

**DISTRICT OF COLUMBIA
OFFICE OF ADMINISTRATIVE HEARINGS**

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KENNETH MAZZER and WENDY
TIEFENBACHER,
Tenants/Petitioners,

v.

B.F. SAUL PROPERTY COMPANY,
KLINGLE CORPORATION, B.F. SAUL
COMPANY,
Housing Providers/Respondents.

Case No.: RH-TP-06-28668
In re: 3133 Connecticut Ave., NW
Unit 115

FINAL ORDER

I. Procedural History

Kenneth Mazzer filed Tenant Petition (TP) 28,668 with the Rent Administrator on June 19, 2006. He alleged that B.F. Saul Property Company violated the Rental Housing Act of 1985 (Act), D.C. OFFICIAL CODE §§ 42-3501.01-3509.07, when it failed to file the proper rent increase forms, filed improper rent ceilings, and substantially reduced services and/or facilities provided in connection with the rental unit at 3133 Connecticut Avenue, NW, Unit 115. The tenants also alleged that “several adjustments to rent ceiling and rent charged have been improperly taken/implemented.” TP 28,668 at 2. The Rent Administrator transmitted TP 28,668 to OAH to

conduct the hearing in accordance with the Rental Housing Act of 1985 (Act), D.C. Official Code §§ 42-3501.01-3509.07.¹

This administrative court issued a Case Management Order (CMO) to the parties on November 8, 2006, and scheduled this matter for a hearing on December 6, 2006. The tenant requested a continuance of the hearing until February 28, 2007, in order to file a FOIA request and obtain documents from the Rental Accommodations and Conversion Division (RACD) of the Department of Consumer and Regulatory Affairs (DCRA). The court granted the continuance. On January 9, 2007, the tenant in this case and tenants in ten other matters concerning the housing accommodation filed a motion to consolidate and requested new hearing dates. They also filed motions for discovery and a motion to expand the scope of proceedings. The housing provider filed oppositions to these motions. On February 7, 2007, this administrative court convened a joint hearing on the motion to consolidate and issued an Order denying the motion to consolidate on May 10, 2007.

On June 4, 2007, Kenneth Mazzer filed a motion to amend TP 28,668 to add his wife, Wendy Tiefenbacher, as a party to this action. He indicated that he and his wife are tenants and lived together at the housing accommodation since May 1996. Mr. Mazzer also requested to delay the hearing in this matter because he had to travel to Japan for several months on official business. The housing provider filed an opposition to the motion to add Ms. Tiefenbacher as a party. The court granted Mr. Mazzer's motion to add Wendy Tiefenbacher as a party to this action.

¹ On October 1, 2006, the Rent Administrator's hearing authority was transferred to the Office of Administrative Hearings (OAH), which is an independent administrative court. D.C. Official Code § 2-1831.03(b-1)(1).

In the interim, the court received a request to place TP 28,668 in mediation along with several other cases concerning 3133 Connecticut Avenue, NW. The court granted this request and scheduled this and other matters for mediation on June 30, 2008. While the matters were in mediation, the parties to the petitions filed a series of motions and pleadings that are not germane to this Final Order. However, the motions, oppositions, and Orders are included in the record of TP 28,668. Mediation was not successful, and the parties requested evidentiary hearings.

On May 22, 2009, Kenneth Mazzer and Wendy Tiefenbacher filed a motion to add Klingle Corporation and B.F. Saul Company as housing providers. The tenants also filed a motion for discovery and two motions for summary disposition. The housing providers filed oppositions to these motions. The court granted the motion to add Klingle Corporation and B.F. Saul Company as parties to this action, since Klingle Corporation owns the property and B.F. Saul Company is the property manager. The court denied the motion for discovery because it was overly broad and the case was not a complex matter that warranted discovery. The court also denied the tenants' motions for summary disposition.

The first motion for summary disposition was a Motion for Partial Summary Disposition of Contention No.1 (Improper Registration of Housing Accommodation). The court denied this motion because the tenants did not claim that the housing accommodation was not properly registered when they filed the petition. Although the tenant petition form contained the claim, the tenants did not select the claim and place the housing provider on notice of this allegation. Consequently, they could not move for summary disposition of this claim or attempt to prove at the hearing that the housing accommodation was not properly registered. *See Parreco v. D.C. Rental Hous. Comm'n*, 885 A.2d 327, 334 (D.C. 2005) (holding that a tenant cannot proceed on claims that the tenant did not raise in the petition, because the housing provider was not placed

on notice of the claim). The court also denied the second Motion for Summary Disposition of Contention No. 2 (Rent Ceiling Increases Were Not Properly Perfected).

