

**DISTRICT OF COLUMBIA
Office of Administrative Hearings**

One Judiciary Square
441 Fourth Street, NW
Washington, DC 20001-2714
TEL: (202) 442-9094
FAX: (202) 442-4789

DISTRICT OF COLUMBIA
OFFICE OF
ADMINISTRATIVE HEARINGS

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BRANDY FISHER,
Tenant/Petitioner,

v.

WILLIAMS AND SONS, LLC,
Housing Provider/Respondent.

Case No.: RH-TP 09-29522
In re 3434 Minnesota Avenue SE
Unit 2

FINAL ORDER

I. Introduction

On January 23, 2009, Tenant/Petitioner Brandy Fisher filed Tenant Petition ("TP") 29,522 alleging: 1) Housing Provider/Respondent Williams and Sons, LLC did not file the correct rent increase forms with the Rental Accommodations Division ("RAD") of the Department of Housing and Community Development ("DHCD"); and 2) Housing Provider substantially reduced the services and facilities provided as part of the rent and/or tenancy violating the Rental Housing Act of 1985 (the "Rental Housing Act" or the "Act") at the Housing Accommodation located at 3434 Minnesota Avenue SE, Unit 2.

I find that Tenant does not prevail on her claim that Housing Provider did not file the correct rent increase forms with the RAD. I find that Tenant prevails in part in her claim that Housing Provider substantially reduced services and/or facilities provided as part of the rent and/or tenancy.

5. From the time Tenant moved in until the date of the hearing, the hot water heater did not supply enough hot water for persons to consecutively shower or to simultaneously shower and operate the dishwasher.
6. The dishwasher was inoperable from December 1, 2008, until the date of the hearing.
7. On January 23, 2009, Tenant filed TP 29,522 alleging that Housing Provider did not file the correct rent increase forms with the RAD and that Housing Provider substantially reduced the services and/or facilities provided as part of the rent and/or tenancy.
8. On February 25, 2009, this administrative court issued a CMO scheduling a hearing of this matter on April 7, 2009, at 9:30 a.m. The CMO cautioned that: "If you do not appear for the hearing you may lose this case." The United States Postal Service confirmed delivery of the CMO to Housing Provider, Williams and Sons, LLC at 3:05 p.m. on February 26, 2009² at the address listed in the tenant petition which was also the same address that Housing Provider listed in the Notice of Change of Ownership, Management or Changes in Services & Facilities in PX 100. That address is 3602 Copperville Way, Fort Washington, MD 20744.
9. The case was called for hearing at 9:53 a.m. on April 7, 2009. Housing Provider did not appear. At no time prior to or following the hearing did Housing Provider give any explanation for their non-appearance. The hearing proceeded with the presentation of Tenant's evidence against Housing Provider.
10. Housing Provider filed a Notice of Change of Ownership, Management or Changes in Services and Facilities form with the Department of Consumer and Regulatory Affairs Housing Regulation Administration Rental Accommodations and Conversion Division

² The U.S. Postal Service confirmed delivery on February 26, 2009 to Housing Provider's address with receipt number 0307 1790 0004 2496 8354.

Housing Provider's absence was therefore appropriate. OAH Rule 2818.3, 1 DCMR 2818.3, provides, in part:

Unless otherwise required by statute, these Rules or an order of this administrative court, where counsel, an authorized representative, or an unrepresented party fails, without good cause, to appear at a hearing, or a pretrial, settlement or status conference, the presiding Administrative Law Judge may dismiss the case or enter an order of default in accordance with D.C. Superior Court Civil Rule 39-I.

D.C. Superior Court Civil Rule 39-I(c) provides that:

When an action is called for trial and a party against whom affirmative relief is sought fails to respond, in person or through counsel, an adversary may where appropriate proceed directly to trial. When an adversary is entitled to a finding in the adversary's favor on the merits, without trial, the adversary may proceed directly to proof of damages.

Because Housing Provider/Respondent failed to appear at the hearing after receiving proper notice, it was appropriate to proceed to take evidence in Housing Provider's absence and to render a decision based on the evidence that Tenant presented. D.C. Superior Court Civil Rule 39-I(c).

