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DISTRICT OF COLUMBIA
OFFICE OF
ADMINISTRATIVE HEARINGS

2010 MAY 25 P 4: 25

CORTEZ BUTLER
Tenant/Petitioner,

v.

HELEN LEWIS
Housing Provider/Respondent.

Case No.: RH-TP-06-28767
In re 2825 Sherman Avenue, NW
Unit 3

FINAL ORDER

I. Introduction

On August 18, 2006, Tenant/Petitioner Cortez Butler filed Tenant Petition (TP) 28,767 alleging that Housing Provider/Respondent Helen Lewis violated the Rental Housing Act as follows: (1) increased his rent larger than the amount allowed by applicable law; (2) one hundred eighty days have not passed since his last rent increase; (3) failed to provide a proper 30 day notice of rent increase was not provided before his most rent increase became effective; (4) failed to file the proper rent increase forms with the Rental Accommodations Division of the Department of Housing and Community Development; (RAD) (5) charged rent that exceeds the legally calculated rent ceiling for his unit; (6) took a rent increase while Tenant's unit was not in substantial compliance with the D.C. Housing Regulations; (7) failed to properly register his unit with the RAD; (8) substantially reduced services and facilities in connection with the rental of his unit; (9) took retaliatory action against him for exercising his rights in violation of section

502 of the act and (10) served upon him a notice to vacate which violated the requirements of the act.¹

An evidentiary hearing was held on July 2, 2008.² Tenant appeared on his own behalf. The Housing Provider appeared with Robert C. Cooper, Esq., her attorney and one witness, her son, Juan Lewis. Based on the record in this matter, I find the following.

Tenant has not proven by a preponderance of the evidence that: the rent charged exceeded the legally calculated rent ceiling for his unit; a rent increase was taken while his unit was not in substantial compliance with the housing regulations; the building in which his rental unit is located was not properly registered with the RAD; and retaliatory action was directed against him by the Housing Provider for exercising his rights in violation of the act. Because of Tenant's failure to prove these allegations, I am dismissing these complaints with prejudice.

Tenant has demonstrated by a preponderance of evidence in the record that Housing Provider substantially reduced services for one week relative to the water and gas being shut off. Tenant has also proven by a preponderance of the evidence that Housing Provider reduced services and facilities by failing to repair a leak in Tenant's unit for one year.

II. Findings of Fact

1. The housing accommodation at issue is located at 2825 Sherman Avenue, NW, Unit 3.

The building has four rental units. Tenant's lease term began November 30, 1991.

¹ During the course of the hearing, Tenant withdrew complaint numbers 1, 2, 3, 4, and 6. As a direct consequence, there are no findings of fact or conclusions of law relative to those complaints.

² The parties made several attempts to settle this matter to no avail.

Tenant's initial monthly rent was set at \$325 per month. (Attachment to Tenant Petition).

Tenant had exclusive use of his unit and his unit was secured by a locked door.

2. On October 24, 2001, Housing Provider increased Tenant's monthly rent to \$375 per month.
3. Tenant's kitchen began to leak intermittently in May of 2003. Tenant notified Housing Provider about this problem in May of 2003. In May 2004, the Housing Provider repaired the leak.
4. In March, September and October 2005, the Department of Consumer and Regulatory Affairs (DCRA) issued notices of violation to the Housing Provider with a request to abate a number of housing code violations. (Petitioner's Exhibit) PX 102.³
5. In March of 2004, the water and gas were shut off for one week. In May of 2004 the water and gas were shut off for two days. Tenant notified the Housing Provider of the March incident but not the May incident.
6. On March 9, 2004, the Housing Provider sent Tenant a notice to vacate for non-payment of rent. PX 101. Tenant had not paid rent since October of 2003. The Tenant was to vacate the premises by March 30, 2004. The Tenant did not vacate the premises, nor did the Housing Provider take any further action to evict Tenant.
7. On January 12, 2005, the Housing Provider sent Tenant another notice to vacate indicating that the building required major renovations. ("Respondent's Exhibit") RX

³ A list of attachments to the Tenant Petition and other exhibits offered and received into evidence is attached as an appendix to the Final Order.

