DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION

RH-TP-15-30,724

In re: 922 N Street, N.W, Unit 101

Ward Two (2)

RONALD HARRIS
Tenant/Appellant

v.

TEFERI ZEWDOU
Housing Provider/Appellee

DECISION AND ORDER

November 7, 2017

EPPS, COMMISSIONER. This case is on appeal to the Rental Housing Commission ("Commission") from 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] These proceedings are governed by the applicable provisions of the Rental Housing Act of 1985 ("Act"), D.C. Law 6-10, D.C. OFFICIAL CODE §§ 42-3501.01 - 3509.07 (2012 Repl.), the District of Columbia Administrative Procedures Act ("DCAPA"), D.C. OFFICIAL CODE §§ 2-501 - 510 (2012 Repl.), and the District of Columbia Municipal Regulations ("DCMR"), 1 DCMR §§ 2800-2899 (2016), 1 DCMR §§ 2921-2941 (2016), and 14 DCMR §§ 3800-4399 (2004).

[1] OAH assumed jurisdiction over tenant petitions from the Rental Accommodations and Conversion Division ("RACD") of the Department of Consumer and Regulatory Affairs ("DCRA") pursuant to the Office of Administrative Hearings Establishment Ace of 2001, D.C. Law 14-76, D.C. OFFICIAL CODE § 2-1831.03(b-1)(1) (2012 Repl.). The functions and duties of RACD in DCRA were transferred to the RAD in DHCD by § 2003 of the Rental Housing Operations Transfer Amendment Act of 2007, D.C. Law 17-20, D.C. OFFICIAL CODE § 42-3502.04b (2012 Repl.).

I. PROCEDURAL HISTORY

On September 24, 2015, tenant/appellant Ronald Harris ("Tenant") filed tenant petition 30,724 ("Tenant Petition" or "Current Tenant Petition") with the RAD against housing provider/appellee Teferi Zewdou ("Housing Provider") regarding 922 N Street NW, Unit 101, Washington, D.C. 20001 ("Housing Accommodation"). *See* Tenant Petition at 1-4; R. at Tab 1. In the Tenant Petition, the Tenant asserted that the Housing Provider violated the Act as follows:

1. The rent increase was larger than the increase allowed by any applicable provision of the Act.
2. There was no proper 30-day notice of rent increase within 30 days of the effective date of the increase.
3. The Housing Provider did not file the correct rent increase forms with the RAD.
4. The rent ceiling exceeds the legally-calculated rent for my/our units.
5. The rent charged is in excess of the rent ceiling for my Rental Unit.

Id. at 2; R. at Tab 1.

On February 29, 2016, the Housing Provider filed a motion to dismiss the Tenant Petition ("Motion to Dismiss") on the grounds that all of the Tenant's claims were "barred by the doctrine of *Res Judicata* [sic]." Motion to Dismiss at 6-8; R. at Tab 17. The Motion to Dismiss asserted that the parties entered into a settlement agreement on August 21, 2014 ("Settlement Agreement"), *see* Motion to Dismiss, Exhibit B; R. at Tab 17, and that the Settlement Agreement resolved all issues related to two, then-pending cases: first, a suit brought by the Housing Provider against the Tenant in the Landlord and Tenant Branch of the Superior Court of the District of Columbia ("LTB"), 2014 LTB 13,729; and second, a tenant petition filed by the Tenant against the Housing Provider, 2014-DHCD-TP 30,518 ("TP 30,518" or "First Tenant Petition"). Motion to Dismiss at 1-10; R. at Tab 17.

On February 16, 2016,[2] the Tenant filed an opposition to the Motion to Dismiss ("Opposition to Motion to Dismiss"), in which the Tenant asserted that the Settlement Agreement "was procured through misrepresentations and therefore voidable" and that the "subject matter" addressed in the First Tenant Petition differs from the subject matter of the Current Tenant Petition. Opposition to Motion to Dismiss at 1-12; R. at Tab 12. The Tenant argued that his two Tenant Petitions challenge to two different rent increases (March 2014 and September 2014) and that the grounds for illegality were different in each. Opposition to Motion to Dismiss at 5-6; R. at Tab 12.

On May 31, 2016, OAH issued a final order captioned as Harris v. Zewdou, 2015-DHCD-TP 30,724 (OAH May 31, 2016) ("Final Order"), granting the Motion to Dismiss with prejudice. Final Order 1-12; R at Tab 18. The ALJ made the following findings of fact in the Final Order:

> 1. The Housing Accommodation is a condominium at 922 N Street, NW, #101. The Housing Accommodation is owned by Teferi Zewdou. Tenant Ronald Harris is the sole leaseholder and has been renting the condominium since 2007. Tenant, who is an attorney, does not live in the Housing Accommodation. Tenant resides in Japan and sublets the condominium to two or more sublessees. It is Tenant, however, who pays the rent to Housing Provider Zewdou.
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> 2. The Housing Accommodation is registered with the RAD as exempt because Housing provider is a small landlord who owns four or fewer rental properties in the District of Columbia. *Mot. to Dismiss,* Exhibit E.
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> 3. Effective March 1, 2014, Tenant's rent was increased from $2,400 per month to $3,600 per month.

[2] The Commission notes that the Tenant filed his opposition to the Housing Provider's Motion to Dismiss on February 16, 2016, in advance of the Housing Provider's actual filing of its Motion to Dismiss on February 29, 2016. The Commission's review of the record reveals that the certificate of service attached to the Motion to Dismiss states that the Housing Provider served the Tenant with a copy of the motion both by email and U.S. mail on February 1, 2016, and February 2, 2016, respectively. Motion to Dismiss at 2; R. at Tab 17. The Commission's review of the record does not reveal why the Motion to Dismiss was not filed with OAH until February 29, 2016.

4. On May 4, 2014, Tenant filed tenant petition (TP) 30,518 with the Rent Administrator which was docketed at OAH as *Harris v. Zewdou,* 2014-DHCD-TP 30,518. That petition alleged that the March 1, 2014, rent increase was improper.

5. Housing Provider sought possession of the rental unit by filing a complaint in the Landlord/Tenant Branch (LTB) of the District of Columbia Superior Court (2014-LTB-13729). Tenant and Housing Provider entered into a Settlement Agreement in the LTB case on August 21, 2014. *Mot. to Dismiss,* Exhibit B. That settlement has the following relevant provisions:

   a. "This case is dismissed, by stipulation of dismissal, today subject to the terms of this Agreement. Defendant [Tenant] shall dismiss, with prejudice, T/P 30,518, within 7 days of execution of this Agreement." Para. 5.

   b. "Notwithstanding the valid increase as of March 1, 2014, Plaintiff [Housing Provider] shall deem Defendant current in his rent through August 31, 2014, and waive entitlement to all rent and late fees otherwise owed. In September of 2014 Defendant shall pay $3,600 per month in rent." Para. 7.

   c. "The parties agree that the valid rent shall be $3,600 per month through February 2016." Para. 8.