The court held the evidentiary hearing in this matter on September 9 and September 10, 2009. The tenants Kenneth Mazzer and Wendy Tiefenbacher appeared *pro se* and presented evidence on their claims. Tanya Marhefka, Vice President of Residential Properties for B.F. Saul Company and David Newcome, a witness, appeared with counsel for the housing providers, Debra Legee and Richard Luchs. The court granted the tenants motion to file a post-hearing memorandum. The tenants filed a post-hearing memorandum on November 6, 2009, and the housing providers, through counsel, filed a post-hearing memorandum on November 24, 2009. The court denied the tenants' request to file a reply to the housing providers post-hearing memorandum.

II. Preliminary Matters

The parties raised several preliminary matters before the evidentiary hearing. First, the tenants moved to strike the exhibits that the housing providers submitted with their list of witnesses and documents. The housing providers, through counsel, made a similar motion with respect to the exhibits the tenants pre-filed with the court. The housing providers noted that the tenants filed exhibits numbered 100 through 195, with dates outside the three-year statutory period covered by the petition. The housing providers moved to strike documents that relate to matters that occurred before or after the petition and are not related to the issues in the petition. The court denied the parties' motions to strike their opponents' exhibits and ruled that the court would entertain objections to the admission of any exhibits when the parties introduced them during the hearing.

The Exhibit Lists are attached to this Final Order. The parties pre-filed numerous exhibits and all of those exhibits appear on the Exhibit Lists. However, the parties did not offer the vast majority of the exhibits during the hearing. Consequently, only those exhibits that were offered during the hearing are marked on the Exhibit Lists as being offered, and there is an additional mark showing if the exhibits were admitted or not admitted. Any exhibit without an indication that it was admitted or not admitted, was not offered during the hearing.

III. Discussion

A. Motion to Dismiss Claims

When the court convened the hearing, the tenants presented evidence on the claims raised in the petition. They also attempted to introduce evidence on claims that were not raised in the petition, and they introduced numerous documents that were not relevant to their claims. At the conclusion of the tenants' evidence on all of their claims, the housing providers indicated that they had no questions on cross-examination and moved to dismiss the petition, because the tenants failed to introduce any evidence to support their claims. They argued that the tenants offered no competent evidence to prove their claims that the rents on November 1, 2004, November 1, 2005, and May 6, 2006 were improper. They did not introduce on any evidence concerning the amount of the rent increases, and they failed to introduce any notices of rent increase. Moreover, the tenants failed to demonstrate how much rent they were charged during the period subject to this petition. They argued that the absence of the evidence makes it impossible for the court to calculate any relief that could be afforded to the tenants, whether there was a rent overcharge or reduction in services and facilities, because the court is without a starting point to make the calculation. Assuming for the sake of this motion that the housing providers violated Act, they argued, the tenants provided the court with no means to provide a

remedy. In response, the tenants attempted to demonstrate that they submitted sufficient evidence to overcome the motion to dismiss their claims.

The court recessed the matter briefly to consider the housing providers' motion to dismiss. The court granted the motion to dismiss the tenants' claims that the housing providers improperly increased the rent on November 1, 2004 and November 1, 2005 because there was not a quantum of evidence to support their burden of proof. The court denied the motion to dismiss the tenants' claims concerning the May 1, 2006, rent increase, the rent ceiling claims, and the claim that the housing providers substantially eliminated services and facilities because the tenants introduced sufficient evidence to overcome a motion to dismiss. However, after considering the evidence in its entirety, the court determined that the tenants failed to meet their burden of proof on any claims alleged in the tenant petition. Consequently, the court will dismiss TP 28,668.

B. Tenants' Rent Increase and Rent Ceiling Issues

The tenants raised the following claims related to rent increases and rent ceilings: the housing providers failed to file the proper rent increase forms with the RACD, the rent ceilings filed with RACD for their unit were improper, and "several adjustments to rent ceiling and rent charged have been improperly taken/implemented." TP 28,668 at 3. The tenants challenged three discrete rent increases that the housing providers implemented on November 1, 2004, November 1, 2005, and May 1, 2006.

1. Rent Increase Implemented on November 1, 2004

The tenants claimed that the rent increase implemented on November 1, 2004, was improper. The tenants testified that they received a rent increase notice in September 2004, for a rent increase that was effective on November 1, 2004. However, the tenants did not offer the rent increase notice into evidence or testify concerning the contents of the notice.² They offered no evidence concerning the amount of rent the housing providers charged before they increased the tenants' rent, and they did not testify to the amount of the rent increase effective November 1, 2004. Instead, the tenants attempted to introduce Certificates of Election of Adjustment of General Applicability, affidavits from other tenants, and countless documents without demonstrating their relevance to their claims. As a result, the court granted the housing providers' oral motion to dismiss the tenants' challenge to the November 1, 2004 rent increase, because the tenants' failed to introduce any evidence to support their claim. *See* discussion *supra* Part III.A.

