SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

MILESTONE EAST CAPITOL 2, LLC, **Plaintiff,** **v.** **DEBRA DANIELS,** **Defendant.**	**Case No. 2024-LTB-7847** **Judge Julie H. Becker**

ORDER GRANTING DEFENDANT'S MOTION TO DISMISS

This matter is before the Court on Defendant Debra Daniels's Motion to Dismiss, filed February 12, 2025. Plaintiff Milestone East Capitol 2, LLC ("Milestone") filed an opposition on April 25, 2025, and Ms. Daniels filed a reply on May 2, 2025. On May 29, 2025, Milestone filed a supplement to its opposition, and Ms. Daniels filed a supplemental reply on June 13, 2025.

The Court has carefully considered the parties' submissions, the authorities cited therein, and the record in this case. For the reasons set forth below, the motion to dismiss is granted.

Background

A. Procedural history

Milestone filed this case on July 18, 2024, seeking to evict Ms. Daniels based on her alleged failure to pay rent from January through July 2024. The complaint alleges that the premises is registered with the D.C. Rental Accommodations Division as exempt from the provisions of the District of Columbia's rent control laws. Pl.'s Compl. ¶ 3 (July 18, 2025). Ms. Daniels filed an Answer, Counterclaim and Jury Demand on January 6, 2025, claiming (among other defenses) that she was entitled to dismissal "because Plaintiff's current rental registration document is invalid since the Plaintiff is not exempt from the Rental Housing Act as required by D.C. Code § 16-

1501(c)(1)." Def.'s Answer ¶ 6 (Jan. 6, 2025). The matter was subsequently transferred to the undersigned for further proceedings.

On February 12, 2025, Ms. Daniels filed a motion to dismiss, again claiming Milestone's rental registration was invalid. The motion was predicated on the assumption that Milestone was claiming an exemption from rent control because "some of the units within the housing accommodation are federally subsidized under the Section 8 voucher program." Def.'s Mot. at 4 (Feb. 12, 2025). Milestone filed its opposition on April 25, 2025, disclaiming any reliance on the use of Section 8 vouchers for its rent control exemption. Instead, Milestone claimed that it was exempt because Ms. Daniels's property, Meadow Green Courts, participates in the federal low-income housing tax credit program (LIHTC). The parties proceeded to submit additional briefing on whether LIHTC participation supports an exemption from rent control.

B. The Low-Income Housing Tax Credit Program

Congress created the LIHTC in 1986 as a way of stimulating the private-sector production of affordable housing in the United States. Under the program, the federal government allocates tax credits to each state, which in turn allocate the credits to developers in exchange for development of affordable housing. To be eligible for the credits, the project must include a certain percentage of units that are affordable to residents who earn no more than 60 or 80 percent of the Area Median Income. *See* Urban Institute, The Low-Income Housing Tax Credit: How it Works and Who it Serves at 2 (July 2018).[1] A unit is "affordable" if the tenant pays no more than 30 percent of his or her income toward rent and utilities. *See id.* at v.

[1] Available at https://www.urban.org/sites/default/files/publication/98758/lithc_how_it_works_and_who_it_serves_final_2.pdf (last visited July 29, 2025).

In a typical LIHTC project, the owner of the property transfers the tax credits to investors in exchange for up-front investment in the acquisition, construction, or rehabilitation of the property. A main benefit of the program structure is that it "provides direct equity from private investors in exchange for income tax benefits [], reducing project need for debt and subsidies." *Id.* at 6. Generally, a LIHTC deal "benefits investors in two ways: (1) general tax savings earned by any rental property owner (not just LIHTC investors) by deducting the depreciation of the rental property plus operating losses, if any are incurred, and (2) the specific tax credits generated through LIHTC that can be used by the investor to offset federal income tax liability." *Id.* at 7.

To guarantee affordability for the statutory period, the property owner must record a restrictive covenant in the land records, setting forth the rent restrictions and other requirements of federal law. *See* 26 U.S.C. §§ 42(h)(6)(A), (B)(vi). The mandated covenant for Meadow Green Courts is attached as Exhibit A to Milestone's opposition.

Discussion

Ms. Daniels seeks dismissal on the ground that Milestone has filed an invalid exemption from the District's rent stabilization laws, and therefore is barred from seeking possession under D.C. law. Milestone's response is twofold: first, it contends that this Court has no authority to rule on this issue, which is a question for the District's Rent Administrator; and second, it contends that its registration satisfies the requirements of the law. The Court addresses each argument below.