6. On September 5, 2014, Tenant filed a motion for voluntary dismissal of TP 30,518. A Final Order was issued on September 9, 2014, dismissing that case with prejudice.

7. In July 2015, Housing Provider sought a judgment of possession in LTB case 13729 for Tenant's failure to comply with the Settlement Agreement. The docket sheet reflects that on August 4, 2015, the LTB Court found that Tenant had breached the Settlement Agreement and a Non-Redeemable Judgment of Possession was entered, as well as a money judgment for liquidated damages to be paid to Housing Provider due to the breach.

8. Two months later, on September 24, 2015, Tenant filed the instant petition challenging the validity of the same March 1, 2014 rent increase.

9. On December 18, 2015, Housing Provider again sought possession of the rental unit by filing a second complaint for possession in the LTB Court that was docketed as case number 2015-LTB-31783. Tenant has been granted a *Drayton* stay in that case pending resolution of this petition.

Final Order at 3-5; R. at Tab 18.

The ALJ made the following conclusions of law in the Final Order:

1. The rules of this administrative court do not specifically refer to a motion to dismiss. However, when the rules do not address a procedural issue, the rules provide that I may be guided by the District of Columbia Superior Court Rules of Civil Procedure. OAH Rule 2801.1. A motion to dismiss is analogous to a motion to dismiss for failure to state a claim pursuant to D.C. Sup. Ct. R. Civ. P. 12(b)(6). As such, the complaint (or petition) is construed in the light most favorable to the tenant, accepting its allegations as true. *See Fraser v. Gottfried,* 636 A.2d 430 (D.C. 1994). A motion to dismiss for failure to state a claim should be granted only if "it appears beyond a doubt that [the Tenant] can prove no set of facts in support of his claim which would entitle him to relief." *Id.* at 432.

2. Housing Provider argues that the tenant petition should be dismissed because Tenant's claims are barred by the doctrine of res judicata stemming from the Settlement Agreement in the first LTB case and the subsequent dismissal of TP 30,518. In opposition, Tenant argues that his claims are not barred because he is challenging the March 2014 rent increase on different grounds than it was challenged in TP 30, 518.

3. The doctrine of *res judicata* "precludes relitigation of the same claim between the same parties." *Elwell v. Elwell,* 947 A.2d 1136, 1139 (D.C. 2008). *Res judicata* provides that "a final judgment on the merits of a claim bars relitigation in a subsequent proceeding of the same claim between the same parties or their privies." *Patton v. Klein,* 746 A.2d 866, 870 (D.C. 1999) (citations omitted). The doctrine not only bars claims that were actually raised in the prior proceeding, but also any claim that might have been raised. *Washington Med. Ctr., Inc. v. Holle, 573 A.2d 1269, 1280-81 (D.C. 1990) (emphasis added).* The rationale is that the judgment embodies an adjudication of all the parties' rights arising out of the transaction involved. *Id* at 1281. The doctrine applies to judgments entered by consent, as well as to those following trials on the merits. *Parker v. Martin,* 905 A.2d 756, 763 n.19 (D.C. 2005); *Williams v. Bd. of Trustees of Mt. Jezreel Baptist Church,* 589 A.2d 901, 906 (D.C. 1991).

4. Three elements must be considered and satisfied to successfully invoke *res judicata* as an affirmative defense: whether (1) the claim was adjudicated finally in the first action; (2) the present claim is the same claim as the claim which was raised or which might have been raised in the prior proceeding; and (3) the party against whom the plea is asserted was a party or in privity with a party in the first claim. *Washington Medical Ctr., Inc., v. Holle,* 573 A.2d at 1280-81.

5. There is no dispute that both claims challenge the March 1, 2014, rent increase, except Tenant argues that he now challenges it on different grounds. There is also no dispute that that the same parties are involved.

In considering the first factor - whether the claim was adjudicated finally in the first action, I find that it was.

6. As a result of the Settlement Agreement in the LTB case, Tenant filed a motion to dismiss TP 30,518 with prejudice. A final order issued on September 9, 2014, dismissed the petition with prejudice. A voluntary dismissal with prejudice constitutes a complete adjudication of the matter and precludes further action between the parties based on the principle of *res judicata Thoubboron v. Ford Motor Co.*, 809 A.2d 1204, 1210 (D.C. 2002) *citing Semtek Intl Inc. v. Lockheed Martin Corp.*, 531 U.S. 497 (2001). Tenant forfeited the ability to challenge the March 1, 2014, rent increase after September 9, 2014, by voluntarily dismissing his petition with prejudice. Therefore, the doctrine of *res judicata* bars Tenant from again alleging that his rent was improperly increased, but on different grounds than challenged in the first petition.

7. In his opposition, Tenant tries to distinguish his present claim by arguing that (1) he is challenging the March 2014 rent increase on different grounds than were identified in RP 30,518 and (2) he is challenging what he refers to as the September 1, 2014, rent increase. Tenant argues that after entering into the Settlement Agreement, he learned that Housing Provider owns more than four rental properties in the District of Columbia. Therefore, Tenant contends Housing Provider is not entitled to an exemption and the rent increase was higher than allowed by the Act. However, Tenant's claims are barred for three reasons.

8. First, the Settlement Agreement is an enforceable contract and the LTB Court in fact, enforced the Settlement Agreement finding Tenant in default and issuing a non-redeemable judgment for possession. In the Settlement Agreement, Tenant agreed that he would be deemed current on his rent from March 1, 2014, through August 31, 2014, not having paid the March 2014 rent increase. He further agreed that his proper rent as of September 1, 2014, was the $3,600. This was not a new increase. Tenant is an attorney and was represented by an attorney. As such, any argument that Tenant did not understand what he was agreeing to is unpersuasive. An important purpose of the doctrine of *res judicata* is to create finality. *See Clement v. D.C. Dep't of Human Servs.*, 629 A.2d 1215, 1218 (D.C. 1993) ("A fundamental principle of litigation that has been stressed in a variety of contexts is the importance of finality."). If Tenant is permitted to go forward on the second claim, Housing Provider gained no security when he entered into the Settlement Agreement with the Tenant agreeing on the rent owed and the rent level. Tenant received a substantial benefit from that agreement as his past due rent was forgiven. Thus, Housing Provider had every reason to believe that the matters of the level of rent and amount of back rent owed were resolved once and for all when they entered into the Settlement Agreement.

9. Second, Tenant cannot in a new petition, challenge the validity of the same rent increase on different grounds. *Res judicata* bars relitigation of "not only those matters actually litigated but also those which might have been litigated in the first proceeding." *Mendez v. D.C. Dep't of Empl Servs.*, 819 A.2d 959, 961 (D.C. 2003) *citing Short v. Dep't of Empl. Servs.*, 723 A.2d 845, 849-850 (D.C. 1998). Tenant had an obligation in filing his first tenant petition to raise all reasons that the rent increase was improper. The Court of Appeals has held that "the doctrine of *res judicata* expresses a rule of judicial administration prohibiting the 'splitting' of causes of action." *Washington Medical Center, Inc., v. Holle, supra,* 573 A.2d at 1281. "A party having several alternative grounds for relief arising out of a particular transaction does not have the privilege of litigating his theories one at a time, holding one in reserve while he presses another to judgment." *Id.* at n. 18 (internal citations omitted).

