DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION

TP 27,034

In re: 1530 Rhode Island Avenue, N.E., Unit 303

SYLVESTER NEWTON
Tenant/Appellant

v.

TOM HOPE
Housing Provider/Appellee

DECISION AND ORDER

May 29, 2002

LONG, COMMISSIONER. This case is before the District of Columbia Rental Housing Commission (Commission) pursuant to 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), also govern the proceedings.

I. PROCEDURAL HISTORY

Sylvester Newton filed Tenant Petition (TP) 27,034 with the Rental Accommodations and Conversion Division on March 6, 2001. The tenant alleged that the housing provider, Tom Hope, substantially reduced the services and facilities provided in connection with the rental unit. Administrative Law Judge (ALJ), Henry McCoy, presided at the Office of Adjudication (OAD) hearing on July 17, 2001. The tenant appeared pro se, and the property manager, Clara Reaves, represented Tom Hope during the OAD hearing. In the decision and order issued on October 11, 2001, the ALJ

concluded, as a matter of law, that the housing provider did not substantially reduce the services and facilities provided in connection with the tenant's rental unit. The tenant filed a notice of appeal from the ALJ's decision on October 22, 2002, and the Commission held the appellate hearing on January 23, 2002.

II. ISSUES

In the notice of appeal, the tenant stated that the housing provider substantially reduced his services. In response to the ALJ's health, safety, and welfare standard, the tenant attempted to demonstrate how the damage to his unit, and the housing provider's failure to employ appropriate maintenance workers to repair the ceiling that was falling in the living room and kitchen, impacted his health, safety, and welfare.

III. DISCUSSION

Whether the ALJ erred when he determined that the housing provider did not substantially reduce the services and facilities provided in connection with the tenant's rental unit.

In the notice of appeal, the tenant alleged that the ALJ erred when he determined that the housing provider did not substantially reduce the tenant's services and facilities. The services and facilities provision of the Act, D.C. OFFICIAL CODE § 42-3502.11 (2001), provides: "If the Rent Administrator determines that the related services or related facilities supplied by a housing provider for a housing accommodation or for any rental unit in the housing accommodation are substantially increased or decreased, the Rent Administrator may increase or decrease the rent ceiling, as applicable, to reflect proportionally the value of the change in services or facilities."

In the decision and order, the ALJ stated the following:

> After reviewing the evidence and testimony from both parties, I am persuaded that the Respondent did not substantially

> reduce the Petitioner's services and/or facilities in violation of the Rental Housing Act of 1985. There was damage to the Petitioner's apartment caused through no fault of the Respondent. Further, the Respondent has made a concerted effort to effectuate repairs to the unit, albeit not as quickly as the Petitioner would like. This has caused a measure of inconvenience to the Petitioner. However, there was no evidence to suggest that his inconvenience presented a threat to [the] health safety or welfare of the Petitioner. To the extent this can be classified as a reduction in services and/or facilities, it does not rise to the level of being a substantial reduction.

Newton v. Hope, TP 27,034 (OAD Oct. 11, 2001) at 5 (emphasis added).

The ALJ's decision is not in accordance with § 42-3502.11, because it is grounded upon a faulty legal premise. The ALJ determined that there was damage to the tenant's rental unit. However, the ALJ improperly interjected an element of fault and a requirement of an adverse impact on the tenant's health, safety, and welfare, which are not required by the statute.

The District of Columbia Court of Appeals interpreted the reduction in services and facilities provision of the Act in Interstate General Corp. v. District of Columbia Rental Hous. Comm'n, 501 A.2d 1261 (D.C. 1985). The Court held that the statute "requires only that there be a finding by the Rent Administrator that there has been a substantial change in the services or facilities provided by the landlord. It does not require the Rent Administrator to look beyond the substantial change to ascertain whether an affirmative act by the landlord caused the damage. The question of substantiality goes simply to the degree of loss. The degree of loss ... is substantiated by the length of time that the tenants were without service." Id. at 1263 (emphasis added). Accordingly, the ALJ's finding that the damage to the tenant's unit was caused through no fault of the housing

provider added an element of culpability to the statute that the Court soundly rejected in Interstate.

Moreover, the ALJ's determination that there was no evidence to suggest that the inconvenience presented a threat to the tenant's health, safety or welfare was rejected by the Commission in Washington Realty Co. v. 3030 30th St. Tenant Assoc., TP 20,749 (RHC Jan. 30, 1991) and Davis v. Madden, TP 24,983 (RHC Mar. 28, 2002).

