

DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION

TP 25,033

In re: 2300, 2316, 2330 Good Hope Road, S.E.

Ward Six (6)

H.G. SMITHY COMPANY
Housing Provider/Appellant

v.

IVY ALSTON, ET. AL
Tenants/Appellees

DECISION AND ORDER

September 30, 2003

YOUNG, COMMISSIONER. This case is on appeal from the District of Columbia Department of Consumer and Regulatory Affairs (DCRA), Office of Adjudication (OAD), to the Rental Housing Commission (Commission). The applicable provisions of the Rental Housing Act of 1985 (Act), D.C. OFFICIAL CODE §§ 42-3501.01-3509.07 (2001), the District of Columbia Administrative Procedure Act (DCAPA), D.C. OFFICIAL CODE §§ 2-501-510 (2001), and the District of Columbia Municipal Regulations, 14 DCMR §§ 3800-4399 (1991) govern these proceedings.

I. PROCEDURAL HISTORY

On July 24, 2000, Ivy Alston, Lorraine McKinney, Lueen Lindsay, Gerald Deans, Eric Jessup, and Tammy Green,¹ all tenants at the housing accommodation known as Marbury Plaza, located at 2300, 2316 and 2330 Good Hope Road, S.E., filed Tenant

¹ There were six (6) tenant, petitioners, Ivy Alston occupied unit 725 at 2300 Good Hope Road, S.E., Lorraine McKinney occupied unit 1 at 2316 Good Hope Road, S.E., Lueen Lindsay occupied unit 201 at 2300 Good Hope Road, S.E., Gerald Deans occupied unit 508 at 2330 Good Hope Road, S.E., Eric Jessup occupied unit 713 at 2330 Good Hope Road, S.E., and Tammy Green occupied unit 504 at 2330 Good Hope Road, S.E.

Petition (TP) 25,033 with the Rental Accommodations and Conversion Division (RACD). In their petition the tenants alleged that the housing provider, the H.G. Smithy Company: 1) substantially reduced services and/or facilities provided in connection with their units; 2) failed to file the proper rent increase forms with RACD; 3) filed rent ceilings with RACD for their units which were improper; 4) took rent increases while their units were not in substantial compliance with the D.C. Housing Regulations; and 5) failed to properly register with the RACD, the building in which their rental units were located.

OAD hearings were held on November 16, and December 14, 2000, and March 13 and 14, 2001, with Hearing Examiner Gerald Roper presiding. On April 30, 2002, the hearing examiner issued the Rent Administrator's decision. The hearing examiner made the following relevant findings of fact:

7. The Housing Provider Respondent, H.G. Smithy Company, has been the manager of the housing accommodations at 2300, 2316-20-24, and 2330 Good Hope Road, S.E., since December 29, 1998; the owner of the housing accommodations since that date is Marbury Plaza L.L.C.
8. The Housing Provider admitted the subject housing accommodations suffered from deferred maintenance and functional obsolescence prior to their [sic]ownership in December 1998.
9. The on-site property [manager] during the period October 1999 and September 2000 acknowledged receipt of numerous housing code violations cited by the District of Columbia Department of Consumer and Regulatory Affairs.
10. The Housing Provider Respondent made necessary repairs to the rental units in response to the housing code violation notices issued by the District of Columbia.
11. The Housing Provider Respondent did not always make necessary repairs to the rental units in response to the Tenant Petitioners [sic] request in a timely manner.

