DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION

RH-TP-21-31,463

In re: 1758 Swann St., NW

Ward Two (2)

SAMANTHA DE SILVA
Housing Provider/Appellant

v.

HOLLY MARTYN
Tenant/Appellee

DECISION AND ORDER

April 17, 2024

CARMICHAEL, ADMINISTRATIVE JUDGE: This case is on appeal to the Rental Housing Commission ("Commission") from a final order issued by the Office of Administrative Hearings ("OAH") based on a petition filed in the Rental Accommodations Division ("RAD") of the Department of Housing and Community Development ("DHCD").[1] 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 (2001), the District of Columbia Administrative Procedure Act ("DCAPA"), D.C. Official Code §§ 2-501-510 (2001), and the District of Columbia Municipal Regulations

[1] OAH assumed jurisdiction over tenant petitions from the Department of Consumer and Regulatory Affairs ("DCRA"), Rental Accommodations and Conversion Division ("RACD") pursuant to the Office of Administrative Hearings Establishment Act, D.C. Law 14-76, D.C. Official Code § 2-1831.03(b-1)(1) (2007 Repl.). The functions and duties of RACD in DCRA were transferred to DHCD by § 2003 the Fiscal Year 2008 Budget Support Act of 2007, D.C. Law 17-20, D.C. Official Code § 42-3502.04b (2010 Repl.)).

("DCMR"), 1 DCMR §§ 2800-2899 (2016), 1 DCMR §§ 2920-2941 (2016), and 14 DCMR §§ 3800-4399 (2004 & 2021),[2] govern these proceedings.

I. PROCEDURAL HISTORY

This matter arises from a tenant petition filed by tenant/petitioner/appellee Holy Martyn ("Tenant" or "Ms. Martyn") on December 1, 2021. The petition claimed that housing provider/respondent/appellant Samantha De Silva ("Housing Provider") had failed to register the Tenant's rental unit, unlawfully reduced related services or facilities, and unlawfully raised the Tenant's rent. R. at Tab 21 ("Tenant Petition"). An evidentiary hearing was held on March 4 and 14, 2022 before Administrative Law Judge Vytas Vergeer ("ALJ"), who then issued a final order on August 3, 2022. R. at Tab 7 ("Final Order"). The ALJ made 66 findings of facts, which the Commission incorporates herein. *Id.* at 2-11. The ALJ concluded the rental unit was not properly registered until at least December 17, 2021, in violation of the Act. *Id.* at 15. The ALJ also concluded that the Housing Provider illegally increased the rent for the property when Ms. Martyn's tenancy began. *Id.* at 16. Although the ALJ did not impose fines for either violation, he awarded the Tenant a total of $12,053.27 in rent refunds and rolled the rent for the unit back to $5,895 per month until and unless Housing Provider completed all required repairs and implemented a legal rent increase. *Id.* at 32-33.

On August 15, 2022, Tenant filed a timely motion "pursuant to [Levy v. D.C. Rental Hous. Comm'n, 124 A.3d 684, 692 (D.C. 2015),] and OAH Rule 2828.5(e) requesting that the

[2] On December 31, 2021, new rules took effect to amend the applicable chapters of Title 14 of the DCMR. Pursuant to 14 DCMR § 3800.10 (2021), the Commission applies the prior rules to the facts of this case and the amended rules to its procedures on appeal.

[OAH] award damages for overpaid rent and reduction in services and facilities that have accrued since the close of the evidentiary hearing." R. at Tab 6 ("Motion for Reconsideration") at 2. The Tenant captioned that motion as a "motion to reconsider" the Final Order, in accordance with OAH Rule 2828, and we use that same term here. The Housing Provider filed an opposition to the Motion for Reconsideration on August 26, 2022, R. at Tab 5 ("Opposition to Reconsideration"), and, on September 30, 2022, the ALJ granted the motion in part and denied it in part. R. at Tab 1 ("Order on Additional Damages"). The ALJ granted all uncontested issues and awarded an additional $2,663.02 in damages through August 3, 2022, rolled the rent back for May 2022 to $5945, for June 2022 to $5995 and ordered that the rent remain rolled back to $6000 until the property is properly registered, contemporaneous notice of registration is given to Tenant and a proper rent increase is implemented. Order on Additional Damages at 6.

