

**DISTRICT OF COLUMBIA
OFFICE OF ADMINISTRATIVE HEARINGS**

Cover Sheet for Electronic Filing

I am filing the attached papers at the Office of Administrative Hearings.

Motion for Partial Summary Judgment. This motion is a result of important new information obtained as the result of a Freedom of Information Act request.

1. Check one of the boxes below.

The case number is: 2016 DHCD TP 30,855
Harry Gural v. Equity Residential

This is a new case, and a case number has not yet been assigned.

2. Briefly describe the paper that you are filing:

Motion for Partial Summary Judgment

3. My name, mailing address, telephone number, and e-mail address are:

Name: Harry Gural
Mailing Address: 3003 Van Ness St NW #S-707
City, State, Zip: Washington, DC 20008

Telephone: (202) 527-2280
E-mail address: harygural@gmail.com
Representing: *pro se*

I agree to receive documents from the court at my email address. **Yes**

4. You should complete this form, save it to your computer, and then attach it to an e-mail, along with the papers you are filing. The e-mail address for filing papers at OAH is oah.filing@dc.gov. Papers sent to any other e-mail address will **not** be accepted for filing.

I sent a copy of the attached papers to all other parties or their representatives as listed below.

Person to Whom the Papers Were Sent:
Debra F. Leege
Greenstein, Delorme and Luchs
1620 L Street, NW Suite 900
Washington, DC 20036

Method of sending:

Mail Commercial Carrier
 Fax (Give Fax number) _____
 Hand delivery
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Date the papers were sent: 2/3/2017

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**DISTRICT OF COLUMBIA
OFFICE OF ADMINISTRATIVE HEARINGS**

<p>HARRY GURAL Tenant/Petitioner,</p> <p style="text-align:center">v.</p> <p>EQUITY RESIDENTIAL MANAGEMENT Housing Provider/Respondent.</p>	<p>Case No.: 2016 DHCD TP 30,855</p> <p>3003 Van Ness Street, N.W. Apt. S-707 Administrative Law Judge: M. Colleen Currie</p>
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TENANT’S MOTION FOR PARTIAL SUMMARY JUDGMENT

Harry Gural (“Tenant”) moves for partial summary judgment of his Tenant Petition against Equity Residential (“Housing Provider”) on the issue of rent filings and a rent increase. He plans to submit a second motion regarding the separate issue of retaliation.

The Tenant files this motion because he received the results of a Freedom of Information Act (“FOIA”) request information that significantly impacts his petition and shows a broad pattern of behavior on the part of the Housing Provider. The FOIA request to the Rental Accommodations Division (“RAD”) was made on November 17, 2016. The first files were received on January 13, 2017 – 22 days overdue and on the evening of the same day as the Tenant’s hearing in the Office of Administrative Hearings.

The documents show that the Housing Provider has systematically filed very high and implausible “rents” with the Rental Accommodations Division, creating de-facto rent ceilings and having the effect of circumventing the Rent Stabilization Statute.

In light of these very important developments, the Petitioner requests that the Court accept his Motion for Partial Summary Judgment.

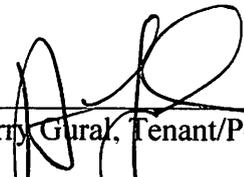
The Tenant moves to require Equity Residential (“Housing Provider”) to rescind its demand of \$2,192 in monthly rent for the Tenant’s occupancy of unit S-707, and to accept the amount currently paid by the Tenant (\$1,895 plus \$100 parking) as payment in full. The Tenant

also moves for treble damages of the difference between the amount demanded and the amount currently paid each month (\$297) until there is a ruling in the Office of Administrative Hearings. He also moves for instruction to the Landlord and Tenant Branch of the DC Superior Court to release the funds that Tenant has paid as a result of a Protective Order.

The Tenant further moves for the Housing Provider to correct its false filings with the Rental Accommodations Division (“RAD”) and to provide other relief as requested.

In support thereof, the Tenant submits the attached Statement of Material Facts not in Dispute and Memorandum of Points and Authorities.

Respectfully submitted,



Harry Gural, Tenant/Petitioner
3003 Van Ness St, NW #S-707
Washington, DC 20008

March 3, 2017

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion for Partial Summary Judgment was served on this 3 day of March by first-class mail, postage pre-paid and by email upon:

Richard W. Luchs (D.C. Bar No. 243931)
Joshua M. Greenberg (D.C. Bar No. 489323)
Debra F. Leege (D.C. Bar No. 497380)
1620 L Street, N.W. Suite 900
Washington, DC 20036-5605

March 3, 2017



Harry Gural
Tenant/Petitioner, *pro se*
3003 Van Ness St, NW #S-707
Washington, DC 20008

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STATEMENT OF MATERIAL FACTS NOT IN DISPUTE

I. THE TENANT AND HOUSING PROVIDER

A. General background

1. Smith Property Holdings Van Ness L.P is the owner of the residential rental accommodation located at 3003 Van Ness Street, N.W. in Washington, D.C. ("Housing Accommodation"). Smith Property Holdings Van Ness L.P is a subsidiary of Equity Residential Corporation ("Housing Provider"). The property was transferred from Archstone Property Holdings LLC to Equity Residential Properties Operating Limited Partnership on February 27, 2013, which is owned by Equity Residential Corporation (EQR-NYSE). *See Exhibits B and C.*
2. Equity Residential Management, L.L.C. manages the Housing Accommodation.
3. Harry Gural ("Tenant") has occupied apartment S-707 since March 6, 2010.
4. The Tenant is president of the Van Ness South Tenants Association, which represents tenants residing at 3003 Van Ness. See Tenant affidavit, *Exhibit A.*
5. The Housing Provider demands a monthly rent of \$2,192 for the Tenant's occupancy of unit S-707 for the period beginning April 1, 2016 and ending March 31, 2017. *See Exhibit D.*