12. The Housing Provider Respondent did not reduce or eliminate related services and facilities with respect to Apt. No. 508, 2330 Good Hope Road, S.E.; the Housing Provider Respondent did not promptly make necessary repairs to the rental unit when notified by Tenant Petitioner that repairs were needed. The Housing Provider did respond to housing code violation notices issued by the District of Columbia.
13. The Housing Provider Respondent did not reduce or eliminate related services and facilities with respect to Apt. No. 725, 2300 Good Hope Road, S.E.; the Housing Provider Respondent did not promptly make necessary repairs to the rental unit when notified by Tenant Petitioner that repairs were needed. The Housing Provider did respond to housing code violation notices issued by the District of Columbia.
14. The Housing Provider Respondent did not reduce or eliminate related services and facilities with respect to Apt. No. 201, 2300 Good Hope Road, S.E.; the Housing Provider Respondent did not promptly make necessary repairs to the rental unit when notified by Tenant Petitioner that repairs were needed. The Housing Provider did respond to housing code violation notices issued by the District of Columbia.
15. The housing Provider Respondent did not reduce or eliminate related services and facilities with respect to Apt. No. 713, 2330 Good Hope Road, S.E.; to the Housing Provider Respondent did not promptly make necessary repairs to the rental unit when notified by Tenant Petitioner that repairs to the rental unit when notified by Tenant Petitioner that repairs were needed. The Housing Provider did respond to housing code violation notices issued by the District of Columbia.
16. The Housing Provider Respondent did not reduce or eliminate related services and facilities with respect to Apt. No. 1, 2316 Good Hope Road, S.E., the Housing Provider Respondent did not promptly make necessary repairs to the rental unit when notified by Tenant Petitioner that repairs where needed. The Housing Provider did respond to housing code violation notices issued by the District of Columbia.
17. The Housing Provider Respondent did not reduce or eliminate related services and facilities with respect to Apt. No. 504, 2330 Good Hope Road, S.E.; the Housing Provider Respondent did not promptly make necessary repairs to the rental unit when notified by Tenant Petitioner that repairs were needed. The Housing Provider did respond to housing code violation notices issued by the District of Columbia.
18. The Housing Provider Respondent did not reduce the related services and facilities with respect to the common areas of 2300, 2316-20-24, 2330 Good Hope Road, S.E.

19. The Housing Provider made necessary repairs, and corrected housing code violations in the common areas.
20. The Housing Provider Respondent increased the rent charged for Apt. No. 508, 2300 Good Hope Road, S.E., August 1, 1999 while there were substantial housing code violations in the rental unit or common areas.
21. The Housing Provider Respondent did not increase the rent charged for Apt. No. 725, 2300 Good Hope Road, S.E., while there were substantial housing code violations in the rental unit or common areas.
22. The Housing Provider Respondent increased the rent charged for Apt. No. 201, 2300 Good Hope Road, S.E., November 1, 1999 while there were substantial housing code violations in the rental unit or common areas.
23. The Housing Provider respondent increased the rent charged for Apt. No. 713, 2300 Good Hope Road, S.E., October 1, 1999 while there were substantial housing code violations in the rental unit or common areas.
24. The Housing Provider Respondent increased the rent charged for Apt. No. 1, 2316 Good Hope Road, S. E., December 1, 1999 while there were substantial housing code violations in the rental unit or common areas.
25. The Housing Provider Respondent increased the rent charged for Apt. No. 504, 2300 Good Hope Road, S.E.. October 1, 1999 while there were substantial housing code violations in the rental unit or common areas.

Alston v. H.G. Smithy Co., TP 25,033 (OAD Apr. 30, 2002) at 66-68. The hearing

examiner made the following conclusions of law:

1. Although there is evidence of a reduction in the related service of maintenance and repairs there is insufficient evidence of a substantial reduction in violation of D.C. Code § 45-2521 to Petitioners Gerald Deans, Ivy Alston, Lueen Lindsay, Eric Jessup, Lorraine McKinney and Tammy Green. Therefore, the Petitioner's have failed to meet their burden of proof. Further, as previously stated had the Petitioner's met there burden there can be no rent refund because given the full value for each Petitioner's claimed value amount for the reduction in service is far below the allowable rent ceilings for each rental unit. Thus, no rent refund or rollback can be awarded.
2. Respondent has increased the rent charged Petitioners Gerald Dean, Lueen Lindsay, Eric Jessup, Lorraine McKinney and Tammy Green during the period August, October, November, and December, 1999 when there

existed substantial housing code violations in their rental units, in violation of D.C. Code § 45-2518 (a)(1)(A) and D.C. Law 6-10, 208 (a)(1) (A).