10. Third, because Tenant cannot challenge the March 2014 rent increase to $3,600, he has no independent claim to challenge Housing Provider's entitlement to an exemption at this time. Tenant cannot challenge Housing Provider's exempt status in the absence of a rent increase that can be challenged. A claim of exemption is only a defense to a tenant petition that must be proven by the housing provider. *Smith Prop. Holdings Consulate, LLC v. Lutsko,* RH-TP-08- 29,149 (RHC Mar. 10, 2015). It is not listed in the housing regulations (14 DCMR [§] 4214) as a basis for filing a tenant petition and the Rental Housing Commission has held that a challenge to a Housing Provider's exempt status is not an independent action. *Id.* Because Tenant is barred by the doctrine of *res judicata* from challenging the March 1, 2014, there is no basis to challenge the exempt status of the Housing Accommodation.

11. Accordingly, for all of the above reasons, I find that Tenant is barred by the doctrine of *res judicata* from challenging the March 1, 2014, rent increase, or any rent increase that was part of the Settlement Agreement. Tenant's allegations that the rent exceeded the rent ceiling are dismissed as rent ceilings were abolished in 2005 and Tenant cannot have a viable claim regarding rent ceilings. As the petition has no other allegations, I grant Housing Provider's motion to dismiss the tenant petition.

Final Order at 5-11; R. at Tab 18.

On June 15, 2016, the Tenant filed Petitioner's Motion for Reconsideration and Summary Judgment ("Motion for Reconsideration"), as well as a Memorandum in Support Petitioner's Motion for Reconsideration and Summary Judgment ("Memorandum in Support of Reconsideration"). R. at Tabs 22 & 21. In support of his Motion for Reconsideration, the

Tenant argued that he had been fraudulently induced to enter into the Settlement Agreement by the Housing Provider's misrepresentation that he qualified for the small-landlord exemption and that the resulting judgment based upon the fraudulent misrepresentation was not a valid judgment for *res judicata*. *See* Motion for Reconsideration at 1; R. at Tab 22; Memorandum in Support of Reconsideration at 3-7; R. at Tab 21. On September 14, 2016, OAH denied the Motion for Reconsideration ("Order Denying Reconsideration"), R. at Tab 35. In denying the motion, OAH determined that the Tenant had failed to establish that he was fraudulently induced to sign the Settlement Agreement, and, even if he had been, such a claim would have to be asserted before the LTB, the court in which the Settlement Agreement was entered as a judgment. Order Denying Reconsideration at 5-7; R. at Tab 35.

On August 12, 2016, the Tenant timely filed a notice of appeal ("Notice of Appeal"), asserting that the OAH erred as follows:

1. The failure of the Administrative Law Judge (ALJ) to proceed to an evidentiary hearing to determine if the previous dismissal was tarnished by fraud and was therefore ineffective.

2. The failure of the ALJ to review the claim of exemption under 14 DCMR § 4106.4.

3. The illegal enforcement of a voluntary agreement to increase the rent of a rent-controlled building without the voluntary agreement first been filed with and approved by the Rent Administrator, D.C. Code § 42-3502.15.

4. Failure to find the settlement agreement unenforceable by reasons of public policy, as the agreement raised by 50 percent the rent ceiling which would be applicable not just to Petitioner, but to all future tenants; because the agreement was procured by fraud, was in violation of D.C. Code § 42-3502.15, and for other reasons as explained in respondent's briefs.

5. The enforcement of a rent increase taken in violation of 14 DCMR § 4205.4 *et seq.*

6. Treating as *res judicata* the dismissal of a petition brought on different grounds and based on different facts than the facts which support the current petition.

7. Failure to accept all allegations and construe all facts and inferences in favor of the petitioner on consideration of respondent's motion to dismiss.

8. The failure to analyze petitioner's legal arguments, which resulted in a final order not supported by law.

9. The award of attorney's fees to a landlord when the tenant's argument were well-supported by fact and law.

See Notice of Appeal at 2-3.

Mr. Harris filed a brief ("Tenant's Brief") on June 26, 2017. The Housing Provider filed a brief ("Housing Provider's Brief") on July 11, 2017. The Commission held a hearing in this matter on July 27, 2017.

II. ISSUES ON APPEAL[3]

1. Whether OAH Erred by Determining that the Current Tenant Petition is Barred by the Doctrine of *Res Judicata*

2. Whether Other Issues are Moot Based on the Application of *Res Judicata*

3. Whether OAH Erred by Awarding Attorney's Fees to the Housing Provider

III. DISCUSSION

1. Whether OAH Erred by Determining that the Current Tenant Petition is Barred by the Doctrine of *Res Judicata*

The first issue that confronts the Commission in this case is whether OAH erred by determining that the Current Tenant Petition arose out of the same cause of action as the First Tenant Petition and thereafter concluding that the Current Tenant Petition was barred by *res judicata*. Final Order at 1-2; R. at Tab 18. The Tenant argues that the First Tenant Petition, which challenged the March 1, 2014, rent increase, did not contain a claim that the Housing

[3] The Commission, in its discretion, has restated the issues raised by the Tenant in his Notice of Appeal to clearly identify the applicable legal principles and to combine overlapping matters. *See, e.g.*, Levy v. Carmel Partners, Inc. d/b/a Quary II, LLC, RH-TP-06-28,830 & RH-TP-06-28,835 (RHC Mar. 19, 2012) at n.9; Ahmed, Inc. v. Avila, RH-TP-28,799 (RHC Oct. 9, 2012) at n.8; Chamberlain Apartments Tenant Ass'n v. 1429-51 Ltd. P'ship, TP 23,984 (RHC July 7, 1999).

Provider lacked of proper registration, *see* D.C. OFFICIAL CODE § 42-3502.08(a)(1)(B),[4] and that therefore neither the Settlement Agreement nor the dismissal of the First Tenant Petition precludes him from making such a challenge in the Current Tenant Petition. *See* Tenant's Brief at 1-6; R. at Tab 12. The Tenant also argues that OAH erred in granting the Housing Provider's Motion to Dismiss without analyzing the Tenant's argument that the Settlement Agreement was induced by the Housing Provider's fraud and therefore does not bar the relitigation of the same cause of action. *See* Tenant's Brief at 4. For the following reasons, the Commission determines that the Tenant's arguments are without merit and affirms Final Order granting the Housing Provider's Motion to Dismiss.

