacate was for nonpayment of rent, no notice was required under the Act. Nor was any notice that the Housing Provider chose to give regulated by the Act.

**6. Tenant failed to prove that Housing Provider's violations of the Act were willful.**

Although Mr. Martin proved that Mr. Gaskins failed to register the property and failed to file the proper forms with the Rent Administrator, Mr. Martin did not prove that Mr. Gaskins's omissions were conscious violations of the Act. The only penalty that may be imposed for Housing Provider's failure to register or to file proper forms is a fine. D.C. Official Code § 42-3509.01(b). Imposition of a fine requires a finding that the housing provider's violation was willful. *Id.* This, in turn, requires a finding that the housing provider intended to violate the law. *See Miller v. D.C. Rental Hous. Comm'n*, 870 A.2d 556, 558 (D.C. 2005) (holding that a

fine may be imposed where the housing provider “intended to violate or was aware that it was violating a provision of the Rental Housing Act”); *Quality Mgmt., Inc. v. D.C. Rental Hous. Comm’n*, 505 A.2d 73, 76 n.6 (D.C. 1986) (holding that “willfully” implies intent to violate the law and a culpable mental state); *Hoskinson v. Solem*, TP 27,673 (RHC July 20, 2005) at 5 (“‘willfully’ in § 42-3509.01(b) relates to whether or not the person committing the act intended to violate the law”); *Recap – Bradley Gillian v. Powell*, TP 27,042 (RHC Dec. 19, 2002) at 9 (quoting *Ratner Mgmt. Co. v. Tenants of Shipley Park*, TP 11,613 (RHC Nov. 4, 1988) at 4-5, holding that a finding of willfulness requires a showing that “the landlord’s conduct was intentional, or deliberate or the product of a conscious choice”).

Ms. Williams’s filing of a claim of exemption for the property at a time when Mr. Gaskins apparently continued to own it is suspicious. But there was no testimony or other evidence at the hearing to explain why the claim of exemption was filed or whether Mr. Gaskins knew about it. Mr. Gaskins’s testimony at the hearing reflected little understanding of the Rental Housing Act’s rent control or filing requirements. Because I cannot conclude that Mr. Gaskins’s violations of the Act were willful, I will impose no fine.

#### **7. Tenant is entitled to a rent refund.**

A housing provider who “demands or receives any rent for a rental unit in excess of the maximum allowable . . . shall be held liable by the [ALJ] for the amount by which the rent exceeds the applicable rent charged . . . .” D.C. Official Code § 42-3509.01(a). It is well-established that a tenant who is entitled to a rent refund may receive an award notwithstanding that the tenant did not pay the rent. *See* D.C. Official Code § 42-3501.03 (28) (defining “rent” as money “demanded” by a housing provider); *Kapusta v. D.C. Rental Hous. Comm’n*, 704 A.2d

286, 287 (D.C. 1997) (affirming award of rent refund where rent was demanded but not paid); *Schauer v. Assalaam*, 2002 D.C. Rental Hous. Comm'n LEXIS 577, TP 27,084 (RHC Dec. 31, 2002) at 6 (holding that the tenant's rent refund was based on the amount demanded rather than the amount paid under a court protective order). Table 1 below computes Mr. Martin's rent refund through the date of the hearing.

The Rental Housing Commission Rules implementing the Rental Housing Act provide for the award of interest on rent refunds at the interest rate used by the Superior Court of the District of Columbia on the date of the decision from the date of the violation to the date of issuance of the decision. 14 DCMR 3826.1 – 3826.3; *Marshall v. D.C. Rental Hous. Comm'n*, 533 A.2d 1271, 1278 (D.C. 1987). Interest at the current 2% per annum rate is reflected in Table 1 below through the date of this decision.