3. Petitioners are entitled to a rent refund with interest.

Id. at 69.

II. ISSUES ON APPEAL

On May 20, 2002, the housing provider filed a notice of appeal. The housing provider stated that the Rent Administrator's decision was arbitrary, capricious, an abuse of discretion, not in accordance with the Rental Housing Act, and unsupported by substantial evidence on the record of the proceedings. The housing provider argued:

1. The hearing examiner's ruling that there were unabated housing code violations at the time that the housing provider raised the rents of five tenant petitioners in 1999 was not supported by substantial evidence.
2. The hearing examiner failed to consider the housing provider's evidence that the tenants had not notified the housing provider about the alleged housing code violations, and he made no findings of fact on this issue.
3. The hearing examiner failed to consider the housing provider's evidence that all maintenance requests made by the tenants and all violations reported by housing inspectors were promptly addressed so that there were no substantial housing code violations at the time of any of the rent increases in question, or even if there were such violations at that time, they were abated thereafter, and the hearing examiner made no findings of fact on this issue.
4. The hearing examiner ordered rent refunds and roll-backs for periods after the close of the evidentiary record, as to which there was no evidence of violations.

Notice of Appeal at 1-2.

III. DISCUSSION OF THE ISSUES

- A. **Whether the hearing examiner erred when he ruled that there were unabated housing code violations at the time that the housing provider raised the rents of five tenant petitioners in 1999.**

On appeal to the Commission, the housing provider argues that the hearing examiner's holding that there were unabated housing code violations when the housing provider increased the tenant's rents in 1999 was not supported by the substantial evidence in the record of the hearing. The decision stated:

Respondent has increased the rent charged Petitioners Gerald Dean, Lueen Lindsay, Eric Jessup, Lorraine McKinney and Tammy Green during the period August, October, November, and December, 1999 when there existed substantial housing code violations in their rental units, in violation of D.C. Code § 45-2518 (a)(1)(A) and D.C. Law 6-10, 208 (a)(1)(A).

Alston v. H.G. Smithy Co., TP 25,033 (OAD Apr. 30, 2002) at 69. The decision further stated, regarding the condition of the tenants' units:

The record evidence shows that each Tenant testified that since December 1998 they have experienced housing code violations in their individual rental units as well as the common areas of the housing accommodations.

Tenant Petitioner Deans testified to eighteen (18) housing code violations during this period and eight (8) housing code violations in the common area. (See, Summary of the Testimony).

Tenant Petitioner Lindsay testified to eleven (11) housing code violations during this period and twelve (12) housing code violations in the common area. (See, Summary of the Testimony).

Tenant Petitioner Jessup testified to fifteen (15) housing code violations during this period and nine (9) housing code violations in the common area. (See, Summary of the Testimony).

Tenant Petitioner McKinney testified to twenty-seven (27) housing code violations during this period and six (6) housing code violations in the common area. (See, Summary of the Testimony).

Tenant Petitioner Green testified to forty-eight (48) housing code violations during this period and fourteen (14) housing code violations in the common area. (See, Summary of the Testimony).

Id. at 57. The examiner concluded:

The Examiner finds that the housing code violations complained of by the

Tenant Petitioner's specifically identify the location of the Tenant's complaints of violations and the testimony of the Tenant's corroborated the location as well as the duration. Based on the record these conditions existed at the time of the rent increases implemented by the Respondent in August, November, and October 1999, and the aggregate number of violations made them substantial. 14 DCMR 4216(u). Accordingly, the rent increases implemented for the affected Tenants during the period August, October, and November 1999 shall be rolled back and refunded to the Tenants with interest.