The Commission's standard of review is contained at 14 DCMR § 3807.1, and provides the following:

> The Commission shall reverse final decisions of the [Office of Administrative Hearings] which the Commission finds to be based upon arbitrary action, capricious action, or an abuse of discretion, or which contain conclusions of law not in accordance with the provisions of the Act, or findings of fact unsupported by substantial evidence on the record of the proceedings before the [Office of Administrative Hearings].[5]

See Notsch v. Carmel Partners, LLC, RH-TP-06-28,690 (RHC May 16, 2014); Atchole v. Royal, RH-TP-10-29,891 (RHC Mar. 27, 2014); Gelman Mgmt. Co. v. Campbell, RH-TP-09-29,715 (RHC Dec. 23, 2013). "Substantial evidence" has been consistently defined as "such relevant evidence as a reasonable mind might accept as able to support a conclusion." Fort Chaplin Park Assocs. v. District of Columbia Rental Hous. Comm'n, 649 A.2d 1076, 1079 n.10 (D.C. 1994);

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[4] D.C. Official Code § 42-3502.08(a)(1) provides, in relevant part, that "[n]otwithstanding any provision of this chapter, the rent for any rental unit shall not be increased above the base rent unless . . . [t]he housing accommodation is registered in accordance with § 42-3502.05[.]" The Act's implementing regulations provide that "registration" includes the filing of a claim of exemption if a housing accommodation qualifies for an exemption. 14 DCMR § 4101.1, .2.

[5] *See supra* n.1 regarding the transfer of jurisdiction over hearings from the RAD to OAH.

Bower v. Chastleton Assocs., TP 27,838 (RHC Mar. 27, 2014); Jackson v. Peters, RH-TP-07-28,898 (RHC Feb. 3, 2012). The Commission reviews an ALJ's conclusions of law *de novo* to determine if they materially misconstrue the Act. United Dominion Mgmt. Co. v. District of Columbia Rental Hous. Comm'n; 101 A.3d 426, 430-31 (D.C. 2014); Caldwell v. Horning Mgmt. Co., LLC, RH-TP-15-30,710 (RHC Mar. 2, 2017).

A. Whether the Doctrine of *Res Judicata* Applies

The doctrine of *res judicata* (or claim preclusion) provides that "a final judgment on the merits of a claim bars relitigation, in a subsequent proceeding, of the same claim(s) between the same parties or their privies. *Res judicata* is an affirmative defense that must be pleaded and established by the proponent." Johnson v. District of Columbia Rental Hous. Comm'n, 642 A.2d 135, 139 (D.C. 1994). "To evaluate a claim of preclusion, the trier of fact must 'have before it the exhibits and records involved in the prior cases[.]" *Id.* at 139 (citing Jonathan Woodner v. Adams, 534 A.2d 292, 296 (D.C. 1987); Abramson v. Grady, 234 A.2d 174, 175 (D.C. 1967); Block v. Wilson, 54 A.2d 646, 648 (D.C. 1947). When a party invokes the doctrine of *res judicata*, the party must present sufficient evidence to enable the fact finder to issue findings of fact and conclusions of law concerning the following:

(1) Whether the claim was adjudicated finally in the first action;

(2) Whether the present claim is the same claim as the claim which was raised or which might have been raised in the prior proceeding; and

(3) Whether the party against whom the plea is asserted was a party or in privity with a party in the prior case.

Frank v. Barac Co., TP 25,075 (RHC Aug. 20, 2002) (citing Patton v. Klein, 746 A.2d 866, 870 (D.C. 1999)). The requirement set forth in Johnson is that the proponent provides adequate evidence for the trier of fact to determine that the claims raised in the instant case could have been adjudicated in a prior action. *See* 642 A.2d at 139.

When the doctrine of *res judicata* applies, subsequent litigation is barred "not only as to every ground of recovery or defense actually presented in the action, but also as to every ground which might have been presented." Henderson v. Snider Bros., Inc., 439 A.2d 481,485 (D.C. 1981) (quoting Cromwell v. County of Sac, 94 U.S. 351, 383 (1877)); *see* CT Assocs. v. Campbell, TP 27,231 (RHC Aug. 15, 2003) ("the parties or those in privity with them are barred, in a subsequent proceeding, from relitigating the same claim or any claim that might have been raised in the first proceeding" (quoting Davis v. Davis, 663 A.2d 499, 501 n3 (D.C. 1995))).

Here, the first question is whether the voluntary dismissal with prejudice of the First Tenant Petition, TP 30,518, constitutes a final adjudication. *See* Motion to Dismiss, Exhibit A (Motion for Voluntary Dismissal in 2014 DHCD TP 30,518) ("Motion for Voluntary Dismissal"); R. at Tab 17; Final Order at 4; R. at Tab 18. A dismissal with prejudice operates as an adjudication on the merits and precludes further action between the parties based on the principle of *res judicata*. Thoubboron v. Ford Motor Co., 809 A.2d 1204, 1210 (D.C. 2002) (citing Semtek Int'l, Inc. v. Lockheed Martin Corp., 531 U.S. 497, 505-06 (2001)); *see also* Burns v. Fincke, 197 F.2d 165, 166 (D.C. Cir. 1952); Parker v. Martin, 905 A.2d 756, 762 (D.C. 2006) (quoting Thoubboron, 809 A.2d at 1210); Bedell v. Clarke, TP 24,979 (RHC Apr. 19, 2006) (citing Davis, 663 A.2d at 501 n1.).

The Housing Provider maintains that all matters between the parties were settled on August 21, 2014, when the Settlement Agreement was filed with the LTB in the pending case of Zewdou v. Harris, 2014 LTB 13,729, which both served to dismiss the LTB matter by stipulation and provided that the Tenant would voluntary dismiss, with prejudice, the First Tenant Petition. Final Order at 4 (emphasis added); R. at Tab 18; *see* Motion for Voluntary Dismissal at 1; R. at Tab 17; Settlement Agreement at 1; R. at Tab 17. In accordance with the Settlement Agreement,

on September 5, 2014, the Tenant filed a praecipe with OAH dismissing the First Tenant Petition, which stated "[t]his case is settled and the petitioner dismisses his complaint *with prejudice*." *See* Motion for Voluntary Dismissal at 1; R. at Tab 17; Settlement Agreement at 1; R. at Tab 17. In the instant case, because there was no appeal filed to the Commission, the decision in TP 30,518 was a final decision on its merits. *See* Taylor v. Bain, TP 28,071 (RHC Jun. 28, 2005) (because no appeal was filed, decision to dismiss tenant petition with prejudice was final decision on its merits). The Commission is therefore satisfied that the voluntary dismissal with prejudice of TP 30,518 constitutes a complete adjudication of the matter and precludes further action between the parties based on the principle of *res judicata*. Thoubboron, 809 A.2d at 1210. Because the First Tenant Petition was dismissed finally and with prejudice, the Commission determines that the first prong of the test is satisfied. Semtek Int'l, 531 U.S. at 505-06); Thoubboron, 809 A.2d at 1210; Davis, 663 A.2d at 501.