On October 14, 2022, the Housing Provider filed a notice of appeal with the Commission ("Notice of Appeal"), raising the following issues:

1. The OAH erred as a matter of law in concluding that [the Housing Provider] implemented an "illegal" rent increase.

2. The OAH erred as a matter of law in concluding that [the Housing Provider failed to properly notify [the Tenant] of the December 17, 2021 registration of the property.

Housing Provider's Notice of Appeal at 1 & 4.

After denying the Tenant's motion to dismiss the Notice of Appeal as untimely, on April 19, 2023, the Commission issued a scheduling order, setting deadlines for the parties to file briefs and setting a date for a hearing. The Housing Provider filed her brief on May 19, 2023 ("Housing Provider's Brief"), and the Tenant filed a responsive brief on June 20, 2023 ("Tenant's Brief"). RHC held a hearing on July 18, 2023.

II. ISSUES ON APPEAL

1. Whether the OAH erred as a matter of law in concluding that the Housing Provider implemented an illegal rent increase

2. Whether the OAH erred as a matter of law in concluding that the Housing Provider failed to properly notify the Tenant of the December 17, 2021 registration of the property

III. STANDARD OF REVIEW

The Commission's standard of review is found at 14 DCMR § 3807.1 (2021) and provides as follows:

> The Commission shall reverse a final order of the Rent Administrator or the [OAH] that the Commission finds to be arbitrary, capricious, an abuse of discretion, not in accordance with the provisions of the Act, or that contains findings of fact unsupported by substantial evidence on the record of the proceedings before the Rent Administrator or [OAH].

The Commission will uphold an ALJ's findings of fact so long as there is substantial evidence on the record to support them. *See* Fort Chaplin Park Assocs. v. D.C. Rental Hous. Comm'n, 649 A.2d 1076, 1079 n.10 (D.C. 1994) (defining "substantial evidence" as "such relevant evidence as a reasonable mind might accept as able to support a conclusion"). The Commission's role is not to make credibility determinations or weigh competing evidence, only to determine whether substantial evidence supported the ALJ's findings. "[T]he relevant inquiry is whether the [ALJ's] decision was supported by substantial evidence, not whether an alternative decision might also have been supported by substantial evidence." Gary v. D.C. Dep't of Emp't. Servs., 723 A.2d 1205, 1209 (D.C. 1998) (quoting McEvily v. D.C. Dep't of Emp't. Servs., 500 A.2d 1022, 1024 n.3 (D.C. 1985)); *see* Notsch v. Carmel Partners, LLC, RH-TP-06-28,690 (RHC May 16, 2014) (explaining that where an ALJ's findings are supported by substantial evidence, the findings will not be overturned even if substantial evidence exists to the contrary).

The Commission will, however, review questions of law raised regarding an ALJ's interpretation of the Act de novo. United Dominion Mgmt. Co. v. District of Columbia Rental Hous. Comm'n, 101 A.3d 426, 430-31 (D.C. 2014). "We review mixed questions of law and fact under our usual deferential standard of review for factual findings and apply de novo review to the ultimate legal conclusions based on those facts." C.R. Calderon Construction, Inc. v. Grunley Construction Co., 257 A.3d 1046, 1051 (D.C. 2021).

IV. DISCUSSION

1. Whether the OAH erred as a matter of law in concluding that the Housing Provider implemented an illegal rent increase

The Act prohibits rent increases for unregistered rental units, and it is undisputed on appeal that the Tenant's unit was not properly registered when the Tenant moved in on November 1, 2020. The question presented by this case is whether the Tenant's initial, $6,500 monthly rent constituted a rent increase for purposes of the Act, based on the Housing Provider's testimony that the last time she had rented out the unit, the rent charged had been (at most) $6,000 until sometime in 2017 when the prior tenant moved out.