C. Tenant's Claim that Housing Provider did not file the correct rent increase forms with the RAD

When Tenant moved into the property on July 1, 2008, she signed a lease with Housing Provider agreeing to pay \$1200 in rent. PX 107. Throughout Tenant's residency until the date of the hearing, Tenant continued to pay \$1200 in rent. At no time did Housing Provider/Respondent Williams and Sons, LLC serve a notice of rent increase on Tenant or otherwise notify Tenant that her rent was increased. There are no rent increase forms on file from Housing Provider with RAD. PX 102.

thus ensure that the claim is fully and fairly litigated.⁴ Because Housing Provider had no knowledge of this claim prior to the hearing, it is not being considered.

D. Tenant's claim that Housing Provider substantially reduced the services and/or facilities provided as part of the rent and/or tenancy

Tenant alleges that Housing Provider substantially reduced the services and/or facilities provided as part of the rent and/or tenancy by not providing adequate heat, an over-the range microwave, fireplace, and a washer/dryer. Tenant also alleges that Housing Provider substantially reduced the services and/or facilities provided as part of the rent and/or tenancy by not providing a dishwasher in proper working order.

The Rental Housing Act contains separate definitions for "related services" and "related facilities." "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).

"Related facility" is defined as:

any facility, furnishing, or equipment made available to a tenant by a housing provider, the use of which is authorized by the payment of the rent charged for a rental unit, including any use of a kitchen, bath, laundry facility, parking facility, or the common use of any common room, yard, or other common area.

D.C. Official Code § 42-3501.03(26).

⁴ See *Parreco v. District of Columbia Rental Hous. Comm'n*, 885 A.2d 327 (D.C. 2005).

bedroom was an uninhabitable space that is being occupied but made no mention of the heating issue. PXs 108, 109. Another repairperson was called and was able to restore the heat in the rental unit on January 16, 2009, but the rear of the unit where the back bedroom and a bathroom are located remained without heat until the date of the hearing. Tenant testified that the heating system began working properly throughout the rental unit except for the rear room on January 16, 2009.

The housing regulations define lack of sufficient heat as a “substantial housing code violation.” 14 DCMR 4216.2(c). “[E]vidence of the existence, duration, and severity of a housing code violation is competent evidence on which to find the dollar value of the rent abatement” to assess the value of reduced services and facilities. *Cascade Park Apartments v. Walker*, TP 26,197 (RHC Jan. 14, 2005) at 32, (quoting *George I Borgner, Inc. v. Woodson*, TP 11, 848 (RHC June 10, 1987). *Jonathan Woodner Co. v. Enobakhare*, TP 27,730 (RHC Feb. 3, 2005) at 11. Expert or other direct testimony is not required.

I find that Housing Provider substantially reduced Tenant’s services and/or facilities by not providing sufficient heat in the unit from November 1, 2008 until January 16, 2009, and am awarding her \$200.00 a month. Appendix B attached to this Final Order details Tenant’s award.

ii. Rear Bedroom

Housing Provider rented to Tenant a two bedroom unit that in actuality is a one bedroom unit with a porch. Tenant is unable to use the rear room as a bedroom because the heating system does not heat the room. Further, DCRA determined that Tenant should not be using the porch as a bedroom and deemed it uninhabitable space citing Housing Provider for unlawful use of uninhabitable rooms. PX 109. Although this room was uninhabitable at the initiation of the

iv. Hot Water Heater

Tenant complains that the hot water heater does not supply enough hot water for Tenant to shower and for someone to shower after her. Tenant opined that it takes approximately thirty minutes for the water to heat and for someone else to be able to shower. The hot water heater also does not supply enough hot water for someone to simultaneously shower and the dishwasher to run. Tenant reported this to Housing Provider shortly after she moved in and they did not rectify the problem. Tenant's witness, James Wright, corroborated the inability of the hot water heater to supply enough hot water for occupants to consecutively shower.

Each residential building shall be provided with a water heating facility to meet normal needs.⁶ I find that Housing Provider substantially reduced Tenant's facilities by not providing a hot water heater sufficient to meet normal needs. I award Tenant \$50.00 a month from the initiation of the lease term on July 1, 2008, to the date of the hearing. Appendix B attached to this Final Order details Tenant's award.

v. Dishwasher

The dishwasher in Tenant's unit began to malfunction in December 2008 and retains water resulting in a rancid smell. Tenant reported the problem to Housing Provider in December 2008 and February 11, 2009. Housing Provider sent a repair person on February 14, 2009, who reported that the dishwasher was defective and that it needed to be returned to the place of purchase. As of the date of the hearing, Tenant is unable to use the dishwasher.

I find that the dishwasher is a related facility and Housing Provider substantially reduced Tenant's facilities by not providing a properly working dishwasher.

⁶ See 14 DCMR 606.1.