II. HOUSING PROVIDER'S FILINGS TO THE RENTAL ACCOMMODATIONS DIVISION

A. Rent Amounts Filed by the Housing Provider in 2015

1. The Housing Provider's Notice to Tenants of Adjustment in Rent Charged (Form RAD-8) dated January 15, 2015 lists the Tenant's "rent charged" as \$2,048 and the "new rent charged" as \$2,118. *See Exhibit E.*
2. The Certificate of Notice to RAD of Adjustments in Rent Charged (RAD-9) dated January 15, 2015 and filed with the Rental Accommodations Division ("RAD") lists the Tenant's "prior rent" as \$2,048 and his "new rent" as \$2,118. The form is signed by an agent of the Housing Provider under penalty of perjury. *See Exhibit F.*
3. The Wells Fargo bank statement of January 28, 2015 shows that on January 27 the Tenant paid \$1,870 to Equity Residential. The amount is listed as a recurring payment. The Wells Fargo bank statement of February 26, 2015, shows that on February 25 the Tenant paid \$1,870 to Equity Residential. The amount is listed as a recurring payment. *See both statements in Exhibit G.*

B. Rent Amounts Filed by the Housing Provider in 2016

1. The Housing Provider's Notice to Tenants of Adjustment in Rent Charged (RAD-8) dated January 15, 2016 lists the "rent charged" as \$2,118 and the "new rent charged" as \$2,192. *See Exhibit D.*
2. The Certificate of Notice to RAD of Adjustments in Rent Charged (RAD-9) dated January 16, 2016 lists the Tenant's "prior rent" as \$2,118 and his "new rent" as \$2,192. The form is signed by an agent of the Housing Provider under penalty of perjury. *See Exhibit H.*
3. The bank statement of January 28, 2016 shows that on December 28, 2015 and January 26, 2016 the Tenant paid \$1,930 to Equity Residential. The amounts are listed as a recurring payment. The bank statement of February 26, 2016, shows that on February 25 the Tenant paid \$1,930 to Equity Residential. The amount is listed as a recurring payment. *See both bank statements in Exhibit I.*

C. Other Details about the Rent Increase Forms (RAD-8)

1. The Housing Provider's Notice to Tenants of Adjustment in Rent Charged (RAD-8) forms dated January 15, 2015 and January 15, 2016 list as sender both Smith Property Holdings LP and the DC Department of Housing and Community Development, Rental Accommodations Division. There is no further clarification about which institution issued the document. *See Exhibit D and Exhibit E.*

D. Dates of rent filings and rent negotiations

1. General Manager Avis Duvall states in an affidavit signed October 21, 2016 that the Housing Provider filed a Certificate of Notice to RAD of Adjustment in Rent Charged on January 27, 2015. *See Exhibit J.* An email exchange between the Tenant and the General Manager shows that negotiations did not begin until over a week later on February 8th, 2015. *See Exhibit K.*
2. General Manager Avis Duvall states in the affidavit signed Oct. 21, 2016 that the Housing Provider filed a Certificate of Notice to RAD of Adjustment in Rent Charged on February 2, 2016. *See Exhibit J.* An email exchange between the Tenant and the General Manager shows that negotiations did not begin until over a month later on March 13, 2016. *See Exhibit L.*

III. LEASES AND LEGAL ACTION

A. The rental year beginning April 1, 2014

1. Tenant signed a lease on March 21, 2014 covering April 1, 2014 and March 31, 2015. The front page of the lease lists the monthly rent as \$2,148. In the margin, the Tenant handwrote "Total monthly cost -- \$1,770." *See Exhibit M.*

B. The rental year beginning April 1, 2015

1. Tenant did not sign a lease covering April 1, 2015 and March 31, 2016.
2. Between the period of April 1st, 2015 and April 1st, 2016, the Housing Provider did not file suit in the Landlord and Tenant Branch of the DC Superior Court. *See Tenant affidavit, Exhibit A.*

C. The rental year beginning April 1, 2016

1. On April 25th 2016, the Housing Provider filed a Verified Complaint for Possession of Real Property in the Landlord and Tenant Branch of the DC Superior Court. *See Exhibit N.*

IV. **FOIA RECORDS AND HOUSING PROVIDER'S FILING PRACTICES**

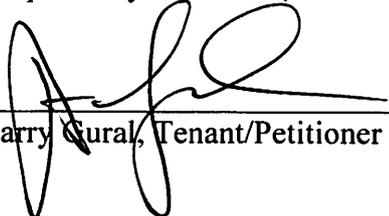
A. Results of the FOIA request to RAD

1. A Freedom of Information Act (FOIA) request was submitted to the Rental Accommodations Division by the Tenant on November 16, 2016 (case number 2017-FOIA-00710). It requests RAD-9 Forms submitted by the Housing Provider to the Rental Accommodations Division from 2006 until present. *See Exhibit O.*
2. The documents released as a result of the FOIA request include hundreds of pages of RAD-9 forms submitted by the Housing Provider to the Rental Accommodations Division between 2006 and 2016. *See Exhibits AA to EE.* RAD-9 forms submitted in 2016 (a sample year) reveal that well over three-quarters of the apartment prices submitted are over \$2,500 per month. *See Exhibit AA.*