There is no dispute as to the relevant facts. The housing accommodation is a single-family row house consisting of two rental units. Final Order at 2. The Housing Provider has rented sections of the house for approximately twenty years. At the time the tenant petition was filed, the Housing Provider was renting the bottom part of the house ("English basement") to one tenant and the upper part of the home ("upper rental unit") to Ms. Martyn. The Tenant entered a two-year lease for the upper rental unit that began on November 1, 2020, for a monthly rent of $6,500. At the time the lease was signed, the Housing Provider did not provide the Tenant with any information to indicate whether the rental unit was subject to or exempt from rent control. While the Housing Provider held an active Basic Business License for the entire rental property

as a "two-family dwelling," only the English basement was registered with RAD as a rental property. It was not until December 21, 2021, one year after tenant entered her lease, that Housing Provider registered the upper rental unit with the RAD.

During the OAH hearing, Housing Provider testified that she had previously rented the upper rental unit sometime in 2016 for an amount of rent of $5500 or $6000. *See* Tr. at 229:9-20 ("I can't remember but it was around the same amount. It was either 5,000 or 6,000.") (OAH March 14, 2022); R. at Tab 12. Between 2017 and 2020, the Housing Provider resided in the upper rental unit. The ALJ held that, per 14 DCMR § 4109.9(b) (2004), the Housing Provider could not increase the rent from the $6,000 per month that she had charged to her previous tenant to the $6,500 that she charged Ms. Martyn. Final Order at 17-19.

The District's rent stabilization program restricts rent increases unless certain conditions are met. D.C. Official Code § 42-3502.08(a). To monitor the rents charged for covered properties, the program requires housing providers to register their rental units. D.C. Official Code § 42-3502.05; *see* Revithes v. D.C. Rental Hous. Comm'n, 536 A.2d 1007, 1009 (D.C. 1987). To ensure compliance with the program, the Act prohibits increasing rent when a property is not properly registered. D.C. Official Code § 42-3502.08(a)(1)(B). While some housing providers may be exempt from rent stabilization due to, among other reasons, their status as a small landlord (a natural person who owns four or fewer rental units), they are still required to register the rental unit and file a registration/claim of exemption form ("RAD Form 1") with RAD. D.C. Official Code § 42-3502.05(a)(3)(C); 14 DCMR §§ 4101 & 4106 (2004); Levy, 126 A.3d at 686. Whether a housing provider is exempt or not, registration of the rental unit is a necessary requirement before a rent increase may be taken. *Id.* The regulations are clear that "[a]ny housing provider who has failed to satisfy the registration requirements of the

Act . . . shall not be eligible for and shall not take or implement . . . [a]ny increase in rent charged for a rental unit which is not properly registered[.]" 14 DCMR § 4109.9 (2004).

While the Housing Provider concedes that she failed to properly register the upper rental unit and claim an exemption prior to Ms. Martyn's tenancy, the Housing Provider contends that there was no illegal rent increase because she "has not sought to increase the rent at any time during the term of Ms. Martyn's lease." Notice of Appeal at 2. The Housing Provider argues that the regulation "contains no language that provides that the rent charged to a previous tenant forms a cap or limit on what the housing provider may charge to the next tenant[.]" *Id.* The Housing Provider also asserts that, in cases where housing providers charged rent increases when their properties were not properly registered, "judges only have imposed rent refunds for rent increases wrongfully demanded during a tenancy." Notice of Appeal at 3. In other words, the Housing Provider asks the Commission to interpret 14 DCMR § 4101.9(b) (2004) as disallowing rent increases only when an increase is taken during a tenancy, not when there is, as there was in this case, a change in rent between two different tenants.

The Housing Provider's interpretation of the regulation is inconsistent with the text of the regulations and intent of the Act. The foundation of the Act is the registration requirement, which the Housing Provider failed to abide by until December 2021, a year after the Tenant leased the rental unit. The regulation does not speak to rents charged to a particular tenant because the intent of the law is to regulate the rent charged for a particular housing accommodation or rental unit. If the Commission were to adopt the Housing Provider's interpretation, the registration requirement and the restrictions imposed by 14 DCMR § 4109.9(b) could be circumvented without consequence, because a change in tenancy would effectively allow unlimited rent increases for unregistered properties.