200. Tenant was to vacate by February 15, 2005. The Notice failed to indicate whether the Housing Accommodation was registered with the Rent Administrator. Tenant did not vacate the premises, nor did Housing Provider take further action to evict Tenant.

8. In March of 2004, Tenant and the Housing Provider's two sons, Mark and Juan Lewis, had a verbal altercation because Tenant refused to pay rent or vacate the premises so that the renovations to the building could begin. Mark Lewis made a physical gesture towards Tenant but was restrained by his brother, Juan Lewis. Tenant felt threatened but did not involve the police. Tenant claimed that the Lewis brothers' collective actions constituted retaliation against him.

III. Conclusions of Law

This matter is governed by the Rental Housing Act of 1985; substantive rules implementing the Rental Housing Act at 14 DCMR 4100 - 4399; the Office of Administrative Hearings Establishment Act at D.C. Official Code § 2-1831.03(b-1)(1), which authorizes the Office of Administrative Hearings (OAH) to adjudicate rental housing cases; the District of Columbia Administrative Procedure Act (D.C. Official Code §§ 2-501 *et seq.* (DCAPA); and OAH procedural rules at 1 DCMR 2800 *et seq.* and 1 DCMR 2920 *et seq.* Tenant has the burden of proving the claims alleged.⁴

A. Tenant has not proven that the rent being charged exceeded the legally calculated rent ceiling for his unit.

⁴ D.C. Official Code § 2-509(b); 1 DCMR 2932.1.

Tenant testified that he was told that his building was not registered. Tenant failed to specify where or when he received this information. Beyond that testimony, Tenant did not present any documentary evidence that the housing accommodation was not registered. As a consequence, Tenant failed to prove by a preponderance of the evidence that the building was not registered.

C. Tenant did prove that services and facilities provided in connection with the rental of his unit were substantially reduced.

Tenant testified that the water and gas services were shut off in March and May of 2004. Tenant notified the Housing Provider of the March 2004 incident but not the May 2004 incident. Additionally, Tenant indicated that he has had an intermittent leak from the ceiling in his kitchen for the past five years. Tenant notified the Housing Provider of this condition in May of 2003 and the Housing Provider corrected the problem in May of 2004. Although the Tenant indicated that the leak has persisted for five years, I do not find Tenant credible on this issue because of the inconsistency of his testimony as to the alleged origination of the leak in relation to the location of his particular unit. Moreover, there is no indication of a leak in the kitchen of Tenant's unit in the March, September or October 2005 notices of violation issued by the DCRA inspectors. The October 2005 report does make a reference to ceiling dampness but does not mention the location.

The Rental Housing Act contains a definition for "related services" "Related services are defined as:

services provided by a housing provider, required by law or by the terms of a rental agreement, to a tenant in connection with the use and occupancy of a rental unit, including repairs, decorating and

maintenance, the provision of light, heat, hot and cold water, air conditioning, telephone answering or elevator services, janitorial services, or the removal of trash and refuse.

D.C. Official Code § 42-3501.03(27).

To be actionable under the Rental Housing Act, a tenant's complaint must relate to services that qualify as "related services". Because the water, gas and repair of the leak are considered services, Tenant's complaints concerning these services are actionable under the Act.

The reduction in services must be "substantial. D.C. Official Code § 42-3509.01(a). Although the Act does not specifically defines a substantial reduction in services, the District of Columbia Court of Appeals has applied the Act's definition of a "substantial violation" as a measure of a substantial reduction in services. Generally, a "substantial violation" is a housing condition that "may endanger or materially impair the health and safety of any tenant or person occupying the property." *Parecco v. D.C. Rental Hous. Comm'n*, 885 A.2d 327, 337 (D.C. 2005) (quoting D.C. Official Code § 42-3501.03(35)). Moreover, the evidence must show that Housing Provider did not act "promptly" to restore the service to its previous level. *Parecco*, 885 A.2d at 337; 14 DCMR 4211.6.