B. Housing Provider's advertised rental prices

1. The Housing Provider's website on February 22, 2017, advertised one-bedroom apartments for prices ranging from \$1,834 to \$2,198. *See Exhibit P.*

Respectfully submitted,



Harry Gural, Tenant/Petitioner

March 3, 2017

3003 Van Ness St, NW #S-707
Washington, DC 20008

Telephone (202) 527-2280
Email: harrygural@gmail.com

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**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF TENANT’S MOTION FOR PARTIAL
SUMMARY JUDGMENT**

The Tenant (“Tenant”) Harry Gural submits his Memorandum of Points and Authorities in support of his Motion for Partial Summary Judgment. In support thereof, he states as follows:

I. THE CLAIMS

1. The Tenant alleges that for the rental year beginning April 1, 2016, Equity Residential (“Housing Provider”) demanded a rent increase of \$362 per month—more than five times the maximum legal amount allowed under the DC Rent Stabilization Statute.
2. The Tenant claims that this increase is based on the Housing Provider’s inflated and false filings with the Rental Accommodations Division (“RAD”). The Housing Provider filed the Tenant’s rent as \$2,118 monthly (*Exhibit F*) when bank statements show that he was paying \$1,930 (\$1,830 rent plus \$100 parking). *Exhibit I*. For that period the Housing Provider accepted the Tenant’s monthly payment of \$1,830 as payment in full, evidenced by the fact that it did not contact him to claim additional payment and did not initiate legal proceedings against him. Therefore, the Housing Provider’s filing with RAD is false and that its subsequent rent increase is illegal.
3. The Tenant claims that there was no lease for the rental year from April 2015 to March 2016. *See Tenant’s affidavit, Exhibit A*. Therefore, there is no basis for the Housing Provider’s claim that the rent for that year was higher than the amount paid and accepted.

4. The Tenant claims that the Housing Provider filed “rents” with the RAD before negotiations had begun, demonstrating that the filings are false. *See Exhibits H and L.*
5. The Tenant claims that in March 2016 he negotiated with the Housing Provider a monthly payment of \$1,895, but was told by the Housing Provider that it only would agree to that amount if the Tenant signed a lease listing the “rent” as \$2,192. *See Exhibit A.*
6. The Tenant claims that as president of the tenants association he has gained additional information about the Housing Provider’s practices that confirm that it acted improperly. He further claims that records obtained via the Freedom of Information Act (“FOIA”) confirm that the Housing Provider exhibits a systematic pattern of behavior. *Exhibit A.*
7. The Tenant attests that over 60 residents of the Housing Accommodation have come to him seeking help because the Housing Provider has demanded of them rent increases that are far higher than the maximum legal amount. *Exhibit A.*
8. The Tenant claims that residents have told him that the Housing Provider has said that if they don't sign a lease under the stated terms they will be forced to pay a monthly rent increase, in some cases as high as \$1,500 per month. *See Tenant’s affidavit, Exhibit A.*
9. The Tenant submits as evidence hundreds of pages of documents obtained as a result of a FOIA request that substantiate tenants' reports. Hundreds of pages of filings with RAD show that the Housing Provider has submitted rent amounts that likely exceed the rents paid by as much as \$1,500 per month. *See Exhibits AA through EE.*
10. The Tenant claims that these false filings are based on the Housing Provider’s abuse of the term “rent,” which is clearly defined in the definitions subchapter of the DC Rental Housing Statute [§42–3501.03(28)]. The Housing Provider uses the term “rent” to mean an effective rent ceiling that is far higher than the amount advertised, charged, paid or accepted as full payment for the right of occupancy. The Tenant claims the Housing Provider violates the DC Rent Stabilization Statute, which states that rent ceilings are “abolished” (§42–3502.06).
11. The Tenant claims that the Housing Provider justifies effective rent ceilings by the use of what it calls “concessions,” which it defines as a rent discount. However, the term “concession” does not appear anywhere in the Rental Housing Statute.
12. The Tenant claims that the Housing Provider does not defend its policies on the basis of the Rental Housing Statute, but upon one administrative law ruling relying on New York rent control practices, *Pope v. Equity Residential* 2014-DHCD-TP 30,612 (OAH July 8, 2015).

13. The Tenant alleges that the Housing Provider has misrepresented to Tenants the DC Rental Housing Statute, deceived them and pressured them into signing leases that list rent ceilings as “rent.” *See emails to three tenants, Exhibit U.*
14. The Tenant claims that documents obtained by FOIA show that the Housing Provider has a systematic, long-standing practice of filing incorrect “rents” with the RAD. On the basis of these false filings it has demanded and received rent increases that far exceed what is allowable under the DC law. *See FOIA documents, Exhibits AA to EE.*
15. The Tenant claims that the Housing Provider’s actions have the effect of circumventing the DC Rent Stabilization Statute (§42–3502).