The Housing Provider's arguments also fail when viewed against existing case law. Commission precedent has firmly established that, for rent stabilized units, tenants may challenge rent increases implemented prior to or at the start of their tenancy. *See, e.g.,* Cambridge House v. Nimri, RH-TP-17-30,999 (RHC June 7, 2022);[3] Burkhardt v. B.F. Saul Co., RH-TP-06-28,708 (RHC Sept. 25, 2014) at 68-70.[4] The fact that a tenant agreed, by signing a lease, to pay a certain amount of rent does not exempt the housing provider from liability for charging more than was allowed by law. The Act exists, among other things to "prevent the erosion of moderately priced rental housing," D.C. Official Code § 42-3501.02(5), and one tenant's willingness and ability to pay more than the law allows does not absolve the Housing Provider of responsibility to register or, failing that, to not increase the unit's rent. The Housing Provider cites a number of cases in which rent refunds have been ordered based on increases taken during a tenancy: Levy v. D.C. Rental Housing Comm'n, 126 A.3d 684 (D.C. 2015) (affirming rent refund decision by Commission for an illegal rent increases imposed by landlord during tenancy); Martins v. Gaskins, 2011-DHCD-TP-30,036, 2012 WL 7005841 (OAH Apr. 24, 2012)[5] (ordering a rent rollback for rent increase imposed during tenancy while housing unit was unregistered); Hegwood v. Davis, RH-TP-09-29,499, 2010 WL 881363 (OAH Jan. 27, 2010)[6] (finding that housing provider's three rent increases during tenancy violated Act because property was

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[3] In Nimri, the Commission remanded for OAH to rule on whether the "discovery rule" applied to a challenge to tenants' initial rent that exceeded the last-filed rent charged for a unit and no vacancy adjustment had been claimed, notwithstanding that the three-year statute of limitations had lapsed since the tenants moved in.

[4] In Burkhardt, the Commission held that a vacancy adjustment was unlawful because it was implemented before the expiration of the then-applicable 180-day restriction on rent adjustments. *See also* Burkhardt v. Klingle Corp., RH-TP-06-28,708, RH-TP-12-30,172, & RH-TP-15-30,616 (RHC June 30, 2022) at 8-13 (holding remedy for violation was refund of excess rent until the expiration of 180-day waiting period, akin to reformation of initial lease signed by tenant).

[5] 2012 D.C. Off. Adj. Hear. LEXIS 71. We note that OAH decisions are not precedential. *See* Fineman v. Smith Prop. Holdings Van Ness, LP, RH-TP-16-30,842 (RHC Jan. 18, 2018) at 43 n.20.

[6] 2010 D.C. Off. Adj. Hear. LEXIS 181.

unregistered, and rolling rent back to rent in effect when tenant assumed lease); Reed v. Tillman, RH-TP-08-29,136, 2008 WL 6759993 (OAH Dec. 15, 2008)[7] (finding illegal housing provider's two rent increases charged to tenant during tenancy while housing unit unregistered). However, the Commission has never ruled that an illegal rent increase only occurs when the increase is charged to the same tenant at different points during their tenancy.

To the contrary, long-standing precedent supports the ALJ's holding that a housing provider may not increase the rent for an unregistered housing accommodation even when the increase occurs prior to a tenant leasing the unit. *See* Temple v. D.C. Rental Hous. Comm'n, 536 A.2d 1024, 1031). In Temple, the housing provider purchased a building that contained five units but only had a Certificate of Occupancy as a two-family flat. For approximately 20 years, the housing provider rented at least four of the five units despite the fact that he did not posses the appropriate Certificate of Occupancy. Nor did the housing provider properly register the housing accommodation with the RACD even after rent control went into effect in the District. The RACD Hearing Examiner found in favor of two separate tenants of the housing accommodation who claimed that the amount of rent charged at the time of their initial lease agreement was higher than the legally allowed rent ceiling for their units. The Hearing Examiner ordered the housing provider to pay each tenant a rent refund to a rent amount determined by the applicable rent control regulations at the time. The Commission and then the DCCA, affirmed the Hearing Examiner's determination with respect to the rent increases. *Id.* at 1034 ("Since the statute is unequivocal in its proscription of any increases above the base rent if a building is not properly registered . . . the agency's decision to set the 'registration day' rent ceiling of all Temple's units as equal to the base rent in 1973 fully comports with the Rental Housing laws.").

