

DISTRICT OF COLUMBIA
OFFICE OF ADMINISTRATIVE HEARINGS
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DISTRICT OF COLUMBIA
OFFICE OF
ADMINISTRATIVE HEARINGS
2010 MAY 28 P 3: 21

JUDEA LAWTON,
Tenant/Petitioner,

v.

U.S. BANK NATIONAL ASSOCIATION,
Housing Provider/Respondent.

Case No.: RH-TP-08-29329
In re 5515 8th Street NW

FINAL ORDER

I. Introduction

On June 17, 2008, Tenant/Petitioner Judea Lawton filed Tenant Petition (TP) 29,329 against Housing Provider/Respondent U.S. Bank National Association alleging that Housing Provider violated the Rental Housing Act of 1985 ("Rental Housing Act" or "Act")¹ by failing to register properly the building where Tenant's rental unit is located with the Rental Accommodations Division (RAD), Department of Housing and Community Development; substantially reducing services and/or facilities provided as part of Tenant's rent or tenancy; and eliminating services and/or facilities provided as part of Tenant's rent or tenancy.

¹ D.C. Official Code §§ 42-3501.01 *et. seq.*

A hearing was held on April 1, 2009. Tenant appeared for the hearing and represented herself.² Housing Provider was represented by Renee Dyson, Esquire, who appeared without a witness. Through counsel, Housing Provider withdrew its motion to dismiss, in which it asserted that it was not Tenant's Housing Provider. A list of admitted exhibits is attached to this order.³

Based on the record, including testimony, documentary evidence, and legal arguments, I find as follows.

- Tenant proved by a preponderance of evidence that Housing Provider did not register Tenant's rental unit properly with RAD. But, Tenant did not prove that Housing Provider's failure to register the unit was willful, so no fine is imposed.
- Tenant proved by a preponderance of evidence that Housing Provider substantially reduced and eliminated services and facilities provided as part of Tenant's rent or

²A hearing in this matter scheduled for September 25, 2008, was continued to October 28, 2008, to afford Tenant time to retain counsel. The hearing scheduled for October 28, 2008, was continued to November 12, 2008, to afford Tenant time to make suitable travel arrangements for an elderly witness Tenant described as critical to her case. When the parties appeared on November 12th, they agreed to attempt resolution of the issues through mediation. When mediation was unsuccessful, the parties agreed to an April 1, 2009, hearing date. When Tenant moved to continue the April 1st hearing date to afford her time to retain counsel, Housing Provider opposed the motion, and I denied the motion given that Tenant first requested a continuance for this purpose in September 2008, had not done so six months later, and did not know when she would be able to do so.

³After the hearing in this matter, Tenant filed a number of motions, some in the nature of amendments to TP 29,329. Because the record was closed when the motions were filed, I will not rule on them. I note, however, that to the extent Tenant requested relief for out of pocket expenses, a ruling not only is inappropriate because the motions were untimely, but also because this administrative court has no jurisdiction to reimburse a tenant for these expenses. *See Taylor et. al. v. Chase Manhattan Mortgage*, TP 24,303 & TP 24,420 (RHC Sept. 9, 1999) at 13 (denying reimbursement for out-of-pocket expenses); *Budd v. Haendel*, TP 27,598 (RHC Dec. 16, 2004) (holding that the Act does not confer jurisdiction to order reimbursement for claims related to damages of loss of property); *Terrell v. Estrada*, TP 22,077 (RHC May 30, 1991) (denying reimbursement for out-of-pocket expense as not covered by the Act).

tenancy in violation of the Rental Housing Act. For these violations, Housing Provider must refund to Tenant \$3001.35 in rent and interest. The refund and interest calculation is attached to this order.