**Table 1**  
**Computation of Tenant's Rent Refund**

Dates of Overcharges	Amount of Overcharge	Months Held by Housing Provider	Monthly Interest Rate	Interest Due
Oct 2009	\$ 100.00	31	0.0017	\$ 5.17
Nov 2009	\$ 100.00	30	0.0017	\$ 5.00
Dec 2009	\$ 100.00	29	0.0017	\$ 4.83
Jan 2010	\$ 100.00	28	0.0017	\$ 4.67
Feb 2010	\$ 100.00	27	0.0017	\$ 4.50
Mar 2010	\$ 100.00	26	0.0017	\$ 4.33
Apr 2010	\$ 100.00	25	0.0017	\$ 4.17
May 2010	\$ 100.00	24	0.0017	\$ 4.00
Jun 2010	\$ 100.00	23	0.0017	\$ 3.83
Jul 2010	\$ 100.00	22	0.0017	\$ 3.67
Aug 2010	\$ 100.00	21	0.0017	\$ 3.50
Sep 2010	\$ 100.00	20	0.0017	\$ 3.33
Oct 2010	\$ 100.00	19	0.0017	\$ 3.17
Nov 2010	\$ 100.00	18	0.0017	\$ 3.00
Dec 2010	\$ 100.00	17	0.0017	\$ 2.83
Jan 2011	\$ 100.00	16	0.0017	\$ 2.67
Feb 2011	\$ 100.00	15	0.0017	\$ 2.50
Mar 2011	\$ 100.00	14	0.0017	\$ 2.33
Apr 2011	\$ 100.00	13	0.0017	\$ 2.17
May 2011	\$ 100.00	12	0.0017	\$ 2.00
Jun 2011	\$ 100.00	11	0.0017	\$ 1.83
<b>Total</b>	<b>\$ 2,100.00</b>			<b>\$ 73.50</b>
<b>Award</b>	<b>\$ 2,173.50</b>			

**8. Tenant's rent is rolled back to the legal rate.**

In addition to providing for rent refunds to compensate for reductions in services, the Rental Housing Act also provides for a "roll back of the rent to the amount the [Administrative Law Judge] . . . determine." D.C. Official Code § 42-3509.01(a); *see Afshar v. D.C. Rental Hous. Comm'n*, 504 A.2d 1105, 1108 (D.C. 1986). Because Mr. Gaskins's October 2009 rent increase was illegal, I will roll back Mr. Martin's rent to the legal rent level that was in effect before the 2009 rent increase, \$600, beginning July 1, 2011, the date the next rent payment was due following the date of the hearing. Mr. Martin's rent remains at this level until Mr. Gaskins imposes a legal rent increase under the Rental Housing Act.

**IV. ORDER**

Accordingly, it is this **24<sup>th</sup>** day of **April, 2012**,

**ORDERED**, that Tenant's claim that Housing Provider filed a notice to vacate in violation of the Rental Housing Act is **DISMISSED WITH PREJUDICE**; and it is further

**ORDERED**, that Tenant has proven his claims that Housing Provider Tenant's rent was increased by an amount larger than the Act allowed, that Housing Provider failed to file the correct rent increase forms, and that the rent charged filed with the Rent Administrator exceeded the legally-calculated rent for the Rental Unit. I will impose no fine for Housing Provider's violations of the Act in the absence of proof that the violations were willful. And it is further

**ORDERED**, that Housing Provider William A. Gaskins pay Tenant Dameian Martin the sum of **two thousand, one hundred and seventy-three dollars and fifty cents (\$2,173.50)**; and it is further

**ORDERED**, that the rent in the Rental Unit shall be rolled back to **\$600 per month** as of July 1, 2011; and it is further

**ORDERED**, that the appeal rights of any party aggrieved by this Final Order are set forth below.

\_\_\_\_\_/s/\_\_\_\_\_  
Nicholas H. Cobbs  
Administrative Law Judge

**APPENDIX**

**Exhibits in Evidence**

<b>Exhibit No.</b>	<b>Pages</b>	<b>Description</b>
<b>Petitioner</b>		
100	1	Tenant Notice of Increase of General Applicability dated 8/22/09
101	5	Registration/Claim of Exemption Form filed 2/18/86
102	8	Registration/Claim of Exemption Form filed 8/6/03
103	1	Certificate of Election of Adjustment of General Applicability
104	2	Lease dated 10/1/06
105	1	Fax Cover Sheet dated 4/15/10
106	6	Notice To Cure Violation of Tenancy or Vacate filed 1/6/11
<b>Respondents</b>		
200	1	Rent Application
201	2	Rent Ledger Pages
202	1	Confirmation of Emergency Rental Assistance Program Payment dated 7/1/10
203	3	Washington Gas Statement, 12/2/08 – 1/2/09
204	2	Letter from Social Security Administration to D. Martin dated 8/21/06