[7] 2008 D.C. Off. Adj. Hear. LEXIS 94.

During the Commission hearing in this case, the Housing Provider argued that even if she was prohibited from instituting a rent increase between tenants, that because her unit was vacant for three years and she had lived in the property between tenants that the Commission should apply the vacancy adjustment provision found in D.C. Official Code § 42-3502.13 that allows for a rent increase of ten percent. We disagree. First, the prohibition on rent increases for unregistered units applies "[n]otwithstanding any provision of this Act[.]" D.C. Official Code § 42-3502.08(a)(1). Second, in order to implement a legal vacancy rent increase, a housing provider must, among other things, "disclose to the tenant on a form published by the Rent Administrator: (1) the rent charged for the rental unit at the commencement of the tenancy; and (2) the amount of the increases in the rent charged for the rental unit during the preceding 3 years, including the basis for each adjustment," and file the same with the Rent Administrator. D.C. Official Code §§ 42-3502.05(g)(1)(B) & 42-3502.13(d). There is nothing on this record to indicate that the Housing Provider served or filed any required notices of rent adjustment or any documents related to rent stabilization for the upper rental unit until December 2021, a year after the Tenant's lease began. The record clearly indicates that the Housing Provider did not register the upper rental unit, and thus, as discussed above, she could not legally increase the rent for the housing accommodation in any amount, pursuant to 14 DCMR § 4101.9 (2004).

Accordingly, the Final Order is affirmed on this issue.

2. Whether the OAH erred as a matter of law in concluding that the Housing Provider failed to properly notify the Tenant of the December 17, 2021, registration of the property

The record indicates and there is no dispute that the Housing Provider filed a completed RAD Form 1 with the Rent Administrator on December 17, 2021. In her Notice of Appeal, the Housing Provider admits that this registration form was not provided to the tenant until January

4, 2022 via an email between the parties' attorneys. However, the Housing Provider seeks to reverse the Final Order and the Order on Additional Damages to the extent that they concluded that the $6,500 rent charged to the Tenant was impermissible even after January 4, 2022. In the Final Order, the ALJ found the $6,500 to be an illegal rent increase and ordered a rent refund based on a proper rent of $6,000. In the Order on Additional Damages, the ALJ awarded a further refund of the $500 for the months between April and August 2022, based on the undisputed fact that the Tenant continued to occupay the upper rental unit and was still charged $6,500 in rent. The Housing Provider argues on appeal that the ALJ erred by awarding any refund of the rent increase after January 4, 2022, asserting that the claimed exemption took effect on that date. Based on the Housing Provider's own assertions regarding the notice date, the Commission finds that the ALJ did not err when he concluded that the rental unit was not exempt during the relevant time period.

The burden of proving an exemption from rent stabilization rests with the Housing Provider. Goodman v. D.C. Rental Hous. Comm'n, 573 A.2d 1293, 1297 (D.C. 1990). Under the rules in effect on December 17, 2021, in order to fully comply with the Act's registration requirements, a housing provider was required, "prior to or simultaneously with the filing [of RAD Form 1], post a true copy of the [form] in a conspicuous place at the rental unit or housing accommodation to which it applies, or [to] mail a true copy to each tenant of the rental unit or housing accommodation." 14 DCMR § 4101.6 (2004).[8] Failure to do so rendered a claim of exemption invalid, which could only be remedied by filing a new RAD Form 1 and timely giving

[8] At that time, the Commission had published a final rulemaking with an effective date of December 31, 2021. 68 D.C. Reg. 012634, 012639 (Dec. 3, 2021); 14 DCMR § 3800.10(a) (2021). Under the amended rules, a housing provider is required to post or serve the copy of RAD Form 1 "within fifteen (15) days of the issuance of a registration or exemption number, as applicable, by [RAD], provide a true copy of the form bearing the registration or exemption number[.]" 14 DCMR § 4101.6 (2021).