The tenants attempted to introduce nine Certificates of Election of Adjustment of General Applicability (Certificates of Election) that the housing providers filed with RACD from December 29, 1995, through May 5, 2006. Petitioners' Exhibits (PX) 150(a-i). After the housing providers objected to the admission of the exhibits as a group, the tenants withdrew them as a group and attempted to introduce the exhibits separately. However, the tenants never identified a Certificate of Election that the housing providers used to increase their rent on

² When the court issued the CMO in this case, the court advised the parties that the "Administrative Law Judge would decide the case based upon the evidence presented by the parties at the hearing." CMO at 4. Also, when the court convened the hearing on September 9, 2009, the court advised the parties that no exhibits were in evidence, and that the parties had to present the exhibits during the hearing if they wanted the documents to be placed in evidence. The tenants pre-filed over 200 exhibits and attached rent increase notices and other documents to the numerous pleadings filed in this administrative court. However, the tenants did not introduce any rent increase notices during the hearing.

November 1, 2004. More importantly, they provided no oral or documentary evidence to prove that the rent increase implemented on November 1, 2004, was improper.

The tenants first introduced a Certificate of Election date-stamped December 29, 1995. The tenants did not show how this exhibit was relevant to the rent increase implemented on November 1, 2004. The housing providers objected to the admission of the document. They argued that the tenants did not show that it was related to the November 1, 2004, rent increase. And the statute of limitations barred its admission because it was not within the three year statutory period covered by the petition. The court agreed and denied the admission of PX 150(a).

The tenants then introduced a Certificate of Election date-stamped February 3, 2003, for a 2.6% CPI-W adjustment of general applicability for calendar year 2002. PX 150(f). The tenants offered no evidence linking this Certificate of Election to the rent increase implemented on November 1, 2004. They did not testify to the amount of the rent increase or offer the rent increase notice to show, for example, that the housing providers used this rent ceiling adjustment to increase the rent on November 1, 2004. The tenants stated that they offered this Certificate of Election to demonstrate that the rent ceiling adjustment that was effective on March 1, 2003, was not proper. This was a direct challenge to a rent ceiling adjustment taken more than three years before the tenants filed the petition. The housing providers objected to the admission of the exhibit because the statute of limitations barred the admission of this Certificate of Election that was filed more than three years before the tenants filed the petition on June 19, 2006.

The court denied the admission of the Certificate of Election for the rent ceiling adjustment effective on March 1, 2003, because the tenants were introducing it to challenge the

propriety of the rent ceiling adjustment that was taken more than three years before the tenants challenged it. The statute of limitations bars a challenge more than three years after the effective date of the rent ceiling adjustment. D.C. Official Code § 42-3502.06(e).

The tenants did not link this Certificate of Election, PX 150(f), to the November 1, 2004, rent increase that was within the statutory period. *See Grant v. Gelman Mgmt. Co.*, TPs 27,995, 27,997, 27,998, 28,002, 28,004 (RHC Feb. 24, 2006). In *Grant*, the tenant introduced a Certificate of Election to prove that a rent increase was improper, because the rent ceiling used to implement the rent increase was not perfected. The Rental Housing Commission (Commission) upheld the introduction of the Certificate of Election, because the tenant introduced the rent increase notice that showed the adjustment of general applicability that the housing providers used to increase the rent that was being challenged. The Commission permitted the introduction of the Certificate of Election that corresponded to the adjustment of general applicability on the rent increase notice even though the Certificate of Election was dated more than three years before the tenant filed the petition. Since the tenant was not challenging the actual rent ceiling taken more than three years before, but introduced the Certificate of Election to show that the rent increase was not proper, the Commission upheld the introduction of the Certificate of Election. The facts in the instant case do not comport with the facts in *Grant*, because the tenants in the instant case challenged the rent ceiling that was in place more than three years before they filed the petition; and they did not introduce the notice of rent increase or testify that the Certificate of Election from 2003 was used for the rent increase that they were challenging. *See also Sawyer v. D.C. Rental Hous. Comm'n*, 877 A.2d 96 (D.C. 2005)

Next, the tenants argued that the November 1, 2004, rent increase was invalid because the housing providers did not meet the requirements of 14 DCMR 4101.6 by posting copies of the

Certificates of Election or rent increase notice. The tenants introduced four affidavits from other tenants who claimed they never saw any documents filed with RACD posted in the building. PX 160-163. The tenants argued that the affidavits proved that the housing providers did not meet the notice requirements of § 4101.6. The housing provider objected to the admission of the affidavits, but the court admitted the affidavits into evidence for the limited purpose for which they were offered.