II. Findings of Fact

A. General

1. The housing accommodation at issue is a single family house located at 5515 8th Street, NW. Tenant's rental unit comprised a room in the housing accommodation and access to common facilities, including two bathrooms, two kitchens, a leisure room, and a patio.
2. Tenant testified credibly that she entered into a one-year lease for the rental unit with Maurice Grant on June 1, 2005. Tenant lived in the unit from the beginning of June 2005, through the date of the hearing. The monthly rent was \$475.
3. The copy of Tenant's lease that was admitted into evidence was not signed. Respondent's Exhibit (RX) 201. Tenant testified credibly that she once had a signed copy of the lease.
4. In January 2007, Maurice Grant disconnected the housing accommodation's gas and electrical utility services.
5. Housing Provider purchased the housing accommodation on January 18, 2007, at a foreclosure sale, RX 200. Housing Provider sold the housing accommodation in October 2008.
6. Tenant testified that she did not pay Housing Provider rent.

B. Failure to Register

7. A search of RAD's records on June 17, 2008, showed no current registration for the rental unit. Petitioner's Exhibit (PX) 100.

C. Reduction/Elimination of Services and/or Facilities

8. From January 2007, through June 2008, Housing Provider hired real estate agents to assess the condition of the housing accommodation and prepare it for sale. The agents photographed conditions in the housing accommodation. From February 2007, through June 2008, Tenant communicated her concerns about the condition of the property to the agents.
9. On February 20, 2007, Tenant called Department of Consumer and Regulatory Affairs (DCRA) housing inspectors because there was no heat in the housing accommodation and the electricity and gas services were disconnected.
10. On February 24, 2007, a DCRA housing inspector issued a Notice of Violation for the housing accommodation noting the following violations by Housing Provider and potential fines: cooking facility is defective (\$500); and the central heating facility should be capable of maintaining a minimum temperature of seventy degrees Fahrenheit in building or part of building used for habitation (\$1000). PX 101.
11. In February 2007, Housing Provider connected the electricity utility service for the lights, but did not connect the gas utility service for the furnace or cooking stoves. Housing Provider did not provide heat between January 2007, when it purchased the housing accommodation, and June 2008, when Tenant filed TP 29,329.

12. In February 2007, a pipe under the bathtub in the bathroom above Tenant's unit broke, which caused water to leak heavily into Tenant's unit. In August 2007, after another tenant began to use the bathtub on a regular basis, the ceiling to Tenant's room collapsed from the leak. PXs 114, 115, 115e, 115f. The leak and damaged ceiling were not corrected by June 2008.

13. By letter dated October 24, 2007, Housing Provider notified Tenant that it purchased the housing accommodation on January 18, 2007, and became Tenant's landlord by doing so; asked Tenant to forward a copy of her lease to ensure that Housing Provider could meet its obligations as a landlord; and notified Tenant that Tenant's failure to pay \$475 in monthly rent since February 2007, placed Tenant in default. Housing Provider notified Tenant that if she did not pay the rent arrearage within 30 days of October 24, 2007, Housing Provider would file an eviction complaint in the Superior Court of the District of Columbia, Landlord and Tenant Branch (Landlord Tenant Court). RX 200. Housing Provider filed eviction complaints for nonpayment of rent against Tenant in Landlord Tenant Court in the first quarter of calendar year 2009.

III. Discussion and Conclusions of Law

A. Jurisdiction

This matter is governed by the Rental Housing Act of 1985; substantive rules implementing the Rental Housing Act at 14 District of Columbia Municipal Regulations (DCMR) 3800 - 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.*); and OAH procedural rules at 1 DCMR 2800 *et seq.* and 1 DCMR 2920 *et seq.* Tenant has the burden of proving the claims asserted.⁴

B. Failure to Register

All rental units must be registered with RAD.⁵ A search of RAD's files on June 17, 2008, showed no current registration for the rental unit. PX 100. Housing Provider did not contest Tenant's claim that it did not register the housing accommodation. I find that Housing Provider failed to register the rental unit properly.