Ultimately, the Tenant must present "competent evidence of the existence, duration, and severity of the reduced services." *Jonathan Woodner Co. v. Enobakhare*, TP 27,730 (RHC Feb. 3, 2005) at 11 (citations omitted). For discrepancies inside the rental unit, a Tenant must show that he gave Housing Provider notice of the condition that needed attention and an opportunity to correct it. *See Hudley v. McNair*, TP 24,040 (RHC June 30, 1999) at 11 ("If the tenant claims a reduction of services in the interior of his unit, he must give the housing provider notice of the

eliminated services to Tenant, I am dismissing Tenant's reduction/elimination of gas and water and leak repair complaints with prejudice for Tenant's failure to sustain his burden of proof.

D. Tenant did not demonstrate by a preponderance of evidence that Housing Provider retaliated against Tenant in violation of the Rental Housing Act.

Tenant argues that Housing Provider retaliated against him in violation of the Rental Housing Act in March 2004. Tenant argues that one of the Housing Provider's sons, Mark Lewis, had a verbal altercation with him which escalated into Mr. Lewis making a physical gesture towards him because Tenant refused to pay rent or vacate the property.

For purposes of the Rental Housing Act, prohibited retaliatory action may include any action, not otherwise permitted by law, which constitutes undue or avoidable inconvenience or serves to threaten or coerce a tenant, unlawfully increase rent, decrease services, increase a tenant's obligations, violate a tenant's privacy, harass a tenant, or reduce the quantity or quality of services provided to a tenant. Retaliatory actions also may include termination of a tenancy without cause, refusal to honor or renew a rental agreement, and unlawful actions to recover possession of a rental unit.¹¹

Retaliation is presumed if a housing provider takes certain prohibited actions within six months after a tenant requests repairs necessary to bring the housing accommodation into compliance with the housing regulations or contacts District government officials concerning violations of the housing regulations.¹²

¹¹ D.C. Official Code § 42-3505.02(a).

¹² D.C. Official Code § 42-3505.02(b)(1),(2).

Tenant failed to allege a precipitating event relative to his claim. Specifically, Tenant did not indicate what legal right he exercised within the 6 months preceding the verbal altercation. Moreover, tenant did not establish that the Housing Provider's sons were acting on her behalf.

Tenant has not demonstrated by a preponderance of evidence that Housing Provider retaliated against Tenant in violation of the Rental Housing Act.

E. Tenant did prove by a preponderance of the evidence that Housing Provider served upon him notices to vacate that were not in accord with the Rental Housing Act.

Tenant complained that Housing Provider served him an unlawful notice to vacate. The Housing Provider served two notices to vacate. The first notice, dated March 9, 2004, was for non payment of rent. (PX 101). The Notice gave Tenant 21 days to vacate the premises. The second notice, dated January 12, 2005, informed Tenant that since the building was to undergo major renovations he needed to vacate the premises no later than February 15, 2005. (RX 200).

The evidence establishes Tenant's complaint. The Rental Housing Act provides that:

[N]o tenant shall be evicted from a rental unit, notwithstanding the expiration of the tenant's lease or rental agreement, so long as the tenant continues to pay the rent to which the housing provider is entitled for the rental unit Notices to vacate for all reasons other than for nonpayment of rent shall be served upon both the tenant and the Rent Administrator. All notices to vacate shall contain a statement detailing the reasons for the eviction, and if the housing accommodation is required to be registered by this chapter, a statement that the housing accommodation is registered with the Rent Administrator.¹³

For purposes of the Rental Housing Act, "single-room-occupancy housing" is defined as a "rental housing accommodation comprised of rental units . . . [which] may, but is not required

¹³ D.C. Official Code § 42-3505.01(a).

to, contain sanitary and food preparation facilities.¹⁴ A “rental unit” includes a room in a housing accommodation that is offered for rent for residential occupancy.¹⁵ A “tenant” is a person entitled to the possession or occupancy of a rental unit.¹⁶ Tenant signed a lease with Housing Provider for residential occupancy of Unit 3. The lease required Tenant to pay \$325 in rent every month and, the unit was secured by a lockable door that afforded Tenant exclusive use of his unit.¹⁷ Thus, Tenant was a “tenant” and Unit 3 was a rental unit for purposes of the Rental Housing Act. Any notice to vacate Housing Provider served on Tenant was subject to the Act.