Petitioners are entitled to a rent refund for the rent over charge by the Respondent. The refund will be computed, based upon the allowable rent for the period of time of the overcharge.

Id. at 58. The evidence of record relied upon by the hearing examiner are letters signed by the tenants listing the violations in their units. P. Exhs. 1, 11, 14, 22 and 25. In addition to the fact that the lists are all dated in July, 2000, after the rent increases, they reflect that several of the violations listed had been corrected. For example, ten of the 15 items listed in tenant Jessup's list of violations in his unit, P. Exh. 14, are marked as corrected.

The Act, D.C. OFFICIAL CODE § 42-3502.16(h) (2001) governs the Commission's review of the notice of appeal. This provision of the Act empowers the Commission to reverse in whole or in part, any decision of the Rent Administrator that the Commission finds to be arbitrary, capricious, an abuse of discretion, not in accordance with the provisions of the Act, or unsupported by the substantial evidence on the record of the proceedings before the Rent Administrator. In the instant case, the Commission holds that the hearing examiner's finding that the housing provider increased the tenants' rents while substantial housing code violations existed in their units is not unsupported by the substantial evidence on the record of the proceedings before the Rent Administrator. Accordingly, the decision of the hearing examiner on this issue is reversed.

B. Whether the hearing examiner erred when he failed to consider the housing provider's evidence that the tenants had not notified the housing provider about the alleged housing code violations.

The housing provider contends that it was not notified of any housing code violations before the rent increases to five (5) of the six (6) tenants before the 1999 rent increases went into effect. The housing provider further argues that the tenants relied on a notice of Housing Code violations from an inspection that was conducted in February 2000.

The record reflects that tenants Deans and Lindsay received \$6.00 and \$5.00 per month rent increases respectively, on August 1, 1999. The record further reflects that tenants Jessup and Green received \$5.00 and \$6.00 per month rent increases respectively, on October 1, 1999, and that tenant McKinney received a \$6.00 per month rent increase on December 1, 1999.

The applicable provision of the Act, D.C. OFFICIAL CODE § 42-3502.08(a)(1) (2001), provides:

Notwithstanding any provision of this chapter, the rent for any rental unit shall not be increased above the base rent unless:

- (A) The rental unit and the common elements are in substantial compliance with the housing regulations, if noncompliance is not the result of tenant neglect or misconduct. Evidence of substantial noncompliance shall be limited to housing regulations violation notices issued by the District of Columbia Department of Consumer and Regulatory Affairs and other offers of proof the Rental Housing Commission shall consider acceptable through its rulemaking procedures.

Pursuant to the Commission's regulations "other offers of proof" include testimony of the parties. See 14 DCMR § 4216.4 (1991).

At the hearing, the tenants offered testimony and documentary evidence concerning the existence, location, and in some instances, the duration of the housing

code violations in their units. The tenants further testified that the housing provider was notified of the housing code violations in their units but either failed to make repairs or made repairs which did not correct the violations. However, a review of the testimony of the tenants reflects that they were unable to state, with specificity, whether, and in what manner the housing provider was notified of the existence of any housing code violations on the various dates on or before their rents were increased in August, October or December, 1999.

Petitioner's Exhibit (P. Exh.) 4 reflects that tenant Deans notified the housing provider by letter dated September 16, 1999, that a leak was occurring in his unit which commenced on September 9, 1999. However, the leak and the notice to the housing provider occurred after his rent was increased on August 1, 1999. Mr. Deans also testified to violations in his unit, but stated repeatedly that he could not remember when they occurred. The record, P. Exh. 17, reflects that tenant McKinney notified the housing provider of violations in her unit, however, that letter was dated February 3, 2000, after her rent increase. The record (R.) at 139 (P. Exh. 25), contains a list of signed by tenant Green which detailed various housing code violation, however, the list was signed on July 22, 2000. The record also contains a letter from Ms. Green (P. Exh. 27-27a) which complained of a lack of heat during October 1999, however, the letter was dated January 5, 2000. Tenant Lueen Lindsay, who occupied unit 201 at the housing accommodation testified that she received a rent increase effective on August 1, 1999. She further testified about housing code violations and her notification to the housing provider by means of repair requests, however, her testimony and documentary evidence (P. Exh. 11) concerned events which occurred after the August 1999 rent increase. Tenant Jessup