No specific penalty for failure to register a rental unit is prescribed by the Rental Housing Act. Thus, the general penalty provision for violations of the Act applies, which is payment of a fine to the government of the District of Columbia, but only if the violation is willful.⁶ Willfulness goes to the intention to violate the Act, as opposed to simply knowing that you have acted or failed to act in a certain way.⁷ Tenant proffered no evidence that Housing Provider intended to violate the Act by failing to register the unit. Therefore, no fine is imposed for Housing Provider's failure to register Tenant's rental unit.

C. Reduction/Elimination of Services and Facilities

To establish a claim for a substantial reduction in related services or facilities, Tenant must present competent evidence of the existence, duration, and severity of reductions; notice to

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

⁵ D.C. Official Code § 42-3502.05(f); 14 DCMR 4101.1.

⁶ D.C. Official Code § 42-3509.01(b)(3).

⁷ *Quality Mgmt., Inc. v. D.C. Rental Hous. Comm'n*, 505 A.2d 73, 75-76 (D.C. 1986).

Housing Provider that the services were needed, if the conditions were in the Tenant's unit; and Housing Provider's failure to make repairs within a reasonable time.⁸ Tenant met the burden of proof.

Tenant proved the existence, duration, and severity of a number of housing violations.

- Tenant testified credibly that, beginning in February 2007, water leaked from the bathtub plumbing, which resulted in damage to the ceiling in her rental unit. The leak and resulting damage continued during the spring and summer of 2007, and the ceiling collapsed in August 2007. Tenant presented photographs of the collapsed ceiling and resulting debris. PXs 114, 115, 115e, 115f. Plaster falling or in immediate danger of falling, ceilings with substantial holes, and defective drains and toilet facilities are substantial housing violations.⁹
- In February 2007, Tenant called DCRA housing inspectors because she had no heat. Housing Provider did not provide heat from February 2007, through June 2008. Failure to provide sufficient heat is a substantial housing violation.¹⁰
- DCRA cited Housing Provider for violating the housing regulations by failing to provide a central heating facility that was capable of maintaining a minimum temperature of seventy degrees Fahrenheit. PX 101.

⁸ *Jonathan Woodner Co. v. Enobakhare*, TP 27,730 (RHC Feb. 3, 2005) at 11 (citations omitted).

⁹ 14 DCMR 4216.2(h), (n), (p).

¹⁰ 14 DCMR 4216.2(c).

- Tenant testified credibly that Housing Provider did not provide the gas utility service for the furnace or cooking stoves between February 2007, and June 2008, when she filed TP 29,329.

Curtailment of the gas utility service is a substantial housing violation.¹¹

When Housing Provider failed to furnish services required by housing regulations, it substantially reduced services and facilities.¹²

Tenant testified credibly that, after Housing Provider purchased the housing accommodation on January 18, 2007, Housing Provider hired real estate agents to assess the its condition and relay the information to Housing Provider. Tenant testified credibly that she complained to the agents about the housing violations when the agents visited the property from February 2007, though June 2008. Tenant testified credibly that Housing Provider did not repair the housing violations before June 2008, when Tenant filed TP 29,329.

Tenant proved the existence, duration, and severity of Housing Provider's failure to provide heating and cooking facilities, and to provide repair and gas utility services. Tenant also proved notice to Housing Provider. In doing so, Tenant proved Housing Provider substantially reduced and eliminated related services and facilities in violation of the Rental Housing Act.¹³

¹¹ 14 DCMR 4216.2(c).

¹² *Jonathan Woodner Co., supra*, at 6.

¹³ Tenant testified about incidents of property destruction and failure to comply with cleanliness standards, which may have resulted in housing violations. Tenant attributed the destruction and lack of cleanliness to other tenants in the housing accommodation and offered no evidence that the other tenants acted on behalf of Housing Provider. Housing providers are not liable for housing violations that result from tenant neglect or misconduct. D.C. Official Code § 42-3502.08.