II. FACTUAL BACKGROUND

1. The property at 3003 Van Ness (“Housing Accommodation”) is owned by Smith Property Holdings. Smith is owned by Equity Residential, a \$23 billion corporation listed on the New York Stock Exchange (symbol EQR). *See Exhibits A, B and C.*
2. The Tenant has lived in the Housing Accommodation since March 2010. He is the president of the Van Ness South Tenants Association (VNSTA), *Exhibit A.*
3. In the period from April 1, 2015 to March 31, 2016, the Tenant occupied apartment S-707 without a lease. His Wells Fargo bank statements show that he was paying \$1,830 (plus \$100 parking) in recurring monthly payments to Equity Residential. *See Exhibit I.* The Housing Provider accepted this amount as full payment for the right to occupy apartment S-707, as evidenced by the fact that it did not request additional payment nor did it initiate court proceedings. *See Exhibit A.*
4. On January 15, 2016, the Housing Provider sent a Form RAD-8 (Housing Provider’s Notice to Tenants of Adjustment of Rent Charged) to the Tenant, listing his monthly rent as \$2,118. *See Exhibit D.* On February 2, 2016, the Housing Provider filed a Form RAD-9 (Certificate of Notice to RAD of Adjustment in Rent Charged) with the RAD, also listing the rent as \$2,118. *See Exhibit H.*
5. The DC Rent Stabilization Statute states that housing providers may demand an annual rent increase of a maximum of 2 percent plus the CPI-W of the prior year’s rent [§42–3502]. For the period beginning April 1, 2016, the maximum percent increase was 3.5 percent. This

percentage, applied to the \$1,830 that the Tenant was paying monthly, amounts to \$65. The maximum legal rent therefore was \$1,895.

6. Nevertheless, the Housing Provider claimed on Forms RAD-8 and RAD-9 that the Tenant's new rent would be \$2,192. This is a 19.8 percent increase above the previous year's rent – five times the statutory limit. *See Exhibits D and H.*
7. On March 18, 2016, the Tenant emailed the General Manager and charged that “my monthly rent is \$1,830 but you fraudulently have reported it to the city as \$2,118.” He also warned that the rent increase demanded by the Housing Provider was “well above the legal limit.” Despite this warning, the Housing Provider did not restate its filing with the RAD. *See Exhibit L.*
8. On March 18, 2016, the Tenant and the General Manager met to negotiate a new rent. They agreed on a monthly payment of \$1,895 -- exactly what the Tenant claims is the maximum legal rent for the year beginning April 1, 2016. However, the General Manager stated that she only would agree if the Tenant signed a lease listing the rent as \$2,192. The lease would claim that the Tenant was being offered a \$297 “concession” so the effective payment would be \$1,895. *See Tenant's affidavit, Exhibit A.*
9. The Tenant told the General Manager that he refused to sign the lease under those terms. On March 25, he paid the Housing Provider via Wells Fargo bank the maximum legal amount, \$1,895 (plus \$100 parking), for the month of April. *See Exhibit A.*
10. On April 25, 2016, the Housing Provider filed a Verified Complaint for Possession of Real Property in the Landlord and Tenant Branch of Superior Court. *See Exhibit N.*

III. ANALYSIS

A. There are no material facts in dispute

1. The parties agree that the 2015 and 2016 RAD-8 rent increase forms are “true and accurate” copies of the documents sent by the Housing Provider to the Tenant. The parties disagree only about whether the documents were filled out properly, which is a matter of law and depends on the legal definition of the word “rent.” *Exhibits D and E.*
2. The Tenant accepts the Housing Provider's claim that the RAD-9 filings presented by the Housing Provider as evidence appear to be “true and accurate” copies of the documents sent by the Housing Provider to RAD. The parties disagree only about whether the documents

were filled out properly, which is a matter of law concerning the legal definition of the word “rent.” See Exhibit F.

3. The parties presumably also agree on the validity of the Tenant’s Wells Fargo bank statements, which show that the Tenant paid to the Housing Provider a recurrent amount of \$1,870 during the 2014-15 rental year, \$1,930 in the 2015-16 rental year, and \$1995 in the 2016-17 rental year. See Exhibit G.
4. The parties agree that the Tenant did not sign a lease for the rental year between April 1, 2015 and March 31, 2016. The parties also agree that the Housing Provider did not initiate legal proceedings against the Tenant during that period. See Exhibit A.
5. The parties presumably also agree that the Tenant filed a Freedom of Information Act request for the RAD-9 Forms that the Housing Provider had filed with the RAD and that the documents obtained are true and accurate copies of those filings. See Exhibit O.

B. There is no material issue at law that is not defined in the Statute

The Tenant Petition hinges primarily on the meaning of the word “rent.” The DC Rental Housing code clearly defines the term “rent” as follows:

‘Rent’ means the entire amount of money, money's worth, benefit, bonus or gratuity demanded, received, or charged by a housing provider as a condition of occupancy or use of a rental unit, its related services and its related facilities. [DC Code section §42-3501.03 (28)]

The definition does not depend on how the rent is computed, but only on the actual amount demanded, received or charged by a housing provider. It likewise is not dependent on any contract between a housing provider and tenant or upon any contractual definition of terms. It is an independent definition of how the term “rent” should be construed throughout Chapter 35 of Title 42 of the DC Code.¹ For a more extensive analysis of the statutory construction of the word “rent,” see the analysis of petitioner Gabriel Fineman in *Gabriel Fineman v. Smith Property Holdings Van Ness* (2016 DHCD TP 30,842). See Exhibit Z.

¹ The term "rent" is well defined in the statute. However, if the court feels that there is some ambiguity, the Tenant provides a full analysis of statutory construction in Exhibit Z that is attached and hereby incorporated by this reference.