a tenant notice. Levy, 126 A.3d at 689; *see* Sterman v. Farrah, RH-TP-18-31,049 & RH-TP-18-31,140 (RHC Nov. 23, 2021) at 10-11 ("Section 4101.9 prohibits rent increases for units where the 'housing provider . . . has failed to satisfy the registration requirements,' but it does not prohibit a housing provider from eventually satisfying those requirements."); Pearson v. Brown, RH-TP-15-30,671 & RH-TP-16-30,767 (RHC Dec. 11, 2020) at 99-100 ("a rental unit may be exempt from rent stabilization if the housing provider files and properly serves a valid [RAD Form 1] in accordance with 14 DCMR § 4101.6, notwithstanding a prior failure to give notice of the claimed exemption.").

When the evidentiary hearing was held over two days in March 2022, the Housing Provider introduced a date stamped copy of the RAD Form 1 bearing an exemption number issued by RAD on December 17, 2021. RX 233. No evidence was introduced regarding the service of that document on the Tenant. The January 4, 2022 email was proffered only as an exhibit to the Housing Provider's opposition to the Tenant's Motion for Reconsideration. The ALJ declined to consider the exhibit, reasoning that "[a] party cannot later introduce evidence that it failed to present at the hearing." Order on Additional Damages at 4 n.1.

We are satisfied that the ALJ properly declined to consider the January 4, 2022 email as new evidence, to the extent that the Housing Provider disputed the $500 rent refund through the close of the evidentiary record. *See* Harris v. D.C. Rental Hous. Comm'n, 505 A.2d 66, 69 (D.C. 1986) ("Ordinarily, the record closes upon termination of the hearing below. . . . New evidence submitted post-hearing may not be admitted into the record and, therefore, may not provide a basis upon which an agency may issue a decision."); *cf.* OAH Rule 2828.5(e) (new evidence may form basis for reconsideration only if it "previously was not reasonably available to the party filing the motion"). It is a closer call to the extent the Tenant's Motion for Reconsideration

sought additional damages after the close of evidence. Because the Tenant submitted new evidence (or, more specifically, proffered that it was an undisputed fact) that she continued to occupy the unit and to be charged $6,500 per month after March 2022, the Housing Provider should have been given the opportunity to put on evidence that she was exempt from rent stabilization in that time frame. *See* Perkins v. D.C. Dep't of Empl. Servs., 482 A.2d 410, 402 (D.C. 1984) (DCAPA requires agencies to make findings on each contested issue); Parreco v. D.C. Rental Hous. Comm'n, 885 A.2d 327, 334 (D.C. 2005) (due process requires opportunity to prepare defense). The Housing Provider's Opposition to Reconsideration conceded certain facts – including the Tenant's continued occupancy of the unit and payment of rent – but clearly contested the award of a rent refund on legal grounds – that the unit was exempt. *See* Opposition to Reconsideration at 3-4. The ALJ disregarded the January 4, 2022 email simply because it was submitted after the evidentiary hearing, *see* Order on Additional Damages at 4 n.1, but in doing so the ALJ failed to recognize that the email could have been relevant evidence of a contested issue – that is, whether the $500 rent refund continued past the close of the record.

We are satisfied, however, that the ALJ's disregard of the January 4, 2022 email is ultimately harmless. *See* United Dominion Mgmt. v. D.C. Rental Hous. Comm'n, 101 A.3d 426, 430 (D.C. 2014) (reversal and remand not required where same ultimate finding would be made). The Housing Provider made no suggestion before OAH or on appeal to the Commission that she provided the Tenant with a copy of RAD Form 1 "prior to or simultaneously with" filing it with RAD on December 17, 2021.[9] 14 DCMR § 4101.6 (2004). Nor did the Housing Provider

[9] Although 14 DCMR § 4101.6 was amended effective December 31, 2021, we judge the Housing Provider's conduct under the old rule in accordance with 14 DCMR § 3800.10 (2021), which provides, in relevant part:

> 3800.10 Amendments to the rules contained in Chapters 38-44 of this title shall be effective as follows:

submit any evidence that she filed or served any other copy of RAD Form 1 after the close of the March 2022 evidentiary hearing. Because there is no record evidence or proffer of evidence by the Housing Provider that would suffice to establish an exemption from rent stabilization and cut off the Tenant's entitlement to a rent refund at any point, we affirm the full refund that the ALJ ordered.