The remedy is to order a refund of rent charged that is proportionate to the value of the reductions, plus interest on the refund calculated from the date of the reductions through the date of the order.¹⁴ While the record shows that Tenant did not pay Housing Provider rent, it shows that Housing Provider *charged* Tenant monthly rent in the amount of \$475; as it demanded rent in that amount and filed an eviction action in Landlord Tenant Court for Tenant's failure to pay it. RX 200. Therefore, Housing Provider must refund rent charged commensurate with the service and facility reductions.

The refund amount may be fixed without expert or other direct testimony on the dollar amount of the reduction.¹⁵ And, evidence of the existence, duration and severity of housing violations is competent evidence on which to fix the dollar value of the rent abatement that flows from the violations.¹⁶ The rent refund amount is determined as follows.

- The plumbing leak was substantial enough to cause Tenant's ceiling to collapse. Housing Provider must refund to Tenant \$50 in rent charged for each month beginning January 2007, through July 2007, for its failure to repair leaking plumbing and the damaged ceiling; and \$100 for each month beginning August 2007, when the ceiling collapsed, through July 2008, when Tenant filed TP 29,329. (\$1550, plus 118.25 in interest).

¹⁴ D.C. Official Code § 42-3502.11; 14 DCMR 3826.1, 3826.2. D.C. Official Code § 42-3509.01(a); 14 DCMR 4217.1(a). The interest rate imposed on rent refunds is the judgment interest rate used by the Superior Court of the District of Columbia pursuant to D.C. Official Code § 28-3302(c), on the date of the order. 14 DCMR 3826.3. On the date of this decision, the annual interest rate is 3%. Interest is calculated from the dates services and facilities were reduced, to the date of issuance of the decision. 14 DCMR 3826.2. See Attachment A for calculation.

¹⁵ *George I. Borgner, Inc. v. Woodson*, TP 11,848 (RHC June 10, 1987) at 11.

¹⁶ *Id.*

- Because Housing Provider failed to connect the gas service and provide a functioning furnace facility, Tenant had no heat during fall and winter months. The District of Columbia Construction Codes provide guidance in fashioning the remedy for Housing Provider's failure to provided heat, as it requires owners and operators of rental units to provide heat from the 15th of October, to the 15th of May.¹⁷ Based on this guidance, Housing Provider must refund to Tenant \$786 in rent charged, calculated as follows: \$75 for each month from February 2007, through May 15, 2007, and for each month from October 15, 2007, through May 15, 2008. (\$786, plus \$61.81 in interest).
- Housing Provider failed to provide a usable stove and gas utilities for food preparation. A cooking stove is fundamental to the use and enjoyment of a residence. Housing Provider must refund to Tenant \$25 in rent charged for these service and facilities reductions, beginning February 2007, through July 2008, the date TP 29,329 was filed. (\$450, plus \$35.29 in interest).
- In total, Housing Provider must refund to Tenant \$3001.35 for its substantial reduction and elimination of services and facilities. The rent refund and interest calculation is attached to this order.

IV. Order

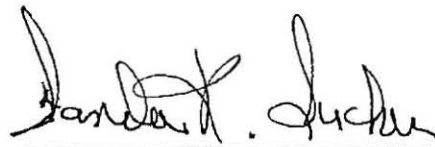
Therefore, it is this 27th day of May, 2010:

ORDERED, that no fine is imposed for Housing Provider's failure to register the building in which Tenant's rental unit was located with RAD; and it is further

¹⁷ 12G DCMR PM-602G.3.

ORDERED, that Housing Provider shall refund to Tenant **THREE THOUSAND ONE DOLLARS AND THIRTY FIVE CENTS (\$3001.35)** for substantially reducing and eliminating related services and facilities; and it is further

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

A handwritten signature in black ink, appearing to read "Wanda R. Tucker", written over a horizontal line.