A. <u>The Court's authority to dismiss the matter</u>

D.C. Code § 16-1501, the District's forcible entry and detainer statute, prohibits any person from filing suit to evict a residential tenant "without a valid rental registration or claim of exemption pursuant to [D.C. Code] § 42-3502.05, and a current license for rental housing issued pursuant to § 47-2828(c)(1), as certified at the time of filing and documented at the initial hearing."

D.C. Code § 16-1501(c)(1). At or before the initial hearing in any landlord-tenant case, the plaintiff must produce "sufficient documentation to meet all requirements under District law," and if the plaintiff fails to do so, "the Court shall dismiss the complaint." *Id.* § 16-1501(d).

Milestone contends that it satisfied the requirements of the statute by presenting documentation of its claim of exemption, which it previously filed with the D.C. Rental Accommodations Division (RAD) as required by law. According to Milestone, because RAD "has approved" the exemption, the Court must defer to the agency's determination that the exemption is valid and may not examine the question in this case. Def.'s Opp. at 2-3. Instead, according to Milestone, Ms. Daniels must raise any challenge through the tenant petition process at the Office of Administrative Hearings. *Id.* at 3 n.5.

The Court rejects this argument for two reasons. First, it is not clear that RAD in fact has "approved" Milestone's claim of exemption. To be sure, the Registration/Claim of Exemption form attached to Milestone's complaint bears a file-stamp from RAD and the signature of an "intake representative." *See* Compl. (July 18, 2024). It also includes a Claim of Exemption number, which the Rent Administrator issues "after review . . . if the claimed exemption appears valid." 14 DCMR § 4106.3. But the form does not indicate that any RAD employee has investigated the claim of exemption beyond its facial sufficiency or determined the information to be accurate. Furthermore, as Ms. Daniels points out, the regulations governing registration and claims of exemption state explicitly that "[t]he acceptance of a document for filing shall not constitute an approval of the document's legal sufficiency or a waiver of any failure to comply with the requirements of the Act or any regulations." *Id*. § 3901.9; Def.'s Reply at 3 (May 2, 2025).

Second, the rental housing regulations appear to contemplate that courts, and not only the D.C. government, are responsible for determining whether an exemption is valid if called upon to do so. The chapter governing claims of exemption provides that "[f]ailure to file or to later provide accurate information . . . may result in the rejection of the filing of the Registration/Claim of Exemption Form, a determination by the Rent Administrator that the registration is defective, [or] *a determination in any legal proceeding* that the housing provider has failed to meet the registration requirements of this chapter." 14 DCMR § 4106.6 (emphasis added). This case is a "legal proceeding," in which the tenant claims that the landlord has provided inaccurate information in support of its claim for exemption. Milestone has not explained why the Court is precluded from resolving that question, especially given that "a valid rental registration or claim of exemption" is required for a landlord to obtain a judgment for possession. D.C. Code § 16-1501(c)(1).

Accordingly, the Court concludes that Ms. Daniels is entitled to challenge the validity of Milestone's claim of exemption as part of this landlord-tenant case. If the exemption is not valid, the case must be dismissed.

B. Whether Ms. Daniels's unit is exempt from rent control

D.C. Code § 42-3502.05(a) makes all rental units in the District of Columba subject to the city's rent stabilization laws unless the unit qualifies for a listed exemption. Those exemptions include, as relevant here, "[a]ny rental unit in any federally or District-owned housing accommodation or in any housing accommodation with respect to which the mortgage or rent is federally or District-subsidized." D.C. Code § 42-3502.05(a)(1). Milestone contends that Ms. Daniels's building satisfies this requirement because it participates in the LIHTC program, which it characterizes as an "indirect federal subsidy [that] results in restrictions on who is qualified to

live at the property and reduced rents for all the units at the property." Pl.'s Opp. at 3-4. Ms. Daniels, on the other hand, contends that LIHTC benefits are not a federal or District subsidy, and therefore cannot be the basis for an exemption.

The question, then, is, the meaning of "federally or District-subsidized" as used in § 42-3502.05(a)(1). "To interpret a statute, [the] court will first look to see whether the statutory language at issue is plain and admits of no more than one meaning." *Wong v. District of Columbia*, 314 A.3d 1236, 1241 (D.C. 2024) (citations and internal quotation marks omitted). The Court must apply that plain meaning "when the language is unambiguous and does not produce an absurd result." *Id.* (citations and internal quotation marks omitted).