The first notice dated March 9, 2004, gave the Tenant 21 days to vacate the premise for non payment of rent. Non payment of rent notices are required to give the Tenant thirty days to correct the delinquency. The latter notice does not have to be served upon the Rent Administrator.¹⁸ The second notice dated January 12, 2005, failed to contain a statement relative to whether or not the housing accommodation was registered with the Rent Administrator.

No specific penalty for serving an unlawful notice to vacate is prescribed by the Rental Housing Act. Thus, the general penalty provision applies, which is payment of a fine, if the violation is intentional and, therefore, willful.¹⁹ Tenant did not present evidence of Housing Provider’s knowledge of or intent to violate the Act. Absent such evidence, there is no basis for

¹⁴ D.C. Official Code § 42-3501.03(33A).

¹⁵ D.C. Official Code § 42-3501.03(33).

¹⁶ D.C. Official Code § 42-3501.03(36).

¹⁷ *Harkins v. WIN Corp.*, 771 A.2d 1025, 1027 (D.C. 2001) (Critical factors in determining whether a person is a tenant are the existence of a long-term written lease and exclusive use of the leased premises (citations omitted)).

¹⁸ D.C. Official Code § 42-3505.01(b).

¹⁹ D.C. Official Code § 42-3509.01(b)(3). *Quality Mgmt., Inc., supra*, at 75-76.

concluding that Housing Provider violated the Act intentionally. Therefore no fine is imposed.

Therefore, it is this 25th day of May, 2010:


ORDERED, that Tenant's complaints that Housing Provider relative charged rent that exceeded the legally calculated rent ceiling for his unit and that the building in which his rental unit was not properly registered with the RAD are **DISMISSED WITH PREJUDICE**; and it is further

ORDERED, that no fine is imposed for Tenant's complaint that Housing Provider reduced and/or eliminated services provided in connection with his rental unit ; and it is further

ORDERED, Tenant's claims that Housing Provider retaliated against him and served upon him notices to vacate in violation of the Act are **DISMISSED WITH PREJUDICE**; and it is further

ORDERED that case no. RH-TP-06-28767 is dismissed with prejudice.

ORDERED, that the appeal rights of any party aggrieved by this Order are set forth below.


N. Denise Wilson-Taylor
Administrative Law Judge

APPENDIX A**1. Tenant/Petitioner's Exhibits in Evidence**

Exhibit No.	Description
PX 100	Tenant Petition with attachments
PX 101	Letter to Tenant dated October 24, 2001
PX 102	Letter to Tenant dated March 9, 2004
	Housing Code Violation Notices

2. Housing Provider/ Respondent's Exhibits in Evidence

Exhibit No.	Description
RX 200	Letter to Tenant dated January 12, 2005

MOTIONS FOR RECONSIDERATION

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

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

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

APPEAL RIGHTS

Pursuant to D.C. Official Code §§ 2-1831.16(b) and 42-3502.16(h), any party aggrieved by a Final Order issued by the Office of Administrative Hearings may appeal the Final Order to the District of Columbia Rental Housing Commission within ten (10) business days, in accordance with the Commission's rule, 14 DCMR 3802. The ten (10) day time limit shall begin to run when the order becomes final. If the Order is served on the parties by mail, an additional five (5) business days shall be allowed, in accordance with 1 DCMR 2811.5.

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

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

**Certificate of Service:
By First Class Mail
(Postage Paid)**

Cortez Butler
2825 Sherman Avenue, NW
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Robert C. Cooper, Esq.
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1625 Massachusetts Avenue, NW
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By Interagency Mail

District of Columbia Rental Housing Commission
One Judiciary Square
441 4th Street, NW
Suite 1140 North
Washington, DC 20001

Keith Anderson
Acting Rent Administrator
Rental Accommodations Division
Department of Housing and Community Development
1800 Martin Luther King, Jr. Avenue, S.E.
Washington, D.C. 20020

I hereby certify that on 5-25, 2010 this document was caused to be served upon the above-named parties at the address(es) and by the means stated.


Clerk / Deputy Clerk