Before the passage of the Rent Control Reform Amendment Act of 2006 rent stabilization was based on two terms, the “rent charged” and the “rent ceiling.” The rent ceiling was the maximum amount that could be charged for a given rental unit. However, the 2006 law and the current Rent Stabilization Statute clearly state that rent ceilings are “abolished.” (§42–3502.06)

C. The Housing Provider’s failure to bring suit in 2015 proves that its filing is false

The Housing Provider claims that the Tenant’s rent for the year between April 1, 2015 and March 31, 2016, was \$2,118. The Housing Provider filed that amount with the RAD as the “new rent” on a Form RAD-9 dated January 15, 2015. *See Exhibit F.* A year later it listed that amount on rent increase Form RAD-8 sent to the Tenant. It filed the same amount as the “prior rent” on a Form RAD-9 filed with the RAD dated January 15, 2016. *See Exhibit H.* However, during that period the Tenant paid the Housing Provider \$1,930 per month (\$1,830 rent plus \$100 parking), as evidenced by his Wells Fargo bank statements. *See Exhibit I.*

There was no signed lease for rental year April 2015 to March 2016. Therefore, the Housing Provider has no grounds to claim that the rent was anything other than the amount paid (\$1,830 + \$100 parking). During that year, the Housing Provider did not contact the Tenant to request additional payment nor did it initiate legal proceedings. The Housing Provider accepted the amount as full payment and it is therefore the “rent.” *See Exhibit A.*

In email correspondence and discussions in March 2016, the Tenant warned the Housing Provider that the filings were incorrect. *See Exhibit L.* Nevertheless, the Housing Provider insisted that those filings were correct and it demanded a rent increase (\$362 per month) for the new rental year based on those false filings. The Tenant refused to pay that amount. The Housing Provider subsequently filed suit. *See Exhibit D.*

D. The Housing Provider filed rent amounts before negotiations began -- therefore the filings cannot be accurate

Rent negotiations for the year beginning April 1, 2016 began with an email exchange between the Tenant and General Manager Avis Duvall on March 13, 2016. *See Exhibit L.* The Tenant and the General Manager met for the first time to discuss the rent on March 18, 2016. *See Exhibit L.* The Tenant did not tell the General Manager whether or not he would accept the Housing Provider’s offer until the day of that meeting. *See Tenant’s affidavit, Exhibit A.*

However, the General Manager attests on the Housing Provider filed the new rent amount with the RAD January 27, 2015 – over two weeks before the Tenant stated that he would decline the Housing Provider’s offer. *See General Manager’s affidavit, Exhibit J.* The same sequence of events took place in the winter and spring of 2015 – the “rent” amount was filed with the RAD before rent negotiations had begun. Because the Housing Provider filed rent increases with RAD before negotiations take place the filings by definition cannot be accurate.

E. Other residents of the Housing Accommodation report that the Housing Provider provides inaccurate rent notices and charges illegal rent increases

Gabriel Fineman until recently was a board member of the tenants association. In a tenant petition, *Gabriel Fineman v. Smith Property Holdings Van Ness (2016 DHCD TP 30,842)*, he charges that the Housing Provider filed with the RAD a rent amount almost \$1,000 higher than the amount he paid. *See Exhibits V and W.*

Fineman attests that he allowed the Housing Provider to debit his bank directly for the full amount it claimed as rent. *See Exhibit X.* The Housing Provider withdrew \$2,329 per month as full payment for the right of occupancy. However, the Housing Provider reported in official filings to the RAD that the “rent” was \$3,114. *See Exhibit Y.* Furthermore, Fineman provides evidence that the “rent” listed by the Housing Provider is far above market prices. On January 25, 2017 the Housing Provider advertised an identical apartment for only \$1,980 per month. The Housing Provider’s rent filing with the RAD is incorrect. *See Exhibit Y.*

The experience of over 60 other residents of the Housing Accommodation confirms that the Housing Provider has a practice of filing “rents” with the RAD that far exceed the amount it actually charges and the tenant pays. The Tenant attests that over 60 residents have sought his help fighting the Housing Provider’s demands for illegal rent increases. *See Exhibit A.* Residents have provided RAD-8 rent increase forms that list their monthly rents for one-bedroom apartments as high as \$3,500 and show rent increases of as much as \$1,500 per month. *Several forms with the names redacted are attached as Exhibit U.*

F. Documents obtained through the Freedom of Information Act reveal that the Housing Provider systematically files implausibly high rents with the RAD

On November 17, 2016, the Tenant filed a Freedom of Information Act request to obtain RAD-9 Forms that the Housing Provider filed with the RAD between 2006 and 2016. *See Exhibit*

Q. The documents show that the Housing Provider has a systematic and long-standing practice of filing “rents” that far exceed plausible rents as defined in the Statute for given apartments. For example, in 2016 the Housing Provider filed rents with the RAD which frequently range from \$2,500 to \$3,500. *See Exhibits AA to EE.*

However, screenshots of the Housing Provider’s website in February 2017 show that one-bedroom apartments in the Housing Accommodation that month rented for between \$1,834 and \$2,198. *See Exhibit P.*

G. The Housing Provider’s practices regarding rent filings appear to apply to its other housing accommodations

The Tenant attests that on February 12, 2016, he phoned several other properties in Washington DC that are operated by the Housing Provider and subject to rent stabilization. Leasing agents at five of those properties report that they use “concession” leases—requiring tenants to sign leases with rent amounts that exceed the monthly amounts paid. *See Exhibit A.*