The Rental Housing Act does not define the terms "subsidy" or "subsidized." *See* D.C. Code § 42-3501.03. "When the statute does not define the term in question, 'it is appropriate for us to look to dictionary definitions to determine [its] ordinary meaning.'" *Lucas v. United States*, 305 A.3d 774, 777 (D.C. 2023) (quoting *Tippett v. Daly*, 10 A.3d 1123, 1127 (D.C. 2010)). The American Heritage Dictionary defines "subsidized" with reference to the term "subsidy," which it in turn defines first as "[m]onetary assistance granted by a government to a person or group in support of an enterprise regarded as being in the public interest," and second as "[f]inancial assistance given by one person or government to another." American Heritage Dictionary of the English Language, 5th ed. (2022). Similarly, the Merriam-Webster Dictionary defines "subsidy" as "money granted by one state to another" or "a grant by a government to a private person or company to assist an enterprise deemed advantageous to the public." Merriam-Webster.com Dictionary (2025).[2]

[2] Available at https://www.merriam-webster.com/dictionary/subsidy (last visited July 29, 2025). Both dictionaries also include, as an alternate definition, money granted from the British Parliament to the Crown.

Each of these definitions incorporates the concept of giving monetary assistance directly from one person or entity to another. As discussed above, however, this not how the LIHTC program works. Rather than providing monetary assistance for affordable housing, the program awards federal tax credits to developers in exchange for developing affordable units. Developers use the tax credits to reduce acquisition and construction costs, typically by selling the credits to investors in exchange for up-front financing. The program involves no transfer of money or other financial assistance from the government, either to the landlord or the tenants in an LIHTC property. A federal tax credit, used an incentive for development, is not the same as a grant of money to maintain affordable rents.

The regulations implementing the Rental Housing Act also appear to define "subsidized" in a way that excludes LIHTC units. The applicable regulation provides that a rental unit qualifies for "the government subsidy exemption" if the unit "is enrolled in a formal program of the federal or District of Columbia government under which the operating expenses or mortgage are subsidized." 14 D.C.M.R. § 4106.10. Again, however, this is not how LIHTC works. "Operating expenses" are "the expenses required for the operation of a housing accommodation," such as "salaries of on-site personnel, supplies, painting, maintenance and repairs, utilities, professional fees, on-site offices, and insurance." D.C. Code § 42-3501.03(22). LIHTC tax credits do not subsidize operating expenses, nor do they subsidize mortgages. To the contrary, as Ms. Daniels points out, the tax credits fund either "new construction" or the "rehabilitation or acquisition of existing housing" for conversion to affordable housing. 10 DCMR § B3402.2(d); Def.'s Reply at 6.

In addition, although the D.C. Court of Appeals does not appear to have addressed the question of whether LIHTC properties are "subsidized" for purposes of D.C. Code § 42-

3502.05(a)(1), the Rental Housing Commission (RHC) – the administrative appellate body for housing cases – has ruled that similar rent restrictions mandated by the D.C. Housing Finance Agency (DCHFA) do not render a property exempt from rent control. *See Bower v. Chastleton Assocs.*, TP No. 27,838, 2014 D.C. Rental Housing Comm. LEXIS 9. In *Bower*, the RHC considered a property that had formerly been subject to a DCHFA-subsidized mortgage, which qualified the property for a rent control exemption. *Id*. *1. After paying off the mortgage, the owner continued to claim an exemption pursuant to § 42-3502.05(a)(1) based on a deed covenant that required rents to remain restricted for several years following the mortgage payoff. The RHC noted that the deed covenant was a type of "special tax covenant" required by the federal Internal Revenue Code for "the Housing Provider to secure the bond financing underlying DCHFA's mortgage subsidy." *Id.* at *31-32 (citations and internal quotation marks omitted). The RHC concluded that these "special tax covenants" were "an entirely separate and independent legal requirement from the . . . mortgage subsidy" that underlay the rent control exemption. *Id.* at *33. And while the mortgage subsidy supported the property's exemption from rent control, the special tax covenants alone did not.

Of course, the tax covenants at issue in *Bower* are part of a different financing scheme than the tax credits available through the LIHTC program. More generally, however, *Bower* supports the proposition that rent restrictions required as a condition of tax benefits to the owner or third parties are not a "subsidy" for purposes of the rent control statute. Even where the federal or local government establishes the rent levels, the absence of a subsidy – for either the mortgage or the operating expenses – disqualifies the property from the statutory exemption.

