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DISTRICT OF COLUMBIA
OFFICE OF
ADMINISTRATIVE HEARINGS

2010 MAY 19 P 4: 08

ELLEN RICHARDSON,
Tenant/Petitioner,

v.

DAVID ENABNIT,
Housing Provider/Respondent.

Case No.: 2009-OAH-DHCD-0000015

Agency No.: TP 29,737

In re: 1544 Independence Avenue, SE
Unit 2

FINAL ORDER

I. Introduction

Ellen Lee Richardson filed TP 29,737 against the housing provider, David Enabnit, on November 13, 2009 for the housing accommodation located at 1544 Independence Avenue, SE, unit 2. The tenant filed the petition on October 13, 2009, and alleged that the housing provider failed to properly register the housing accommodation located at 1544 Independence Avenue, SE, increased her rent when substantial housing code violations existed at the property, and substantially reduced services and facilities. Each of these claims falls under D.C. Official Code § 42-3502.01 through 42-3502.21, the Rent Stabilization Program of the Rental Housing Act of 1985 (Act), D.C. Official Code §§ 42-3501.01 – 3509.07.

The parties appeared for a hearing in this matter on May 6, 2010. The tenant appeared with two individuals from the Office of the Tenant Advocate, Dennis Taylor and Linda Sun. Mr. Taylor and Ms. Sun, however, indicated that they did not represent the tenant. Consequently, the

tenant and the housing provider appeared as self represented parties. The housing provider pre-filed several documents that he intended to introduce as evidence during the hearing. The court pre-marked the exhibits Respondent's Exhibits (RX) 200 through 205. The tenant did not pre-file any exhibits.

At the beginning of the hearing, the housing provider made an oral motion to dismiss the petition, because he is a small landlord and exempt from the rent stabilization provisions of the Act. He argued that the court was required to dismiss the entire action because all of the tenant's claims fell within the rent stabilization provisions of the statute. The court agrees.

II. Discussion

The tenant filed TP 29,737 on October 13, 2009, and alleged that the housing provider failed to properly register the housing accommodation located at 1544 Independence Avenue, S.E., increased her rent when substantial housing code violations existed at the property, and substantially reduced services and facilities. Each of these claims falls under D.C. Official Code § 42-3502.01 through 42-3502.21, the Act's Rent Stabilization Program.

The rent stabilization provisions of the Act apply to housing accommodations in the District of Columbia, unless the housing accommodation is exempt or excluded from coverage. D.C. Official Code § 42-3502.05. In the instant case, the housing provider argued that he is exempt from the rent stabilization provisions of the Act, because he is a small landlord.

When a housing provider alleges that the property is exempt from the rent stabilization provisions of the statute, the housing provider must file a Registration/Claim of Exemption Form

and attest to the validity of the exemption from rent control.¹ *Revithes v. District of Columbia Rental Hous. Comm'n*, 536 A.2d 1007 (D.C. 1987) (holding that even small landlords are required to register their properties and file a Claim of Exemption affirming their eligibility for the small landlord exemption); *see also* D.C. Official Code § 42-3502.05(a)(3)(C). In addition, the housing provider bears the burden of proving that he is exempt from the Rent Stabilization Program. *Blacknall v. District of Columbia Rental Hous. Comm'n*, 544 A.2d 710, 713 (D.C. 1988) citing *Revithes*, 536 A.2d at 1017; *Remin v. District of Columbia Rental Hous. Comm'n*, 471 A.2d 275, 279 (D.C. 1984).

In order to prove that he was exempt, the housing provider introduced a Registration/Claim of Exemption Form for the housing accommodation. The form contained an agency date-stamp reflecting that the housing provider filed with the Registration/Claim of Exemption Form with the Rental Accommodations and Conversion Division (RACD) of the Department of Consumer and Regulatory Affairs (DCRA) on November 13, 1992. The court marked this exhibit RX 201 and admitted it into evidence. According to his testimony and the Registration/Claim of Exemption Form, the housing provider, David B. Enabnit, is the sole owner of one four unit apartment building. He testified that he has no interest in any other rental units in the District of Columbia. The housing provider also introduced his Basic Business License and a series of documents and cancelled checks to demonstrate that he has paid the required renewal fees to maintain his business license for the duration of his ownership of the property. The housing provider also introduced the Certificate of Occupancy for the property.

¹ When a property is exempt, housing providers are required to register; however, they are not required to follow the Act's prescriptions for increasing rents and maintaining services and facilities.

The tenant cross-examined the housing provider, and introduced a series of documents to demonstrate that the housing provider was not properly registered because he did not have a valid business license. The court marked these exhibits Petitioner's Exhibits (PX) 100 through 103 and admitted them as record evidence.