Wanda R. Tucker
Administrative Law Judge

Admitted Exhibits

100	RAD Certification, No Current Registration on File, dated 17 Jun 08
101	Notice of Violation No. 116156_1, dated 24 Feb 70
102	Receipt for lock repair, dated 27 Jun 08
105	Tenant Petition 29,329
107	Duplicate of PX 102
111	Letter from Judea Lawton to Carlyta M. Smith & Renee Dyson re: notice that self help evictions are illegal, dated April 8, 2008.
113	Notice that water from tub causes damage on first floor, dated June 14, 2008
114	Photograph of damage to ceiling in Tenant's room
115	Photograph of damage to ceiling in Tenant's room
115b	Photograph of stove and refrigerator and food removed from refrigerator
115c	Photograph of can
115d	Photograph of upstairs toilet
115e	Photograph of damaged ceiling
115f	Photograph of debris that fell from collapsed ceiling
115g	Photograph of inside of refrigerator
115h	Photograph of kitchen sink w/ broken faucet
115i	Photograph of brown substance leaking from refrigerator
115j	Photograph of bathtub
115k	Photograph of trash can
115l	Photograph of hanging laundry
115m	Photograph of hanging laundry
115n	Photograph sink w/ water and clothing
115o	Photograph lawn care supplies
115p	Photograph newspapers on floor
200	Letter from Renee Dyson, Esq. to Ronnie Savage, Judea Lawton, and/or Current Occupants of 5515 8th Street, NW re: purchase of 5515 8th Street, NW; and rent arrearages
201	Lease

Refund Calculation**Plumbing/Ceiling Damage**

Date	Amount of Overcharge	Months Held	Monthly Interest Rate	Interest Due
Jan-07	\$50.00	40.87	0.0025	\$5.11
Feb-07	\$50.00	39.87	0.0025	\$4.98
Mar-07	\$50.00	38.87	0.0025	\$4.86
Apr-07	\$50.00	37.87	0.0025	\$4.73
May-07	\$50.00	36.87	0.0025	\$4.61
Jun-07	\$50.00	35.87	0.0025	\$4.48
Jul-07	\$50.00	34.87	0.0025	\$4.36
Total	\$350.00			\$33.14

Plumbing/Ceiling Collapse

Date	Amount of Overcharge	Months Held	Monthly Interest Rate	Interest Due
Aug-07	\$100.00	33.87	0.0025	\$8.47
Sep-07	\$100.00	32.87	0.0025	\$8.22
Oct-07	\$100.00	31.87	0.0025	\$7.97
Nov-07	\$100.00	30.87	0.0025	\$7.72
Dec-07	\$100.00	29.87	0.0025	\$7.47
Jan-08	\$100.00	28.87	0.0025	\$7.22
Feb-08	\$100.00	27.87	0.0025	\$6.97
Mar-08	\$100.00	26.87	0.0025	\$6.72
Apr-08	\$100.00	25.87	0.0025	\$6.47
May-08	\$100.00	24.87	0.0025	\$6.22
Jun-08	\$100.00	23.87	0.0025	\$5.97
Jul-08	\$100.00	22.87	0.0025	\$5.72
Total	\$1,200.00			\$85.11

Furnace and Gas Utility – February 2007 to May 15, 2007

Date	Amount of Overcharge	Months Held	Monthly Interest Rate	Interest Due
Feb-07	\$75.00	39.87	0.0025	\$7.48
Mar-07	\$75.00	38.87	0.0025	\$7.29
Apr-07	\$75.00	37.87	0.0025	\$7.10
May 1, 2007 - May 15, 2007	\$36.00	36.87	0.0025	\$3.32
Total	\$261.00			\$25.18

Furnace and Gas Utility – October 15, 2007 to May 15, 2008

Date	Amount of Overcharge	Months Held	Monthly Interest Rate	Interest Due
October 15, 2007 - October 31, 2007	\$39.00	31.39	0.0025	\$3.06
Nov-07	\$75.00	30.39	0.0025	\$5.70
Dec-07	\$75.00	29.39	0.0025	\$5.51
Jan-08	\$75.00	28.39	0.0025	\$5.32
Feb-08	\$75.00	27.39	0.0025	\$5.14
Mar-08	\$75.00	26.39	0.0025	\$4.95
Apr-08	\$75.00	25.39	0.0025	\$4.76
May 1, 2008 - May 15, 2008	\$36.00	24.39	0.0025	\$2.20
Total	\$525.00			\$36.63