testified that he received a rent increase in October, 1999. Mr. Jessup testified, in summary, that he did not notify the housing provider about violations in his unit before a rent increase went into effect on October 1, 1999. See P. Exh. 14 and 15, R. at 154-155.

Neither the testimony nor documentary evidence submitted by the tenants reflects that the housing provider was notified of housing code violations in the tenants' units when their rents were increased. Although a housing provider may not raise rent for a rental unit if it and the common elements are not in substantial compliance with the housing regulations, this is only so if the housing provider has notice of the existing housing code violations. If the housing provider was first notified of the violations after the effective date of the rent increase, the rent increase is valid. Gavin v. Fred A. Smith Co., TP 21,918 (RHC Nov. 18, 1992). Accordingly, the decision of the hearing examiner is reversed on this issue.

C. Whether the hearing examiner erred when he failed to consider the housing provider's evidence that all maintenance requests made by the tenants and all violations reported by housing inspectors were promptly addressed so that there were no substantial housing code violations at the time of any of the rent increases in question.

Hearing Examiner Roper's decision stated:

10. The Housing Provider Respondent made necessary repairs to the rental units in response to the housing code violation notices issued by the District of Columbia.
11. The Housing Provider Respondent did not always make necessary repairs to the rental units in response to the Tenant Petitioners request in a timely manner.

Alston v. H.G. Smithy Co., TP 25,033 (OAD Apr. 30, 2002) at 67.

The examiner's finding of fact numbered 10 reflects that he considered and agreed with the housing provider's evidence that repairs were made pursuant to violation

notices issued by DCRA. Further, the record evidence did not reflect that the tenants had submitted maintenance requests to the housing provider on or before those dates in August, October, and December 1999, when their rents were increased. Therefore, this appeal issue is denied.

D. Whether the hearing examiner erred when he ordered rent refunds and rent roll-backs for periods after the close of the evidentiary record.

Finally, the housing provider argues that the hearing examiner erred when he awarded rent refunds to the tenants beyond the date of the evidentiary hearing, despite the fact that the record in this case closed on March 14, 2001. In his decision and order the hearing examiner awarded rent refunds to the various tenants from the dates their rent increases went into effect until the date of the decision, April 30, 2002.²

While the Commission has determined that damages should be awarded for rent overcharges to the date of the hearing, the Commission has further ruled that damages may not be awarded for the period after the conclusion of the hearing, as was done in the instant case. See Borger Mgmt., Inc. v. Green, TP 12,108 & TP 12,123 (RHC Aug. 16, 1989) cited in Carter v. Davis, TP 23,535 & TP 23,553 (RHC June 30, 1998) at 13-14.

Accordingly, the decision of the Rent Administrator on this issue is reversed.

² See Alston v. H.G. Smithy Co., TP 25,033 (OAD Apr. 30, 2002) at 60.

IV. CONCLUSION

Accordingly, the decision of the hearing examiner on Issue A is reversed. The decision of the hearing examiner on Issue B is reversed. The housing provider's appeal of Issue C is denied, and finally, the hearing examiner's decision awarding rent refunds and rollbacks to the date of his decision is reversed.

SO ORDERED.



RUTH R. BANKS, CHAIRPERSON



RONALD A. YOUNG, COMMISSIONER



JENNIFER M. LONG, COMMISSIONER

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing decision and order in TP 25,033 was sent by priority mail, with delivery confirmation on this **30th day of September, 2003** to:

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