The tenant introduced a Certificate from the Business License Division of DCRA. PX 100. The certificate showed that DCRA issued Residential Housing Business Licenses for 1544 Independence Avenue, SE from November 1, 2003, until October 31, 2007. However, the Certificate stated that a business license had not been issued for the period November 1, 2007, to September 28, 2009. The tenant also submitted an undated letter from DCRA indicating that the housing provider's basic business license was in an unpaid status for over 60 days. PX 101. And she submitted a handwritten letter from the housing provider to DCRA dated September 20, 2008. PX 102. In this letter, the housing provider thanked DCRA for reminding him that he had not received his renewed business license; he indicated, however, that he sent in the payment and additional information requested by DCRA, and DCRA cashed the check for the license. Finally, the tenant introduced a letter dated November 26, 2007, from DCRA to the housing provider indicating that DCRA improperly sent a duplicate bill for the license. In this letter, DCRA instructed the housing provider to disregard the bill if he already made the payment, apologized for the confusion, and indicated that it extended the renewal period from October 30, 2007, to December 31, 2007, as a result of errors made by the agency. PX 103.

In rebuttal, the housing provider testified that he regularly renewed his business license by paying the requested fees and submitting supporting documents. He indicated that DCRA erred when it indicated that he did not have a valid business license for the period November 1, 2007 through September 28, 2009. The housing provider testified concerning a series of

missteps by the government that led to its delay in issuing the renewed business license in 2007 for the two year period ending September 2009. He submitted a copy of the renewal application that he submitted in October 2007, supporting documentation such as the Clean Hands Certificate, and the cancelled check dated October 20, 2007, evidencing payment for the license. These documents were marked collectively RX 200 and admitted into evidence. The housing provider explained that DCRA was under the mistaken belief that he had not properly renewed his license even though he submitted the application and payment. The housing provider described a series of visits to DCRA and other agencies to resolve these issues. He also introduced the November 26, 2007 letter from DCRA, which the tenant introduced as PX 103. In this letter, DCRA apologized for its mistake and the inconvenience it caused. RX 200.²

III. Findings of Fact

1. Ellen Lee Richardson filed TP 29,737 against the housing provider, David Enabnit, on November 13, 2009, for the housing accommodation located at 1544 Independence Avenue, SE, unit 2.
2. The housing provider, David Enabnit, is the sole owner of the four unit housing accommodation located at 1544 Independence Avenue, SE.
3. The housing provider does not own or have an interest in any other rental units in the District of Columbia.
4. On November 13, 1992, the housing provider filed a Registration/Claim of Exemption Form for 1544 Independence Avenue, SE with RACD and attested to the fact that he held and operated four rental units, and he did not have an interest in any other rental units in the District of Columbia. RX 201.

² The housing provider pre-filed four additional exhibits that were marked RX 202 through RX 206. The housing provider did not introduce these exhibits during the hearing, and the court did not consider them.

5. RACD assigned Claim of Exemption Number EX 516692 to the Registration/Claim of Exemption Form for 1544 Independence Avenue, SE. RX 201
6. The housing accommodation at 1544 Independence Avenue, SE is an apartment building with four one bedroom rental units.
7. The housing provider is a natural person who owns only four rental units in the District of Columbia.
8. The housing provider has a Certificate of Occupancy and has maintained a residential housing business license for the housing accommodation. RX 200.

IV. Conclusions of Law

This matter is governed by the Rental Housing Act of 1985, D.C. Official Code §§ 42-3501.01 – 3509.07, the District of Columbia Administrative Procedure Act (“DCAPA”), D.C. Official Code §§ 2-501 – 510, the District of Columbia Municipal Regulations (“DCMR”), 1 DCMR 2800 – 2899, 1 DCMR 2920 – 2941, and 14 DCMR 4100 – 4399. On October 1, 2006, the Office of Administrative Hearings (“OAH”) assumed the Rent Administrator’s jurisdiction to hear rental housing cases pursuant to the Office of Administrative Hearings Establishment Act, D.C. Official Code § 2-1831.03(b-1)(1).

The housing provider has moved to dismiss the tenant petition, arguing that he is a small landlord exempt from the rent stabilization provisions of the Act. The Act’s Rent Stabilization Program, Sections 42-3502.05(f) through 42-3502.19, except § 42-3502.17, shall apply to each rental unit in the District of Columbia except rental units that are excluded or exempt from coverage. Rental units owned by small landlords are exempt from coverage. Under the Act, a

housing provider is a small landlord if he or she owns or has an interest in four or fewer rental units that are properly registered.³

The tenant opposed the motion to dismiss because, she argues, the housing provider did not have a valid business license, and he was not properly registered. She did not, however, present evidence to challenge the housing provider's claim that he was exempt from the rent stabilizations provisions of the Act because he was a small landlord who owned four rental units. Moreover, the tenant did not allege that the housing provider failed to provide written notice that rent increases were not regulated by the rent stabilization program, prior to the execution of her lease.⁴ See *Kornblum v. Charles E. Smith Residential Realty, L.P.*, TP 26,155 (Mar. 11, 2005) at