The tenants' reliance upon 14 DCMR 4101.6 is misplaced because the regulation requires housing providers to post a true copy of the Registration/Claim of Exemption form or mail it to the tenant.³ The tenants testified that they received the notice for the rent increase effective November 1, 2004; so even if 4101.6 was applicable to the tenants' claim, posting is only required if the housing provider does not mail a true copy to the tenant.

For the foregoing reasons, the tenants did not meet their burden of proving that the rent increase implemented on November 1, 2004, was improper. They did not introduce into evidence the notice that they received in September 2004, for the rent increase effective on November 1, 2004, or offer testimony concerning the contents of the notice, such as the source and amount of the rent increase, the rent or rent ceiling before the housing providers increased the rent, and they did not indicate what if any Certificate of Election the housing providers used to increase their rent on November 1, 2004.

2. Rent Increase Implemented on November 1, 2005

³ The regulation, 14 DCMR 4101.06, provides: "Each housing provider who files a Registration/Claim of Exemption form under the Act, shall prior to or simultaneously with the filing, post a true copy of the Registration/Claim of Exemption form in a conspicuous place at the rental unit or housing accommodation to which it applies, or shall mail a true copy to each tenant of the rental unit or housing accommodation."

The tenants' proof for their claim that the November 1, 2005, rent increase was improper suffered many of the deficiencies in their proof for the November 1, 2004, rent increase. The tenants did not offer evidence concerning the amount of the rent increase, and they did not identify the rent charged or rent ceiling that was in place before the housing providers implemented the rent increase on November 1, 2005. Consequently, they did not introduce the necessary evidence to meet their burden of proving that the November 1, 2005, rent increase was improper. Consequently, the court granted the housing providers' motion to dismiss this claim. *See discussion supra Part III.B.1.*

The tenants testified that they received the notice for the rent increase that was effective on November 1, 2005. However, they did not submit the notice during the hearing or testify concerning its contents. Instead, they stated, "We think the whole house of cards of faulty registration dates should be entered." OAH Hearing, Sept. 9, 2009. They testified that the rent increase letter noticing the rent increase did not state what Certificate of Election is applicable to it. As a result, they wanted "to submit all Certificates of Election and one of them has to be applicable to it." *Id.*

They introduced a Certificate of Election date-stamped February 4, 2004, and stated that it was not filed in a timely manner, and it was not posted. PX 150(g). When the court asked the tenants to explain the relevance of PX 150(g) to the November 1, 2005, rent increase, they said the housing providers did not list it on the rent increase notice so they did not know. The tenants argued that the Certificate of Election might be related to November 1, 2005, rent increase, because the housing providers did not indicate what Certificate of Election they used to increase the rent in 2005. The tenants also introduced the Certificate of Election date-stamped January 27, 2005, and argued that it was not valid because it was not "done" in May, and it was not

posted. PX 150(h). The court admitted PX 150(g) and (h). However, there was no testimony linking either exhibit to the November 1, 2005 rent increase.

When the court resumed the hearing on September 10, 2009, the tenants stated they offered PX 150(g), a Certificate of Election date-stamped February 4, 2004, and 150(h), a Certificate of Election date-stamped January 27, 2005, “but based on the dates, between those two, it is PX 150(h) [Certificate of Election date-stamped January 27, 2005], that was used for the rent increase notice that was effective on November 1, 2005.” The tenant offered no additional evidence on this claim. The Certificate of Election date-stamped January 27, 2005, PX 150(h), shows that the 2003 CPI-W was 2.9%, and the rent ceiling for the tenants’ unit 115, was increased from \$1503 to \$1547 on March 1, 2005; there was no change in the rent. Since the tenants did not introduce the rent increase notice or testify to the amount of the rent increase, there is no way to determine if the housing providers increased the rent on November 1, 2005, by implementing the rent ceiling adjustment reflected in PX 150(h).

The tenants also re-introduced the affidavits, PXs 160-163, to show that the November 1, 2005, rent increase was invalid because the housing providers did not post the Certificates of Election, PX 150(g) and (h), as required by 14 DCMR 4101.6. For the reasons stated above, the tenants’ reliance on 4101.6 is misplaced. *See* discussion *supra* Part III.A.