The second question to consider is whether the claim at issue in the Current Tenant Petition could have been raised in the First Tenant Petition or in the LTB matter. "A 'claim' or 'cause of action,' for purposes of claim preclusion, comprises *all rights of the plaintiff* to remedies against the defendant with respect to all or *any part of the transaction, or series of connected transactions, out of which the action arose*." Smith v. Greenway Apartments, LP, 150 A.3d. 1265, 1273 (D.C. 2016) (emphasis added) (citing Smith v. Jenkins, 562 A.2d 610, 613 (D.C. 1989); *see also* RESTATEMENT (SECOND) OF JUDGMENTS § 24(1) (1982). "[T]he 'transaction' or 'occurrence' is the subject matter of a claim, rather than the legal rights arising therefrom[.]" Jenkins, 562 A.2d at 613 (quoting Clark v. Taylor, 163 F.2d 940, 942-43 (2d Cir. 1947)).

The Housing Provider, in the Motion to Dismiss, argued that the August 21, 2014, Settlement Agreement "explicitly addressed the issue of the March 2014 rent increase and the Tenant's challenge to the validity of such increase" and that these same issues formed the basis for the Tenant's claims in the current Tenant Petition. Motion to Dismiss at 4; R. at Tab 17. The Housing Provider also noted in his motion to dismiss that the Settlement Agreement's recitals stated:

> Defendant [Tenant] has filed an affirmative claim against Plaintiff [Landlord], T/P 30,518, ***alleging that Plaintiff illegally raised rent because*** of a rodent infestation and the that ***Plaintiff is not entitled to the Rent Control exemption he filed and therefore not entitled to the rent increase taken starting in March of 2014***. . . the parties dispute each other's allegations ***but wish to resolve all of their disputes amicably by execution of this Settlement Agreement***."

Id. (alterations original); *see also* Settlement Agreement at 1; R. at Tab 17. The Housing Provider further noted that the Settlement Agreement "required that T/P 30,518 be dismissed by Tenant, with prejudice, within 7 days of execution of the Agreement." *Id.* The Tenant maintains that, because TP 30,518 did not actually assert a claim that the claim of exemption for the Housing Accommodation was invalid, the Settlement Agreement does not preclude the Tenant from raising the issue in the Second Tenant Petition. Tenant's Brief at 8-9.

In this case, there are five issues raised in the Tenant Petition, and each issue concerns a challenge to the validity of the March 1, 2014, rent increase. *See* Tenant Petition at 2; R. at 2. The Housing Provider notified the Tenant in January of 2014 that his monthly rent would increase from $2,400 per month to $3,600, commencing March 1, 2014. *See* January 28, 2014 Notice of March 1, 2014 Rent Increase; R. at Tab 24. Then in April, the Housing Provider filed the LTB action for possession, where one of the stated grounds was non-payment, and the parties subsequently entering into the Settlement Agreement. *See* Motion to Dismiss, Exhibit C (Docket Entry Sheet LTB 2014-LTB-13729) ("LTB Docket Sheet") at 1; R. at Tab 17; First Tenant

Petition, Exhibit 2 Attachment (Housing Provider Complaint for Possession filed in 2014-LTB-13729) at 1; R. at Tab 20; Final Order at 4; R. Tab at 18. In addition to the portions of the Settlement Agreement referenced above, the Commission notes that provisions in the Settlement Agreement specifically address, among other things:

> 5. This case shall be dismissed, by stipulation of dismissal, today, subject to the terms of this Agreement. *Defendant shall dismiss, with prejudice, T/P 30,518*, within 7 days of execution of this Agreement.
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> 7. Notwithstanding the *valid increase as of March 1, 2014*, Plaintiff shall deem Defendant current in his rent through August 31, 2014 and waive entitlement to all rent and late fees otherwise owed. In September of 2014 Defendant shall pay $3,600.00 per month in rent.
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> 8. *The Parties agree that the valid rent shall be $3,600.00 per month through February of 2016.* Thereafter, Plaintiff shall be entitled to no more than 1 rent increase per calendar year and each increase shall be a maximum of 10% greater than the existing rent. Within 14 days of execution of this Agreement Plaintiff will provide Defendant a new lease agreement with the exact terms of the Parties' 2007 lease, and incorporating all terms of this Agreement herein, which Defendant shall execute and return to Plaintiff within 14 days of receipt.

Settlement Agreement at 3 (emphasis added); R. at Tab 17.

Based on the Commission's review of the record, there is substantial evidence to conclude that the Tenant's claim in his Current Tenant Petition arises out of the same transaction or occurrence that was the subject matter of the First Tenant Petition. *See* Greenway Apts., LP, 150 A.3d. at 1273; Jenkins, 562 A.2d at 613; RESTATEMENT (SECOND) OF JUDGMENTS § 24(1) (1982). In the Current Tenant Petition, the Tenant alleged that the Housing Provider violated several provisions of the Act by increasing the rent in March 1, 2014. *See supra* at 2; Tenant Petition at 2; R. at Tab 1.1. Although the First Tenant Petition did not include a specific complaint that the Housing Provider violated D.C. OFFICIAL CODE § 42-3502.08(a)(1)(B) by increasing the rent while the Housing Accommodation was not properly registered, all the issues raised in the First Tenant Petition challenge the March 1, 2014, rent increase as violations of the

Act, and they all were specifically addressed and resolved by the parties in the Settlement Agreement. *See* Tenant Petition at 1-4; R. at Tab 1; Settlement Agreement at 1-2; R. at Tab 17. Moreover, all the complaints in the Current Tenant Petition could have been raised in the First Tenant Petition as alternative grounds to invalidate the March 1, 2014, rent increase,[6] and therefore those claims are precluded by *res judicata* from being relitigated now. *See* Henderson, 439 A.2d at 485. Thus, the Commission is satisfied that there is substantial evidence in the record to support the ALJ's conclusion that the First Tenant Petition was based on the same cause of action as the Current Tenant Petition, and that the ALJ's conclusion was in accordance with the Act. *See* Greenway Apts., LP, 150 A. 3d. at 1273; Campbell, TP 27,231; RESTATEMENT (SECOND) OF JUDGMENTS § 24(1) (1982). The Commission therefore determines that the second prong of the test is satisfied. Thoubboron, 809 A.2d at 1210.

The third question is whether the parties in the two cases are the same. The Housing Provider submitted, as exhibits to its Motion to Dismiss, copies of TP 30,518, the Voluntary Dismissal Motion filed by the Tenant in TP 30,518, the entire Settlement Agreement entered into by the parties in LTB, and the LTB Docket Sheet. *See* Motion to Dismiss; R. at Tab 17. These documents state that Ronald Harris, the Tenant, and Teferi Zewdou, the Housing Provider, were parties in both the First Tenant Petition, TP 30,518, and the Current Tenant Petition, TP 30,724.