³ The Registration and Coverage provision of the Act, D.C. OFFICIAL CODE § 42-3502.05 (2001), provides the following requirements for the small landlord exemption:

- (3) Any rental unit in any housing accommodation of 4 or fewer rental units, including any aggregate of 4 rental units whether within the same structure or not, provided:
 - (A) The housing accommodation is owned by not more than 4 natural persons;
 - (B) None of the housing providers has an interest, either directly or indirectly, in any other rental unit in the District of Columbia;
 - (C) The housing provider of the housing accommodation files with the Rent Administrator a claim of exemption statement which consists of an oath or affirmation by the housing provider of the valid claim to the exemption. The claim of exemption statement shall also contain the signatures of each person having an interest, direct or indirect, in the housing accommodation. Any change in the ownership of the exempted housing accommodation or change in the housing provider's interest in any other housing accommodation which would invalidate the exemption claim must be reported in writing to the Rent Administrator within 30 days of the change;

⁴ D.C. Official Code § 42-3502.05(d) provides: "Prior to the execution of a lease or other rental agreement after July 17, 1985, a prospective tenant of any unit exempted under subsection (a) of this section shall receive a notice in writing advising the prospective tenant that rent increases for the accommodation are not regulated by the rent stabilization program."

6-9 (denying tenant's allegation that the housing provider failed to provide notice of the exemption where the rental application provided notice that the housing accommodation was exempt from the Rent Stabilization Program).

In order to qualify for the small landlord exemption, the housing provider must prove that he owns four or fewer rental units, that he does not have an interest in other rental units in the District of Columbia, and that the property is properly registered. *Revithes v. District of Columbia Rental Hous. Comm'n*, 536 A.2d 1007 (D.C. 1987). This requirement is also found in the implementing regulation, which provides: "The registration requirements of this section shall apply to each rental unit covered by the Act as provided by § 4100.3 and to each housing accommodation of which the rental unit is a part, including each rental unit exempt from the Rent Stabilization Program." 14 DCMR 4101.1. In order to meet the registration requirements for a multi-unit housing accommodation, a housing provider must file a Registration/Claim of Exemption Form, and possess a Certificate of Occupancy and Housing Business License. *Redmond v. Majerle Mgmt, Inc.*, TP 23,146 (RHC Mar. 26, 2002) at 17, n12; D.C. Official Code § 42-3502.05; 14 DCMR 4101.

In the instant case, the housing provider proved that he is a small landlord who is exempt from the Rent Stabilizations provisions of the Act. He presented oral and documentary evidence to prove that owns a housing accommodation with four rental units; he filed the Registration/Claim of Exemption Form for the units on November 13, 1992; obtained a Certificate of Occupancy for the property; and maintained the Business License for Residential Housing.

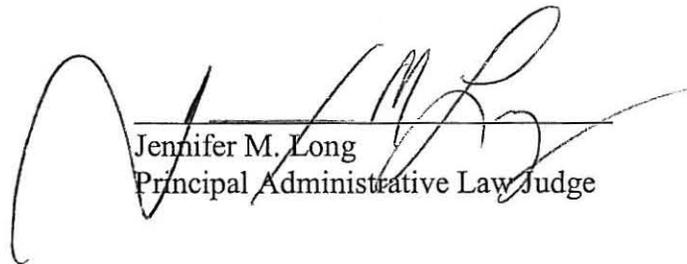
V. Order

Based on the foregoing findings of fact and conclusions of law, it is, this 19th day of May,
2010:

ORDERED, that Housing Provider/Respondent's motion to dismiss is **GRANTED**; and
it is further

ORDERED, that Case No. 2009-OAH-DHCD-0000015, Agency No. TP 29,737 is
DISMISSED WITH PREJUDICE; and it is further

ORDERED, that the reconsideration and appeal rights of any party aggrieved by this
Order are stated below.



Jennifer M. Long
Principal Administrative Law Judge

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 4th Street, NW
Suite 1140 North
Washington, DC 20001
(202) 442-8949

Certificate of Service:

By First-Class Mail (Postage Paid):

Ellen Richardson
1544 Independence Avenue, SE
Unit 2
Washington, DC 20003

David Enabnit
8429 Freyman Drive
Chevy Chase, MD 20815

By Inter-Agency Mail:

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

Keith Anderson, Acting Rent Administrator
District of Columbia Department of Housing and Community Development
Housing Regulation Administration
1800 Martin Luther King Jr. Avenue, SE
Washington, DC 20020

I hereby certify that on 5-19, 2010 this document was caused to be served upon the above-named parties at the addresses and by the means stated.


Clerk / Deputy Clerk