> (a) The final rulemaking published on December 3, 2021 to amend Chapters 38-44 of this title shall be effective on December 31, 2021 ("Effective Date"); . . .
>
> (f) All conduct regulated or acts required by Chapters 41-44 of this title shall be subject to the rules in effect under those chapters on the date the conduct occurred or act was required, without regard to the date on which a petition or other proceeding is filed or initiated or a decision or order is issued. No claim of, cause of action against, or liability for a violation of the rules prior to the Effective Date shall be extinguished by the amendment of these rules. Failure to comply with those chapters after the Effective Date shall not be excused by reason that a course of conduct began or that a condition existed prior to the Effective Date.

Even if we were to apply the amended rule, in light of the Housing Provider having sent the RAD Form 1 to the Tenant after the rule's Effective Date, the January 4, 2022 email does not meet the new requirements. The amended rule requires posting on the premises unless: (a) the housing accommodation is only a single unit, or (b) the premises have "no suitable location" for conspicuous posting. 14 DCMR § 4101.6 (2021). The amended rule implements the statutory requirement that:

> Each housing provider shall keep a duplicate of the registration statement posted in a public place on the premises of the housing accommodation to which the registration statement applies. Each housing provider may, instead of posting <u>in each housing accommodation comprised of a single rental unit,</u> mail to each tenant of the housing accommodation a duplicate of the registration statement.

D.C. Official Code § 42-3502.05(h)(2) (emphasis added). It is undisputed that the housing accommodation in this case is comprised of two units. The Housing Provider (having the burden of proof to claim an exemption) makes no suggestion that the premises have no suitable "public place" to "conspicuously" post RAD Form 1, and emailing a copy to the Tenant is therefore insufficient.

We also note that, under the amended rules, posting or service must be completed within 15 days of receiving a registration or exemption number from RAD, which would have been January 3, 2022. 14 DCMR § 4101.6 (2021). Finally, we note that amended 14 DCMR § 4101.8 (2021), replacing former § 4101.9 (2004), imposes a 90-day "cooling off" period for newly exempted units after a housing provider properly registers before rent may be increased. Because none of this has been raised by the Housing Provider, we have no opportunity to opine on whether, under the amended rules, a new RAD Form 1 must be filed in order for the rental unit to be exempt or whether a notice of rent increase would be required after the exemption to charge the Tenant $6,500 (both of which the ALJ appears to have assumed in the Order on Additional Damages).

V. CONCLUSION

For the foregoing reasons, the Commission affirms the Final Order and Order on Additional Damages. Substantial evidence in the record shows that the Housing Provider increased the rent for an unregistered rental unit, and the Act and implementing regulations do not provide any exception to that prohibition based on a vacancy occurring. In the particular circumstances of this case, the Housing Provider has not shown any reversable error in the ALJ's failure to consider evidence, submitted after the close of the evidentiary record, that the Housing Provider served RAD Form 1 on the Tenant over two weeks after filing it.

SO ORDERED.

ADAM HUNTER, ACTING CHIEF ADMINISTRATIVE JUDGE

TOYA CARMICHAEL, ADMINISTRATIVE JUDGE

MOTIONS FOR RECONSIDERATION

Pursuant to 14 DCMR § 3823 (2021), final decisions of the Commission are subject to reconsideration or modification. The Commission's rule, 14 DCMR § 3823.1 (2021), provides that "[a]ny party adversely affected by a final decision of the Commission . . . may file a motion for reconsideration or modification with the Commission within fifteen (15) days of service of the decision or order[.]"

JUDICIAL REVIEW

Pursuant to D.C. Official Code § 42-3502.19 (2012 Repl.), "[a]ny person or class of persons 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 **DECISION AND ORDER** in RH-TP-21-31,463 was electronically served on this **17th** day of **April, 2024,** to:

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