Finally, the tenants introduced a DCRA Housing Violation Notice dated October 8, 2003, and a DCRA Housing Notice of Violation dated January 9, 2007. PXs 144 and 145. The tenants introduced these exhibits to show that the rent and rent ceiling adjustments were invalid because housing code violations existed on the dates of the adjustments. The housing providers objected to the admission of PXs 144 and 145 because the tenants did not raise this issue in the tenant

petition. The tenants argued that their August 2009 motion for summary disposition placed the housing providers on notice of this claim. The court denied the admission of PXs 144 and 145 because the tenants did not claim, in the petition, that substantial housing code violations existed when the housing providers increased the rent. *See Parreco v. D.C. Rental Hous. Comm'n*, 885 A.2d 327, 334 (D.C. 2005) (holding that a tenant cannot proceed on claims that the tenant did not raise in the petition, because the housing provider was not placed on notice of the claim).

3. Rent Increase Implemented on May 1, 2006

The housing providers objected to the tenants proceeding on this claim, because the rent increase is related to a capital improvement petition that is on appeal to the Commission. The tenants requested to proceed on this claim because they were not challenging the contents or substance of the order on appeal. They indicated that they only raised issues related to perfection and the rent increase that was imposed on them. These issues, they argued, were not part of the capital improvement petition on appeal. The court permitted the tenants to proceed on this issue.

The tenants argued that the rent increase implemented on May 1, 2006, was improper because the rent ceiling that was the basis of the rent increase was not perfected within thirty days of the date of the Rent Administrator's Decision and Order granting the capital improvement petition, which authorized the rent ceiling surcharge.

The tenants introduced the Decision and Order in CI 20,794 issued by the Rent Administrator on March 24, 2004. PX 148. The parties agree that CI 20,794 is pending on appeal to the Commission. The tenants also introduced the Amended Registration form that the Klinge Corporation filed with DCRA on March 16, 2006. PX 149. The Amended Registration

Form showed that the housing providers increased the rent ceiling for the tenants' unit from \$1547 to \$1726 on May 1, 2006. PX 149. The Amended Registration form only reflected a change in the rent ceiling; it did not show an increase in the tenants' rent. The court admitted PX 148 and 149 without objection.⁴ The tenants did not introduce the notice of rent increase or testify concerning the contents of the notice. The tenants did not provide evidence of the rent charged before or after the rent increase.

The tenants argued that the capital improvement increase authorized by CI 20,794 should have been "implemented and taken" within 30 days of the Rent Administrator's Decision and Order issued on March 24, 2004. The parties agree, however, that the Rent Administrator's decision was appealed to the Commission. The tenants did not cite any case law, or provision of the Act or the housing regulations that supported their contention that the rent ceiling adjustment had to be perfected within 30 days of a Decision and Order that was appealed.

The tenants also argued that the May 1, 2006, rent increase was not valid because it violated notice requirements of 14 DCMR 4101.6, and the tenants re-introduced the affidavits, PXs 160-163, to prove this point. For the reasons stated above, the tenants' reliance on 4101.6 is misplaced. *See* discussion *supra* Part III.A. The tenants also attempted to introduce a Notice of Violation dated January 7, 2007, PX 145, which was offered to show housing code violations in 2007 had to exist when the rent was increased on May 1, 2006. The court denied the admission

⁴ The tenants attempted to introduce PXs 164 and 165, the Rental Accommodations Office Case Docket and Proposed Decision and Order in CI 20,794 filed by the housing providers. The housing providers objected, and the court denied the admission of the exhibits because they were not relevant to the tenants' claims.

of PX 145, in accordance with *Parreco v. D.C. Rental Hous. Comm'n*, 885 A.2d 327, 334 (D.C. 2005), because the tenants did not raise this claim in the tenant petition.

The tenants have not presented sufficient evidence to prove that the rent increase implemented on May 1, 2006 was improper. Moreover, even if the court ruled that the rent increase was improper, the tenants have not provided the court with evidence, such as the amount of the rent charged or the time period that the housing provider demanded the rent increase to provide a remedy.

Therefore, the court dismisses the tenants' claim concerning the May 1, 2006 rent increase.

B. Substantial Reduction in Services and Facilities Claim

When the tenants filed the petition, they alleged that the housing providers substantially reduced services and facilities provided in connection with the rental unit because there was noise and dust for several months as a result of major work that the housing providers were doing on the lower floors of the housing accommodation.