[6] The Tenant additionally asserts on appeal that the Current Tenant Petition challenges a "September, 2014 rent increase," rather than the March 1, 2014, rent increase challenged in the First Tenant Petition, and maintains that this petition therefore arises out of a separate cause of action. Tenant's Brief at 8; *see also* Opposition to Motion to Dismiss at 5-6; R. at Tab 12. Reviewing the plain language of the Settlement Agreement, the Commission determines that the Housing Provider's waiver of past-due rent through August 2014, and the Tenant's agreement to, thereafter, pay the increased amount of rent previously demanded in March 2014, did not constitute a separate rent increase with an effective date of September 1, 2014. *See* Tillery v. District of Columbia Contract Appeals Bd., 912 A.2d 1169, 1176 (D.C. 2006) (under objective law of contracts in the District of Columbia, "the written language embodying the terms of an agreement will govern the rights and liabilities of the parties [regardless] of the intent of the parties at the time they entered into the contract" (alteration original)); *see, e.g.*, Sindram v. Tenacity Group d/b/a Cap City Mgmt., RH-TP-07-29,094 (RHC Aug. 18, 2011) (occupancy agreement objectively created seller-purchaser, not landlord-tenant, relationship). Accordingly, the Commission affirms the OAH's determination that "[t]his was not a new increase." Final Order at 7; R. at Tab 18.

Moreover, in the Current Tenant Petition the Tenant concedes the parties are unchanged. *See* Notice of Appeal at 6. The Commission therefore determines that the third prong of the test is satisfied. Thoubboron, 809 A.2d at 1210.

The Commission therefore determines that OAH's conclusion that all three prongs of the test for *res judicata* have been met is supported by substantial evidence and in accordance with the Act. 14 DCMR § 3807.1; Thoubboron, 809 A.2d at 1210. Accordingly, the Commission affirms the OAH's application of the doctrine of *res judicata* to the Current Tenant Petition based on the Settlement Agreement entered into in the parties' LTB case and First Tenant Petition.

B. Whether OAH Erred by Granting the Housing Provider's Motion to Dismiss Without Addressing the Tenant's Fraud Argument

The Tenant argues that OAH nonetheless erred in granting the Housing Provider's Motion to Dismiss without analyzing the Tenant's fraud argument. *See* Tenant's Brief at 4. The Tenant maintains that the Housing Provider fraudulently induced him to enter the Settlement Agreement on August 21, in the LTB of the D.C. Superior Court. *See* Tenant's Brief at 11-16; *see also* Petitioner's Motion for Reconsideration, and Summary Judgment ("Motion for Reconsideration") at 1-2; R. at Tab 22; Memorandum in Support of Petitioner's Motion for Reconsideration and Summary Judgment at 5-8; R. at Tab 21. In denying the Motion for Reconsideration the ALJ noted:

> Even if Tenant had been fraudulently induced into signing the Settlement Agreement, his remedy is to seek to vacate the Settlement Agreement by filing a Rule 60(b) motion in D.C. Superior Court or seeking to vacate the final order dismissing TP 30,815. As long as TP 30,815 remains dismissed with prejudice and there is a valid Settlement Agreement that has not be vacated by the court, the doctrine of *res judicata* prevents Tenant from filing a new petition challenging the same rent increase that was part of the Settlement Agreement and previous tenant petition.

See Order Denying Motion for Reconsideration at 5-6; R. at Tab 35. As noted *supra* at 12, the Settlement Agreement was entered into by the parties under the jurisdiction of the D.C. Superior Court. *See* Settlement Agreement at 1-4; R. Tab 17; LTB Docket Sheet at 1; R. at Tab 17.

The Commission's standard of review requires it to reverse decisions that are "based upon arbitrary action, capricious action, or an abuse of discretion, or which contains conclusions of law not in accordance with provisions of the Act, or findings of fact unsupported by substantial evidence in the record." 14 DCMR § 3807.1.

The Commission observes that "a prior judgment operates as *res judicata* only in the absence of fraud or collusion." Interdonato v. Interdonato, 521 A.2d 1124, 1132 (D.C. 1987). However, the Commission also observes that:

> "A compromise or settlement of litigation is always referable to the action or proceeding *in the court where the compromise was effected*; it is through that court the carrying out of the agreement should thereafter be controlled. Otherwise, the compromise, instead of being an aid to litigation, would be only productive of litigation as a separate and additional impetus."

Autera v. Robinson, 419 F.2d 1197, 1200 n.10 (D.C. Cir. 1969) (emphasis added) (quoting Melnick v. Binenstock, 179 A. 77, 78 (Pa. 1935)); *see also* Puckrein v. Jenkins, 884 A.2d 46, 54 (D.C. 2005) ("A consent judgment is an order of the court, 'indistinguishable in its legal effect from any other court order, and therefore subject to enforcement like any other court order.'" (quoting Moore v. Jones, 542 A.2d 1253, 1254 (D.C. 1988))); Confederate Memorial Ass'n v. United Daughters of the Confederacy, 629 A.2d 37, 39 (D.C. 1993) ("Trial courts have the power to enforce settlement agreements in cases pending before them." (citing Autera, 419 F.2d at 1200 (other citation omitted)).

The Tenant has not provided the Commission with any legal authority to support that continuing jurisdiction over the enforcement of the Settlement Agreement was removed from the D.C. Superior Court, or that the D.C. Superior Court was an inappropriate venue to determine the

Tenant's claims of fraudulent inducement with respect to the Settlement Agreement. The Commission is satisfied that D.C. Superior Court is the appropriate venue for the Tenant to assert his allegations that the Housing Provider fraudulently induced him to enter into the Settlement Agreement. *See* Autera, 419 F.2d at 1200 n.10; *see also* D.C. OFFICIAL CODE § 11-921(a) ("the Superior Court has jurisdiction of any civil action or other matter (at law or in equity) brought in the District of Columbia"); Powell v. Washington Land Co., 684 A.2d 769, 770 (D.C. 1996) ("The D.C. Superior Court is 'a court of general jurisdiction with the power to adjudicate any civil action at law or in equity involving local law.'" (quoting Andrade v. Jackson, 401 A.2d 990, 992 (D.C. 1979)); King v. Kidd, 640 A.2d 656, 661 (D.C. 1993). Therefore, so long as the consent judgment entered pursuant to the Settlement Agreement in the LTB has not been vacated, the Commission is satisfied that the doctrine of res judicata applies to the claims made in the Current Tenant Petition. Autera, 419 F.2d at 1200; Puckrein, 884 A.2d at 54.

Accordingly, the Commission determines that the failure to address the Tenant's fraud argument was not arbitrary and capricious, an abuse of discretion, or otherwise not in accordance with the law, and affirms the OAH's determination that the Tenant's claims are barred by the doctrine of *res judicata*. *See e.g.* Caldwell v. Horning Management Co., RH-TP-15-30,710 (RHC Mar. 2, 2017).