H. The Rental Accommodations Division does not check rent filings

It has been assumed that the Housing Provider’s rent filings are reviewed by the RAD and legally authorized. However, the Tenant testifies that employees of the RAD have told him that RAD does not check filings in any way. *Exhibit A.* In an email exchange, Acting Rent Administrator Keith Anderson confirms that “Historically, RAD has/does not perform a review of rent adjustment filings for rent calculation accuracy.” *See Exhibit S.*

Furthermore, the RAD has a policy of not investigating a rent filing even if a tenant can produce evidence such as a bank statement indicating that a filing is incorrect. In an email exchange with the Tenant, the Acting Rent Administrator states that the RAD only investigates a complaint if the tenant gives up his or her right to file a tenant petition. *See Exhibit S.*

“If a complaint is lodged in lieu of a tenant petition, RAD will investigate. Over the past five years, RAD has received no complaints. RAD does not conduct its own investigation into the merits of allegations raised in a tenant petition.”

I. The Housing Provider deceives tenants into signing leases listing false rent amounts

The Housing Provider justifies the extremely high “rents” it files with the RAD on the basis of leases signed by tenants. Yet evidence provided by residents of the Housing Accommodation demonstrates that many of these leases list rents that are hundreds of dollars or up to \$1,500

above the amounts advertised by the Housing Provider or paid by tenants. *See rent increase forms sent by Housing Provider to 20 tenants, Exhibit U.*

In addition, the documents obtained as a result of the Freedom of Information Act contain thousands of “rent” entries for thousands of tenants between the years 2006 and 2016. *See RAD-9 documents obtained by FOIA for the years 2006—2016, Exhibits AA to EE.* These “rents” appear to far exceed the amounts the Housing Provider likely charged as a condition of occupancy. The Housing Provider likely has signed leases for some number of those individual filings.

However, it seems extremely unlikely that thousands of residents would knowingly and willingly sign leases listing “rents” between several hundred dollars and \$1,500 higher than the amount they expect to pay. It would be irrational for them to sign leases that list the “rent” as up to \$1,500 above the rents advertised. The only reasonable explanation is that the Housing Provider misled them about the lease they were signing.

The Tenant attests that dozens of residents have told him that the Housing Provider misled them using a “bait and switch.” *See Tenant’s affidavit, Exhibit A.* Residents report that when they were first shopping for an apartment they saw prices on the Housing Provider’s website that were consistent with market rates. They report visiting an apartment, deciding to rent it, undergoing a credit check and giving notice to their previous landlords. After doing most or all of those things, when they finally sat down with an agent of the Housing Provider to sign a lease they saw for the first time that the lease would list a much higher rent than what had been advertised or discussed. The lease would list an extremely high “rent” with a “concession” (discount), as well as a much lower monthly payment (the amount advertised.) *See Tenant’s affidavit, Exhibit A.*

Recent screenshots of the website confirm that the Housing Provider does not advertise the extraordinarily high “rents” that appear on their leases. *See Exhibit P.*

The Tenant attests that residents have told him that the Housing Provider’s leasing agents tell them that the higher number is “just a formality” or “required by DC rent control laws.” For example, an email from a leasing agent to a tenant specifically states that the false higher “rent” is mandated by the District of Columbia. *See Exhibit U.*

“Your lease agreement will state the RCC Rent Control Price of \$3105. The RCC rent amount of \$3105 is the rent amount that is recorded with the city. It is the maximum rent that the city tells us we can charge for your specific apartment.”

The Housing Provider's leasing agents also confuse tenants by using the word "rent" to mean both the amount paid and the higher, fictional "rent" that appears on a lease. Residents have shared emails with the Tenant confirm their claims about this deception. *See Exhibit U.*

These actions by the Housing Provider are deliberate deceptions and these leases therefore are not contracts of mutual consent. They should be disregarded when evaluating the Housing Provider's pattern of behavior regarding rent filings.

J. The Housing Provider misleads tenants about the legality of rent increases

The Housing Provider systematically misleads current tenants by sending them RAD-8 rent increase forms that appear to be issued by the city but which in fact come from the Housing Provider. The form list in the header the Housing Provider and the DC Department of Housing and Community Development, Rental Accommodations Division. *See Exhibit D and E.* The Tenant attests that many residents report that they have wrongly assumed that the form is authorized by the city. An email from a leasing agent to a tenant shows that this deception is deliberate. *See Exhibit U.*

"You should have received a letter from DC Dept. of Housing which shows the rent control increase for your apartment."

The Tenant/Petitioner attests that dozens of residents have told him that this deception has fooled them into rent increases far in excess of what is allowed under DC law.

K. The Housing Provider doesn't rely on the Rental Housing Statute

The Housing Provider's defense of its false filings to RAD and its rent increases based on those filings is not founded on the Rent Stabilization Statute. The Housing Provider does not cite the Rental Housing Code. It does not claim that its use of the term "rent" is consistent with the Statute. It does not confront the fact that rent ceilings are "abolished" by Statute. It does not claim that it is exempt from any portion of the Statute.

Instead, the Housing Provider constructs its argument on the term "concession," which appears nowhere in the Statute. It implies that a "concession" is a discount, presumably off a "list price" or rent advertised or paid or charged for an apartment. However, as evidence provided by residents of the Housing Accommodation shows, confirmed by thousands of entries on RAD-9 filings obtained under FOIA, the Housing Provider's "rents" have nothing to do with either the definition of "rent" in the Statute or with any common definition of the word. In fact, the "rents"

the Housing Provider reports are up to \$1,500 above the statutory and the dictionary definitions of the word “rent.”