During the hearing, the tenants testified that the housing providers permanently eliminated a convenience store, garden plots, a piano in the lounge, storage spaces, dry cleaners, a florist, a restaurant, valet, a dressmaker, green spaces, and a picnic play area. The housing providers objected to this evidence, because the tenants did not claim that the housing providers permanently eliminated services and facilities when they filed the petition. They stated that the tenants only claimed dust and noise as the basis of their substantial reduction in services and/or facilities claim and should not be permitted to proceed on any other services and facilities claim. The court overruled the objection and allowed the tenants to offer additional evidence to support

their substantial reduction in services and facilities claim. However, the tenants continued to testify concerning amenities that they maintained were permanently eliminated from the housing accommodation, in spite of the fact that they did not allege the permanent elimination of services and facilities when they filed the tenant petition.

The tenants attempted to admit brochures, landscape plans, zoning reports, photographs, and other documents that were not probative of their claim that the housing providers substantially reduced services and facilities provided in connection with the rental unit. D.C. Official Code § 42-3502.11. Moreover, the tenants did not prove that the services and facilities were related services and facilities provided in connection with the rent, and they could not offer the specific dates that the services and facilities were substantially reduced or permanently eliminated. They surmised that it may have happened at some time in 1994 or sometime between the statutory period, June 19, 2003, and June 19, 2006.

Tanya Marhefka, the Vice President of Residential Properties for B.F. Saul Company introduced an Amended Registration Form and testified that the related services and facilities provided in connection with the rental units at 3133 Connecticut Avenue, NW were a cooking range, refrigerator, elevator, exterminator, and coin operated washer and dryer.

The tenants also attempted to introduce evidence concerning a leak that occurred on June 28, 2006. The housing provider made an oral motion to prohibit the tenants from introducing evidence concerning the leak. The court granted the motion because the leak occurred after the tenants filed the petition on June 19, 2006, the tenants did not amend the petition or provide notice of the leak, and the housing providers were not prepared to proceed on the leak.

The housing providers objected to the propriety of the tenants proceeding on a substantial reduction in services and facilities claim when the basis of the complaint was noise and dust, as opposed to a substantial reduction of a related service or facility. The housing providers cited *Washington Realty Co. v. Rowe*, TP 11,802 (RHC May 14, 1986) as authority for their position that the tenants should not be permitted to proceed on this claim. In *Washington Realty Co.*, the Commission evaluated what constitutes a compensable reduction in services. The Commission stated that the services and facilities provision of the Act does not apply to every change in service; it is “triggered only by a substantial change or, to use the words of the Act, when related services [or facilities] ‘are substantially increased or decreased.’” *Id.* at 3.

In order for a substantial reduction in services or facilities claim to meet the requirements of D.C. Official Code § 42-3502.11, there must be a substantial reduction of a related service or facility. The Act defines related services as "services provided by a housing provider, required by law or by the terms of a rental agreement, to a tenant in connection with the use and occupancy of a rental unit, including repairs, decorating and maintenance, the provision of light, heat, hot and cold water, air conditioning, telephone answering or elevator services, janitorial services, or the removal of trash and refuse.” D.C. Official Code § 42-3501.03(27). In *Washington Realty Co.*, TP 11,802 at 4, the Commission held that an action to eliminate noise . . . was not a “service” required by law or the terms of the rental agreement. On the facts of that case, the Commission found there was no reduction of a related service previously provided as contemplated by the Act.

The tenants cited *H.G. Smithy Co. v. Arieno*, TP 23,329 (RHC Aug. 7, 1998) to support their position that they had a viable services and facilities claim. In *H.G. Smithy Co.*, the Commission held that a tenant cannot prevail on the reduction in services or facilities claim

unless the tenants prove that the service or facility was related; there was a substantial reduction of the related service or facility; and the tenants prove the duration of the reduction.

The tenants in *H.G. Smithy Co.* complained that the housing providers substantially reduced their related services when they were deprived of their roof, windows, and balcony while the housing providers made repairs. The tenants proved that the roof, windows, and balcony connected to their unit were related services as defined by D.C. Official Code § 42-3501.03(27). They also offered evidence to prove the reduction was substantial, and they provided the dates to support their claim. They testified to feeling as if they lived in a cave when their windows were boarded, described the impact of drilling on the roof directly above their unit, provided the exact date the housing providers removed the roof of their unit during a heat wave, and showed that the conditions in the apartment required them to seek lodging elsewhere.

In the instant case, the tenants complained of noise and dust when the housing providers did extensive work in connection with a capital improvement in the old wing of the housing accommodation, and said it lasted about a year. The tenants stated that there was extensive noise and dust that started sometime in March 2006, but they were not sure of the day, and ended sometime in June 2007. The tenants testified that their habitability, enjoyment, services and ability to live in the apartment were reduced for this entire time period. Instead of demonstrating that there was a related service or facility that was reduced or testifying about the impact of the noise and debris on them or their rental unit, the tenants attempted to introduce notes and emails from other tenants detailing their complaints about noise. The housing providers objected to many of these exhibits. The court denied their admission, because the tenants failed to lay a proper foundation for the exhibits, the exhibits were not signed, the dates of the complaints were not clear, and the tenants did not demonstrate the relevance of the exhibits to their claim.