2. Whether Other Issues are Moot Based on the Application of *Res Judicata*

The Tenant also claims that the ALJ erred in granting the Housing Provider's Motion to Dismiss by: (1) failing to conduct a review of the Housing Provider's claim of exemption under 14 DCMR § 4106.4; (2) failing to find that the rent increase was illegal the rent which was based on a voluntary agreement which had not first been filed with and approved by the Rent

Administrator under D.C. OFFICIAL CODE § 42-3502.15;[7] (3) Failing to find the settlement agreement unenforceable by reasons of public policy; (4) failing to find that the enforcement of the March 2014 rent increase was a violation of 14 DCMR § 4205.4 *et seq*; (5) failing to accept all allegations and construe all facts and inferences in favor of the petitioner on consideration of respondent's motion to dismiss; and (6) failing to analyze petitioner's legal arguments, which resulted in a final order not supported by law. *See* Notice of Appeal 2-3.

As discussed *supra at* 13, the doctrine of *res judicata* (or "claim preclusion") provides that subsequent litigation is barred not only as to the claim that was decided "but also as to every ground which might have been presented." Henderson, 439 A.2d at 485; Campbell, TP 27,231. The Commission observes that all six of the Tenant's other issues on appeal represent alternative grounds to invalidating the March 1, 2014, rent increase. As discussed *supra* at 14-16, all the complaints in the Current Tenant Petition could have been raised in the First Tenant Petition as alternative grounds to invalidate the March 1, 2014, rent increase,[8] and therefore those claims are precluded by res judicata from being relitigated now. See Henderson, 439 A.2d at 485.

The Commission therefore determines that the Tenant's issues relating to review of the claim of exemption under 14 DCMR § 4106.4 and the alleged violation of 14 DCMR § 4205.4 are also precluded by the doctrine of *res judicata*. Henderson, 439 A.2d at 485; Campbell, TP 27,231. The Commission also determines that the Tenant's assertion that the rent increase

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[7]The Commission observes nothing within the record on appeal nor the factual and legal assertions made in this case that supports the applicability of D.C. OFFICIAL CODE § 42-3502.15 to the Settlement Agreement. The provisions of the Act allowing for rent increases based on "voluntary agreements" require the approval of 70% of the tenants of a registered, rent-controlled housing accommodation and the filing of a particular application with the RAD. D.C. OFFICIAL CODE § 42-3502.15; 14 DCMR § 4213. The Tenant provides no basis for finding that those provisions are applicable to a settlement agreement entered in the LTB regarding a single rental unit that is asserted by the respective parties to be either exempt from rent control (thereby not requiring prior approval for rent increases) or improperly registered (thereby prohibiting *any* rent increase). *See* Tenant's Brief at 16-17; *cf.* D.C. OFFICIAL CODE § 42-3502.08(a)(1).

[8] *See supra* n.6.

agreed to by the Settlement Agreement violated the voluntary agreement provisions of the Act is also precluded because it constitutes alternate grounds for the same relief the Tenant previously sought in the First Tenant Petition.[9] *Id.* The Tenants assertion that the Settlement Agreement should be void as contrary to public policy is, like the Tenant's fraud argument, properly directed to the D.C. Superior Court where the Settlement Agreement was filed and adopted. *See supra* at 17-18. With respect to the Tenant's issue that the ALJ failed to draw inferences in his favor, the Commission observes that the Tenant appears to only make this assertion with respect to the fraud claim that is, again, properly directed to the D.C. Superior Court. *See* Tenant's Brief at 11. Finally, the Tenant's issue that the ALJ failed to analyze all issues again appears to refer only to the fraud claim and to the voluntary agreement argument. *See id.* at 4.

As discussed *supra* at 11-17, because the Commission determines that OAH's conclusions that all three prongs of the test for *res judicata* have been met were supported by substantial evidence and in accordance with the Act, the Commission is also satisfied that the Tenant's two remaining claims in the Current Tenant Petition are therefore precluded as well. Thoubboron, 809 A.2d at 1210. Accordingly, the Commission affirms the OAH's dismissal of the Current Tenant Petition under the doctrine of *res judicata*. The Commission notes that its affirmance of the OAH dismissal of the current Tenant Petition, TP 30,724, renders the remaining two issues raised by the Tenant moot. Milar Elevator Co. v. District of Columbia Dep't of Emp't Servs., 704 A.2d 291, 292 (D.C. 1997) Knight-Bey v. Henderson, RH-TP-07-

[9] The Commission also observes that nothing within the record on appeal nor the factual and legal assertions made in this case supports the applicability of D.C. OFFICIAL CODE § 42-3502.15 to the Settlement Agreement. The provisions of the Act allowing for rent increases based on "voluntary agreements" require the approval of 70% of the tenants of a registered, rent-controlled housing accommodation and the filing of a particular application with the RAD. D.C. OFFICIAL CODE § 42-3502.15; 14 DCMR § 4213. The Tenant provides no basis for finding that those provisions are applicable to a settlement agreement entered in the LTB regarding a single rental unit that is asserted by the respective parties to be either exempt from rent control (thereby not requiring prior approval for rent increases) or improperly registered (thereby prohibiting *any* rent increase). *See* Tenant's Brief at 16-17; *cf.* D.C. OFFICIAL CODE § 42-3502.08(a)(1).

28,888 (RHC Jan. 8, 2013); Borger Mgmt., Inc. v. Winchester-Luzon Tenants Assoc., RH-TP-06-28,854 (RHC Mar. 7, 2009).

3. Whether the ALJ Erred by Awarding Attorney's Fees to the Housing Provider

In granting the Housing Provider's motion for attorney's fees, the ALJ found that the "Tenant filed his petition frivolously and without foundation in an attempt to avoid eviction." *See* Final Order at 11; R. at Tab 35. The Tenant disputes the ALJ's finding and argues that the Current Tenant Petition was not filed to avoid eviction, but rather "was designed to protect himself, his totally-innocent subtenants[,] and future tenants, both his housing and throughout D.C., from having the rent control law eviscerated by fraudulent conduct from landlords." *See* Tenant's Brief at 21.

As stated *supra* at 10, the Commission reviews findings of fact to determine if they are supported by substantial evidence and conclusions of law *de novo* to determine if they are unreasonable interpretation of the Act or embody a material misconception of the law. 14 DCMR § 3807.1; United Dominion Mgmt. Co., 101 A.3d at 430-31; Tenants of 1754 Lanier Pl., N.W. v. 1754 Lanier, LLC, RH-SF-15-20,126 (RHC Mar. 25, 2016). An award of attorney's fees is generally reviewed for abuse of discretion, so long as the correct legal standard is applied. Tenants of 710 Jefferson St., N.W. v. District of Columbia Rental Hous. Comm'n, 123 A.3d 170, 179 (D.C. 2015).

The Commission's rules governing awards of attorney's fees under the Act provide, in relevant part:

> A prevailing housing provider represented by an attorney may be awarded attorney's fees where the [OAH] or the Commission finds the litigation of the tenant was frivolous, unreasonable, or without foundation.