For this reason, the Housing Provider’s “concession” is not a “discount” but a surcharge added to the statutory or dictionary definition. It is an accounting gimmick, which creates an effective rent ceiling. There is no other way to understand a \$3,500 “rent” for a one-bedroom apartment in an aging building in Van Ness.

The Housing Provider does not build its defense on the Statute. Instead, its entire legal argument stands on a previously decided tenant petition in which it also is the Respondent, *Pope v. Equity Residential* 2014-DHCD-TP 30,612 (OAH July 8, 2015).

The *Pope* ruling is an administrative case hence it does not serve as a precedent for the current petition. However, the ruling reveals some assumptions that now can be proven false, and which further prove that the Housing Provider’s actions are contrary to the Rental Housing Statute.

The *Pope* ruling concedes that the word “concession” does not appear in the Rental Housing code, so it seeks guidance from rent stabilization practices in New York City and rental housing cases in New York state. It finds that:

“In the District of Columbia, rent concessions are also used to offer rent controlled units at or below market value while preserving a higher legal rent level that can be charged later. There are many arguments to be made that such concessions are contrary to the abolishment of rent ceilings. Prior to the Act’s amendment in 2005, a Housing Provider was able to reserve future rent increases by increasing the ‘rent ceiling’ for a unit while actually charging a lower rent. The rent ceiling permitted a housing provider to later implement rent increases in amounts that were higher than the annual increase of general applicability. However, there is nothing in the Rental Housing Act that prohibits a housing provider from offering rent concessions as long as the rent charged does not exceed the legally authorized rent that is on file with the Rental Accommodations Division.”

The key assumptions of the *Pope* ruling are undermined by new, extensive information uncovered in the Tenant’s petition, especially the hundreds of pages of the Rent Provider’s filings to RAD obtained under the FOIA.

First, evidence wasn’t yet available proving that the Housing Provider systematically violates the definition of “rent” in the Rental Housing Statute. The example of a single petitioner did not fully indicate that the Housing Provider has a systematic and long-standing practice of filing “rents” with the RAD that far exceed amounts that could possibly fit the definition of the term as

it is defined in the Statute [§42-3501.03(28)]. The sheer volume of evidence that is now available likely would have yielded a different ruling in the *Pope* case if it had been available at the time.

Second, the *Pope* decision relies on the assumption that “rent concessions are [also] used to offer rent controlled units at or below market value...” However, the new and extensive documents demonstrate that the Housing Provider uses “concessions” as an accounting trick to justify rent filings that far exceed market prices. These are effective rent ceilings. Rent ceilings are specifically “abolished” in the Rent Stabilization Statute. (§42–3502.06)

Third, the *Pope* decision assumes that the Housing Provider’s filings with RAD are “legally authorized.” However, the Acting Rent Administrator concedes in an email that the RAD does not check rent filings whatsoever. Furthermore, he concedes that the RAD does not investigate a tenant complaint of a false filing even when provided with evidence. *See Exhibit S.*

For these reasons, the *Pope* decision should be disregarded.

The Housing Provider is Respondent in a second administrative case, *Mary Jane Maxwell vs. Equity Residential Management* 2015-DHCD-TP 30,704 (OAH April 22, 2016). The *Maxwell* ruling sidesteps the question of whether the Housing Provider’s practice of providing rent “concessions” is legal and accepts wholesale the logic of *Pope*.

“In her Tenant Petition, Tenant Maxwell alleges that the 2015 increase in rent was 11.1 and, therefore, too high. She does not directly challenge the legality of the Housing Provider’s practice of providing rent concessions. To the extent that Tenant Maxwell is alleging that the concessions, in general, are not legal, I adopt the analysis of the Hon. Erika L. Pierson in *Pope v. Equity Residential* 2014-DHCD-TP 30,612 (OAH July 8, 2015).

As in *Pope*, he Administrative Law Judge in *Maxwell* did not have the additional information provided by the Tenant, residents of the Housing Accommodation and the extensive documents uncovered as a result of the FOIA request. As in *Pope*, it relies on three assumptions that now can be proven false. For these reasons, the *Maxwell* decision also should be disregarded.

L. Housing Provider’s actions circumvent the DC Rent Stabilization Statute

The specific circumstances of the Tenant’s petition prove that the Housing Provider filed inflated and incorrect “rent” amounts with the RAD on the RAD-9 forms dated January 15, 2015 and January 15, 2016. On the basis of these false filings, it attempted to collect an illegal rent increase from April 1, 2016 to the present of \$2,192 per month -- \$362 per month above the legal maximum that the Tenant has been paying monthly via his Wells Fargo account.

The tenant petition by Gabriel Fineman in *Gabriel Fineman v. Smith Property Holdings Van Ness* (2016 DHCD TP 30,842) provides additional information suggesting that the Housing Provider has a policy of filing false “rent” amounts with the RAD. In Fineman’s case, the fact that the Housing Provider had complete control over the amount it debited from his bank account proves that the rent is the amount charged, not the amount filed with the RAD.

The report of over 60 tenants of the Rental Accommodation, attested by the Tenant as president of the tenants association, suggested the Housing Provider’s actions are even more widespread. See Tenant affidavit, *Exhibit A*. Twenty other residents have allowed the Tenant to submit as evidence RAD-8 rent increase forms that show “rents” listed that are as high as \$1,500 over the rents advertised by the Housing Provider. See *Exhibit Q*.