To support its claim that the property in question is subsidized, Milestone makes two arguments. First, it characterizes LIHTC as an "indirect federal subsidy," which subsidizes

operating expenses through "significantly reduced income taxes which would otherwise come out of Plaintiff's operating budget in full." Pl.'s Opp. at 3, 5. But a tax credit is not the equivalent of direct monetary assistance, either in the LIHTC context or more generally. *See, e.g.*, *Randall v. Loftsgaarden*, 478 U.S. 647, 657 (1986) ("Unlike payments in cash or property . . . the 'receipt' of tax deductions or credits is not itself a taxable event, for the investor has received no money or other 'income' within the meaning of the Internal Revenue Code."); *West v. Palo Alto Hous. Corp.*, 2019 U.S. Dist. LEXIS 103665, *70 (noting, in the context of the federal Rehabilitation Act, that "courts have uniformly determined that tax credits do not constitute financial assistance"). Nor, as discussed above, do tax credits support a property's operating budget.

Second, Milestone relies on a non-binding 1993 Advisory Opinion from the D.C. Rent Administrator concluding that a unit subject to the LIHTC is "subsidized" for the purpose of the rent control law. *See* Pl.'s Praecipe to Supplement Record, Ex. A (May 29, 2025). The Court does not find this opinion persuasive. For one thing, the Advisory Opinion appears to rest on a basic misunderstanding of the LIHTC program. It explains that a low-income housing tax credit "is not made available on some building wide basis, but is rather keyed specifically to the low-income housing use of the particular rental unit." *Id.* at 8. This feature, according to the opinion, demonstrates that "the low-income housing tax credit is clearly intended to subsidize the rent payable by the low-income tenant, by supplementing it with the use of the tax credit. This is the same in its effect as a direct payment of cash to subsidize the rent." *Id.* That is incorrect, however. As discussed above, LIHTC credits are not "keyed" to a "particular rental unit"; they are made available to a developer in exchange for providing a certain number of low-income units in the property as a whole. *See* 26 U.S.C. §§ 42(a), 42(c)(1) (setting the tax credit amount with reference to the percentage of low-income units in the project); 10 DCMR § B3400.6 (providing that the

maximum available tax credit depends on certain project-wide qualities, including the percentage of low-income units); Pl.'s Opp. Ex. A at ¶ III.B (Indenture of Restrictive Covenants for Low-Income Housing Tax Credit) ("Owner represents, warrants and covenants that, throughout the Compliance Period, not less than 80% of the units shall be rent restricted as Low-Income Units and occupied by households whose income is 60% or less of Area Median Gross Income, as described in the [Internal Revenue] Code."). Contrary to the Advisory Opinion's understanding, the program does not supplement the rent for individual units with a tax credit.

The Court also notes that the Advisory Opinion defines "subsidy" in a manner that is inconsistent with the plain meaning of that term. As discussed above, the word "subsidy" is generally defined as monetary assistance from the government. The Advisory Opinion, on the other hand, indicates that "the definition of the word 'subsidy' is not confined solely to the direct payment of money by the Government to a housing provider." Pl.'s Praecipe to Supplement Record, Ex. A at 4. It bases this conclusion on two even earlier administrative documents relating to the interpretation of the subsidy exemption from rent control. *See id.* at 3-4. The Court is disinclined to adopt this decades-old interpretation of the statute, which predates *Bower*, the current version of 14 DCMR § 4106.10, and other cases addressing the operation of the LIHTC program.

For these reasons, the Court concludes that a property that participates in the LIHTC program is not a "housing accommodation with respect to which the mortgage or rent is federally or District-subsidized." D.C. Code § 42-3502.05(a)(1). As a result, LIHTC participation is not a basis for an exemption from rent control, and a claim of exemption on this basis is invalid.

Conclusion

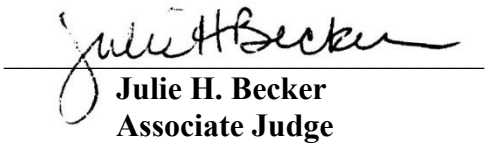
Accordingly, it is this 4th day of August, 2025, hereby

ORDERED that Defendant's Motion to Dismiss is **GRANTED**. It is further

ORDERED that Plaintiff's claim for possession is **DISMISSED**. It is further

ORDERED that the parties appear for a remote status hearing on August 15, 2025 at 11:00am in Courtroom 415 to discuss how they wish to proceed on Ms. Daniels's counterclaim.

SO ORDERED.



Julie H. Becker
Associate Judge

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