14 DCMR § 3825.3;[10] *see* Tenants of 500 23rd. St., N.W. v. District of Columbia Rental Hous. Comm'n, 617 A.2d 486, 488-89 (D.C. 1992) ("attorney's fees may be assessed in favor of a prevailing housing provider when the litigation of tenants is 'frivolous, unreasonable, or without foundation, even though not brought in subjective bad faith.'" quoting Christiansburg Garment Co. v. Equal Emp't Opportunity Comm'n, 434 U.S. 412, 421 (1978));[11] Londraville v. Kader, TP 21,748 (RHC Dec. 14, 1993); Columbia Plaza Ltd. Partners v. Tenants of 500 23rd St., NW, CIs 20,266-20,268 (RHC May 30,1991).

In her application of 14 DCMR § 3825.3, the ALJ found that the "Tenant filed the [Current Tenant Petition] frivolously and without foundation in an attempt to avoid eviction." Final Order at 5-11; R. at Tab 35. The ALJ concluded that the "Tenant knowingly entered a Settlement Agreement, the terms of which (1) resolved the March 1, 2014, rent increase, (2) agreed to the validity of the $3,600 rent amount, and (3) required the Tenant to dismiss his [First Tenant Petition] with prejudice." *See* Final Order at 5-11; R. at Tab 35.

The Commission's review of the record shows that the ALJ's above findings and conclusions are supported by substantial evidence. *See* 14 DCMR § 3807.1. Specifically, the Housing Provider Complaint for Possession filed in 2014-LTB-13729 and the LTB Docket Sheet show that, in July 2015, the Housing Provider sought a judgment for possession in the LTB against the Tenant for breach of the Settlement Agreement. *See* LTB Docket Sheet at 1; R. at Tab 17. Then on August 4, 2015, the LTB Court found that the Tenant had breached the Settlement Agreement and a Non-Redeemable Judgment of Possession was entered as well as a

[10] *See supra* n.1 regarding the transfer of hearings to OAH.

[11] Although D.C. OFFICIAL CODE § 42-3509.02 provides that attorney's fees may be awarded to "the prevailing party in any action under this chapter," the District of Columbia Court of Appeals ("DCCA") has held that, because "housing provider litigation fails to serve [the] goals of the attorney's fee provision of the Act, . . . prevailing housing providers do not enjoy a presumptive entitlement to attorney's fee awards." Tenants of 500 23rd Street, N.W., 617 A.2d at 490.

money judgment for liquidated damages to be paid to the Housing Provider due to the breach. *Id.* The timing of the Tenant's filing of the Current Tenant Petition, shortly after the entry of judgment against the Tenant in the LTB, supports the ALJ's determination that the Current Tenant Petition was filed as an improper delay tactic. *See* Tenant Petition at 1; R. at Tab 1; Final Order at 11; R. at Tab 35.

Further, the Commission observes, based on its review of the record, that the Current Tenant Petition was filed despite the fact that the Settlement Agreement resolved the issue of the March 1, 2014, rent increase, was binding on the parties, and was subject to enforcement by the LTB. As described *supra* at 9-19, the Commission has affirmed the ALJ's determination that the Current Tenant Petition is clearly barred by the doctrine of *res judicata*, due to the prior litigation in the LTB. Specifically, as described *supra* at 13-16, the Tenant's argument, made before the OAH and also on appeal, that the Second Tenant Petition avoids the bar of *claim* preclusion because of the difference in the *issues* asserted in the First Tenant Petition is wholly without merit; *res judicata*, fundamentally, bars all issues, whether previously asserted or not. *See* Greenway Apts., LP, 150 A. 3d. at 1273; Campbell, TP 27,231; RESTATEMENT (SECOND) OF JUDGMENTS § 24(1) (1982).[12]

With respect to the Tenant's fraud argument, as the ALJ explained in denying the Tenant's Motion for Reconsideration, Superior Court "Rule 60(b) preserves as a last resort the possibility that a court may entertain an independent action to relieve a party from a judgment or to set aside a judgment for fraud on the court." *See* Order Denying Motion for Reconsideration

[12] The Commission also notes that, as described *supra* at n.6, the Tenant's assertion that there was a separate, "September 2014 rent increase" that can be challenged in the Current Tenant Petition is without merit under the plain language of the Settlement Agreement. Accordingly, the Tenant cannot raise a new claim, based solely on a challenge to the validity of the Housing Provider's registration (or exemption), because invalid registration, in the absence of a rent increase, does not constitute an independent cause of action. *See* Smith Prop. Holdings Consulate, LLC v. Lutsko, RH-TP-08-29,149 (RHC Mar. 10, 2015).

at 6-7; R. at Tab 35. The Commission notes, finally, that throughout all proceedings, including the negotiation of the Settlement Agreement the Tenant now seeks to avoid, the Tenant has been represented by counsel. *See* Housing Provider's Brief at 15-16.

The Commission therefore determines that the ALJ's award of attorney's fees is supported by substantial evidence in the record and that the ALJ's conclusion that the current petition was filed frivolously and without foundation was in accordance with the Act and not an abuse of discretion. *See* Tenants of 710 Jefferson St., 123 A.3d at 179; *see e.g.*, Salazar, RH-TP-29,645; Hagner Mgmt., TP-12,117. Based upon its review of the record, the Commission determines that the ALJ did not abuse her discretion in awarding legal fees to the Housing Provider's counsel. Accordingly, the Commission affirms the Final Order on this issue. *See* 14 DCMR § 3807.1.

IV. CONCLUSION

For the foregoing reasons, the Commission affirms the OAH dismissal of the Tenant Petition because the claim of an invalid registration is precluded under the doctrine of *res judicata*. *See supra* at 11-17. The Commission further determines that the Tenant's remaining issues, asserting that the ALJ failed to address certain claims, are moot based on the dismissal of the Tenant Petition as barred by *res judicata*. *See supra* at 19-22. Finally, the Commission affirms the ALJ's award of attorney's fees to the Housing Provider because substantial evidence supported the determination that the Current Tenant Petition was filed frivolously and without foundation. *See supra* at 23-24.

SO ORDERED.

MICHAEL T. SPENCER, CHAIRMAN

PETER B. SZEGEDY-MASZAK, COMMISSIONER

DIANA HARRIS EPPS, COMMISSIONER

MOTIONS FOR RECONSIDERATION

Pursuant to 14 DCMR § 3823 (2004), final decisions of the Commission are subject to reconsideration or modification. The Commission's rule, 14 DCMR § 3823.1 (2004), provides, "[a]ny party adversely affected by a decision of the Commission issued to dispose of the appeal may file a motion for reconsideration or modification with the Commission within ten (10) days of receipt of the decision."

JUDICIAL REVIEW

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

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

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing **DECISION AND ORDER** in RH-TP-15-30,724 was mailed, postage prepaid, by first class U.S. mail on this 7**th day** of **November, 2017**, to:

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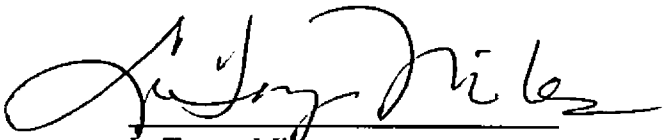

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