Moreover, the tenants did not explain why the parties were not called as witnesses and presented for cross-examination.

The tenants did not meet the requirements of *H.G. Smithy Co. v. Arieno*, TP 23,329 (RHC Aug. 7, 1998), because they did not prove that the housing providers substantially reduced a related service or facility. The holding in *Washington Realty Co. v. Rowe*, TP 11,802 (RHC May 14, 1986) applies to the instant case and the tenants cannot prevail on the services and facilities claim raised in the petition.

IV. Findings of Fact

1. Kenneth Mazzer and Wendy Tiefenbacher moved into the Kennedy Warren Apartments located at 3133 Connecticut Avenue, NW, unit 115 in May 1996.
2. Klingle Corporation owns the Kennedy Warren Apartments located at 3133 Connecticut Avenue, NW.
3. B.F. Saul Company is the manager of the property located at 3133 Connecticut Avenue, NW.
4. The tenants received rent increase notices for the three rent increases that were effective on November 1, 2004, November 1, 2005, and May 1, 2006.
5. The tenants did not introduce the rent increase notices for the rent increases that were effective on November 1, 2004, November 1, 2005, or May 1, 2006.
6. The tenants did not offer oral or documentary evidence of the amount of the rent charged prior to the rent increase on November 1, 2004, November 1, 2005, or May 6, 2006.
7. The tenants did not introduce evidence of the amount of the rent increase on November 1, 2004, or the amount of the rent November 1, 2005.
8. The tenants did not present oral or documentary evidence of the duration of services or facilities that were purportedly reduced or eliminated.
9. The tenants did not claim the housing accommodation was not properly registered when they filed the tenant petition.

10. The tenants did not allege a permanent elimination of services and facilities when they filed the petition.
11. The tenants did not claim that the substantial housing code violations existed when the rent was increased November 1, 2004, November 1, 2005, or May 6, 2006.
12. The tenants did not offer oral or documentary evidence to show that any rent ceiling adjustments taken between June 19, 2006 and June 19, 2006 were improper.
13. Tanya Marhefka served as the Vice President of Residential Properties for B.F. Saul Company since June 2009. She was the Assistant Vice President and General Manager for the Klingle Company at the Kennedy Warren Apartments from November 2000 until June 2009.
14. The housing providers gave the tenants notice that Certificates of Election and Amended Registration Forms were available in the management office under the care and supervision of Tanya Marhefka. The notice was displayed in the laundry rooms and in or near the elevator.
15. The housing providers posted the Amended Registration form dated March 16, 2006, in the laundry room on March 17, 2006. RX 212 This is the same document as PX 149.
16. Certificate of Election of Adjustment of General Applicability date-stamped February 3, 2003 with an effective date of March 1, 2003 reflecting that the rent ceiling for unit 115, the tenants' unit, was \$1472. RX 202
17. The District of Columbia Department of Transportation was doing construction on the Klingle bridge just north of the housing accommodation in the fall of 2006 and it was an ongoing long project. They started work early in the morning and on Saturdays and Sundays.
18. Ms. Marhefka received noise complaints from residents of the building concerning the bridge construction and asked tenants to contact DDOT.
19. Ms. Marhefka was not aware of any citations or communications from the Government of the District of Columbia concerning noise caused by construction at the Kennedy Warren.
20. The related services and facilities provided in connection with the tenants' rent were a cooking range, refrigerator, elevator, exterminator, coin operated washer and dryer. There were no other related services and facilities.
21. There was no restaurant in the Kennedy Warren when Ms. Marhefka began working there in 2000.

22. The south lounge is still located in the housing accommodation.
23. The north lounge is part of the KW Club which is a private piano bar for residents.
24. Public storage is an open area where the tenants can store boxes and trucks. It is locked but it is one large open area. The public storage is free for tenants.
25. Private storage was in individual areas that the tenants could rent for a fee.
26. On August 21, 2006, the housing providers sent Tiefenbacher and Mazzer a notice to quit the private storage unit / men's lounge on the first floor of the housing accommodation that the tenants rented for a fee.
27. Daily trash removal and onsite laundry services and these services were never eliminated.
28. There is a fitness facility at the housing accommodation, but the tenants have always had to pay a fee and sign an agreement to use the fitness facility. Wendy Tiefenbacher and Kenneth Mazzer paid these fees to use the fitness facility.
29. Storage facilities were not included in the rent.