Stove and Gas Utility

Date	Amount of Overcharge	Months Held	Monthly Interest Rate	Interest Due
Feb-07	\$25.00	39.87	0.0025	\$2.49
Mar-07	\$25.00	38.87	0.0025	\$2.43
Apr-07	\$25.00	37.87	0.0025	\$2.37
May-07	\$25.00	36.87	0.0025	\$2.30
Jun-07	\$25.00	35.87	0.0025	\$2.24
Jul-07	\$25.00	34.87	0.0025	\$2.18
Aug-07	\$25.00	33.87	0.0025	\$2.12
Sep-07	\$25.00	32.87	0.0025	\$2.05
Oct-07	\$25.00	31.87	0.0025	\$1.99
Nov-07	\$25.00	30.87	0.0025	\$1.93
Dec-07	\$25.00	29.87	0.0025	\$1.87
Jan-08	\$25.00	28.87	0.0025	\$1.80
Feb-08	\$25.00	27.87	0.0025	\$1.74
Mar-08	\$25.00	26.87	0.0025	\$1.68
Apr-08	\$25.00	25.87	0.0025	\$1.62
May-08	\$25.00	24.87	0.0025	\$1.55
Jun-08	\$25.00	23.87	0.0025	\$1.49
Jul-08	\$25.00	22.87	0.0025	\$1.43
Total	\$450.00			\$35.29

Stove and Gas Utilities

Date	Amount of Overcharge	Months Held	Monthly Interest Rate	Interest Due
Feb-07	\$25.00	39.87	0.0025	\$2.49
Mar-07	\$25.00	38.87	0.0025	\$2.43
Apr-07	\$25.00	37.87	0.0025	\$2.37
May-07	\$25.00	36.87	0.0025	\$2.30
Jun-07	\$25.00	35.87	0.0025	\$2.24
Jul-07	\$25.00	34.87	0.0025	\$2.18
Aug-07	\$25.00	33.87	0.0025	\$2.12
Sep-07	\$25.00	32.87	0.0025	\$2.05
Oct-07	\$25.00	31.87	0.0025	\$1.99
Nov-07	\$25.00	30.87	0.0025	\$1.93
Dec-07	\$25.00	29.87	0.0025	\$1.87
Jan-08	\$25.00	28.87	0.0025	\$1.80
Feb-08	\$25.00	27.87	0.0025	\$1.74
Mar-08	\$25.00	26.87	0.0025	\$1.68
Apr-08	\$25.00	25.87	0.0025	\$1.62
May-08	\$25.00	24.87	0.0025	\$1.55
Jun-08	\$25.00	23.87	0.0025	\$1.49
Jul-08	\$25.00	22.87	0.0025	\$1.43
Total	\$450.00			\$35.29

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 after service of the final order, in accordance with the Commission's rule, 14 DCMR 3802. If the Final Order is served on the parties by mail, an additional three (3) days shall be allowed, in accordance with 14 DCMR 3802.2.

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
441 Fourth Street, NW
Suite 1140 North
Washington, DC 20001-2714
(202) 442-8949

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

Judea Lawton
5515 8th Street, NW
Washington, DC 20011

Renee Dyson, Esquire
Atlantic Law Group
803 Sycolin Road, Suite 301
Leesburg, VA 20175

By Interagency Mail

District of Columbia Rental Housing Commission
441 Fourth 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 Avenue, SE
Washington, DC 20020

I hereby certify that on 5-28, 2010, this document was caused to be served upon the above-named parties at the addresses and by the means stated.

Benedicta Rhames