The documents recovered via the Freedom of Information Act prove that these actions are systematic and long-standing. Although the records are incomplete due a failure on the part of the RAD, there is sufficient information to conclude that the practice of systematically overstating “rents” to the RAD extends at least back to 2013, and that it may extend back to the passage of the Rent Control Reform Amendment Act of 2006.

The Tenants attests made calls to other housing accommodations operated by the Housing Provider and that at least five of them say that they also use “concession” leases. See *Exhibit A*. If this is true, and if this practice is as long-standing in those housing accommodations, it is likely that tens of thousands of residents of the District of Columbia have been affected by the Housing Provider’s false filings to the Rental Accommodations Division and subsequent rent increases that exceed the amount allowable under the Rental Housing Statute.

For these reasons, information uncovered as part of the Tenant’s petition suggests that the Housing Provider’s systematic policies have the effect of circumventing DC Rent Stabilization Statute (§42–3502).

IV. RELIEF

Accordingly, the Tenant Petition should be granted and the Housing Provider should be ordered to:

A. Compensate the Tenant as required by Statute

1. Pay treble damages to the Tenant as required by Statute (§45-1591(a)). See also *Temple v. DC Rental Housing Commission* 536 A.2nd 1024 (1987), *McCulloch v. DC Rental Housing*

Commission 584 A.2nd 1244 (1991) and Mudd v. DC Rental Housing Commission 546 A.2nd 440 (1988). Damages should be based on the difference between the amount charged by the Housing Provider (\$2,192) and the maximum legal rent increase (\$1,830) -- \$362 per month for every month and every day (pro-rated) until the Tenant Petition is first decided in the Office of Administrative Hearings. (See Kapusta v. DC Rental Housing Commission, 704 A. 2d 286 - DC: Court of Appeals 1997)

2. Immediately file a Motion and set a hearing in Landlord and Tenant Branch of the DC Superior Court to have the Protective Order removed.
3. Immediately correct its rent filings to the RAD for the Tenant's unit for the years in which the filings did not align with the amount actually demanded as full payment for occupancy of the rental unit. The Housing Provider's two most recent RAD-9 filings, January 15, 2015 and January 15, 2016, have been proven to be false.
4. Correct all false filings for all residents of the Housing Accommodations beginning with the enactment of the Rent Control Reform Amendment Act of 2006.
5. Notify all individuals who have resided in the Housing Accommodation since 2006 and whose rents were falsely reported to the Rental Accommodations of each false filing.
6. Make future rent increase notices to tenants and rent filings to the RAD correctly.
7. Cease using Form RAD-8 as a notice of rent increases to tenants. Clearly state on any communications to tenants that the originator of documents is the Housing Provider and that the "rent currently charged" and "maximum rent increase" are not specifically authorized by the Rental Accommodations Division.

B. Additional action

Furthermore, the action of the Housing Provider in filing these false RAD-8 and RAD-9 forms was unlawful. The Rad-9 form states:

I declare, affirm and ratify under penalty of perjury that the foregoing information is complete and accurate to the best of my knowledge. I fully understand and acknowledge that my signature below shall be deemed as the taking of an oath or affirmation regarding all of the information provided herein, to which the sanctions for perjury, false swearing or false statements under D.C. OFFICIAL CODE §§22-2402, 2404 & 2405 (Supp. 2008), respectively, shall apply.

The penalty for perjury is set forth in D.C. Official Code §22-2402 (b) is that:

Any person convicted of perjury shall be fined not more than the amount set forth in §22-3571.01 or imprisoned for not more than 10 years, or both.

The fine in section §22-3571.01 is up to \$25,000 for an individual and twice that (i.e., \$50,000) for an organization.

The RAD-8 forms are also false and violate §42- 3509.01 that says:

(b) Any person who willfully (1) collects a rent increase after it has been disapproved under this chapter, until and unless the disapproval has been reversed by a court of competent jurisdiction, (2) makes a false statement in any document filed under this chapter, (3) commits any other act in violation of any provision of this chapter or of any final administrative order issued under this chapter, or (4) fails to meet obligations required under this chapter shall be subject to a civil fine of not more than \$5,000 for each violation.

These violations were willful because (a) they were not corrected upon notice from the Tenant; and (b) because they were part of a pattern of always listing the ceiling rent instead of the rent charged as required by the RAD. They were the basis of subsequent rent increases that exceeded the maximum allowed and thus violated the provisions of Chapter 35 and they failed to meet the obligations of proper filings also required by Chapter 35.

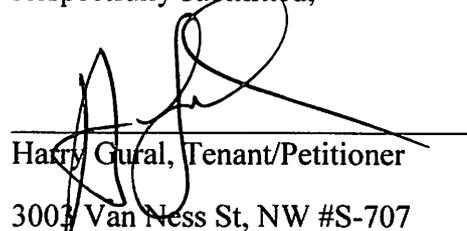
Therefore, the Housing Provider should be fined appropriately under the provisions of D.C. Official Code §§22-2402 and 42- 3509.01.

Such other relief should be provided as the adjudicator thinks appropriate.

V. CONCLUSION

For the foregoing reasons, Tenant's Motion for Partial Summary Judgment should be granted and the tenant petition should be granted with the relief stated above.

Respectfully submitted,



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March 3, 2017