V. Conclusions of Law

A. Jurisdiction

This matter is governed by the Rental Housing Act of 1985, D.C. Official Code §§ 42-3501.01 – 3509.07, the District of Columbia Administrative Procedure Act (“DCAPA”), D.C. Official Code §§ 2-501 – 510, the District of Columbia Municipal Regulations (“DCMR”), 1 DCMR 2800 – 2899, 1 DCMR 2920 – 2941, and 14 DCMR 4100 – 4399. On October 1, 2006, the Office of Administrative Hearings (“OAH”) assumed the Rent Administrator’s jurisdiction to hear rental housing cases pursuant to the Office of Administrative Hearings Establishment Act, D.C. Official Code § 2-1831.03(b-1)(1).

B. Burden of Proof

When the tenants filed the petition, they alleged that the housing providers failed to file the proper rent increase forms, filed improper rent ceilings, substantially reduced services and/or facilities provided in connection with the rental unit and several adjustments to rent ceiling and rent charged were improperly taken or implemented. The tenants bear the burden of affirmatively proving the facts to support their claims. *Allen v. D.C. Rental Hous. Comm'n*, 538 A.2d 752, 754 (D.C. 1988). In this rental housing case, the tenants had the burden of establishing each fact essential to the order by a preponderance of the evidence. 1 DCMR 2932.1. *See also* D.C. Official Code 2-509(b). "This burden cannot be sustained simply by showing a lack of substantial evidence to support a contrary finding." *Allen*, 538 A.2d at 754.

The tenants failed to meet their burden of proof on any claims raised in the tenant petition.

VI. Order

Therefore, it is, this 30th day of September, 2010:

ORDERED, that Tenants/Petitioners' claims that Housing Providers/Respondents failed to file the proper rent increase forms, filed improper rent ceilings, and substantially reduced services and/or facilities provided in connection with the rental unit are **DISMISSED WITH PREJUDICE**; and it is further

ORDERED, that either party may move for reconsideration of this Final Order within ten days under 1 DCMR 2937; and it is further

ORDERED, that reconsideration and appeal rights of any party aggrieved by this Order are stated below.

Jennifer M. Long
Principal Administrative Law Judge

MOTION FOR RECONSIDERATION

Any party served with a final order may file a motion for reconsideration within ten (10) days of service of the final order in accordance with 1 DCMR 2937. When the final order is served by mail, five (5) days are added to the 10 day period in accordance with 1 DCMR 2811.5.

A motion for reconsideration shall be granted only if there has been an intervening change in the law; if new evidence has been discovered that previously was not reasonably available to the party seeking reconsideration; if there is a clear error of law in the final order; if the final order contains typographical, numerical, or technical errors; or if a party shows that there was a good reason for not attending the hearing.

The Administrative Law Judge has thirty (30) days to decide a motion for reconsideration. If a timely motion for reconsideration of a final order is filed, the time to appeal shall not begin to run until the motion for reconsideration is decided or denied by operation of law. If the Judge has not ruled on the motion for reconsideration and 30 days have passed, the motion is automatically denied and the 10 day period for filing an appeal to the Rental Housing Commission begins to run.

APPEAL RIGHTS

Pursuant to D.C. Official Code §§ 2-1831.16(b) and 42-3502.16(h), any party aggrieved by a Final Order issued by the Office of Administrative Hearings may appeal the Final Order to the District of Columbia Rental Housing Commission within ten (10) business days after service of the final order, in accordance with the Commission's rule, 14 DCMR 3802. If the Final Order is served on the parties by mail, an additional three (3) days shall be allowed, in accordance with 14 DCMR 3802.2.

Additional important information about appeals to the Rental Housing Commission may be found in the Commission's rules, 14 DCMR 3800 et seq., or you may contact the Commission at the following address:

District of Columbia Rental Housing Commission
One Judiciary Square
441 4th Street, NW
Suite 1140 North
Washington, DC 20001
(202) 442-8949

**Certificate of Service:
Sent by First-Class Mail (Postage
Prepaid) to:**

Kenneth A. Mazzer and
Wendy Tiefenbacher
3133 Connecticut Avenue, N.W.
Unit 115
Washington, DC 20008

Richard W. Luchs, Esq.
Debra F. Leege, Esq.
Greenstein DeLorme & Luchs, P.C.
1620 L Street, N.W.
Suite 900
Washington, DC 20036

I hereby certify that on _____,
2010 this document was caused to be served
upon the above-named parties at the
addresses and by the means stated.

Clerk / Deputy Clerk