In Washington, the Commission conducted an exhaustive analysis of § 42-3502.11 and the Court's opinion in Interstate.[1] The hearing examiner, in Washington, expanded the substantial reduction standard by defining the test for substantiality as being whether the housing provider's failure to provide a service constituted a threat to the tenant's health, safety, or welfare. The Commission held that, "[w]hile this is a useful test, it is not exclusive. It is entirely possible that there could be substantial reductions in services and facilities even where the [threat to the health, safety, or welfare] test is not fully met and even though the alleged violation did not constitute a violation of the housing regulations." Id. at 28. In Davis, the Commission held that the use of the threat to the health, safety, or welfare standard in a reduction in services and facilities claim was error.

The Commission is compelled to reject the ALJ's finding that the housing provider did not substantially reduce the tenant's services and facilities, because the ALJ improperly applied a standard of fault and a health, safety, welfare test that were not in accordance with § 42-3502.11. See Tenants of 738 Longfellow

[1] "And, while the temporarily reduced service in the Interstate case was the major service of air conditioning, there is nothing to suggest that the standard enunciated by the court does not apply in the same manner to services such as maintenance and repair." Washington at 26-27.

St., N.W. v. District of Columbia Rental Hous. Comm'n, 575 A.2d 1205, 1222-1223 (D.C. 1990) (holding that an agency's interpretation of a statute "should be soundly rejected ... if it is incompatible with the statutory purposes[,] based on a faulty legal premise, plainly erroneous, or inconsistent with the statute").

In order to prove a claim for reduction in services and facilities, the tenant must present competent evidence of the existence, duration and severity of the reduced services or facilities. When the tenant claims a reduction of services in the interior of his unit, he must give the housing provider notice of the allegations that constitute violations of the housing code. Hall v. DeFabio, TP 11,554 (RHC Mar. 6, 1989). If the tenant presents satisfactory evidence of the existence, duration and severity of the reduced services, the examiner may set a monetary value, which rationally flows from the evidence without direct or expert testimony concerning the dollar value. Bernstein v. Estrill, TP 20,007 (RHC May 30, 1991); Norman Bernstein Mgmt., Inc. v. Plotkin, TP 21,182 (May 10, 1986).

During the OAD hearing, the tenant presented evidence concerning the existence, severity, and duration of the reduced services. The tenant testified that on January 3, 2001 at approximately 12:30 a.m., he was awakened by water coming into his apt. He went into the kitchen and saw water pouring through the kitchen ceiling and light fixture, and down the walls in the kitchen and living room. The tenant testified that he discovered the source of the water on an upper floor where he saw a pipe shooting water into the hall. The tenant testified that he contacted the housing provider, police, fire department, and the Mayor's command center. Mr. Holland from the Mayor's command center conducted an

inspection immediately and informed the tenant that he would contact DCRA to arrange an inspection. Mr. Fuller, a DCRA employee, conducted an inspection later that day and directed the housing provider to restore water and electricity, which were disabled during the night. In the ensuing days, the paint on the ceiling and walls in the living room began to drop. The tenant testified that he had to remove his collection of paintings, a drum set, and other articles from the living room into his bedroom. He testified that he could not use his living room or a part of the kitchen, as a result of the damage. The use of his bedroom was curtailed, because it was filled with the items from the living room.

Two weeks after the incident the housing provider viewed the damage to the tenant's apartment, and, thereafter, began making repairs. During the hearing, the tenant expressed concern about the inordinate amount of time the housing provider was taking to complete the repairs, the qualification of the workers, and the quality of the repairs. The tenant testified that the living room wall is still in need of repair; the kitchen cabinets hanging from the ceiling was never addressed, and that there is a crack from the middle of the kitchen wall to the baseboard. He testified that one of the repairmen dug into the crack in the kitchen wall and created a hole. The tenant testified that the housing provider corrected 70-80% of the damage by the OAD hearing date. The tenant presented two witnesses who testified to the existence, severity and duration of the conditions within the tenant's unit.

The housing provider did not dispute the essence of the tenant's claim. Clara Reaves, the property manager testified that someone pulled the main water

line during a fight on January 3, 2001. One of her workers was on the property the night of the incident, and the housing provider restored the water and electricity the following day. Ms. Reaves stated that the tenant's unit was not the only unit that was damaged.

Ms. Reaves testified that within two to three weeks after the incident, they attempted to repair the damage. However, the damage reoccurred within the week, because the wall was not dry. She testified that she tried to resolve the problem, but the moisture continued to return. The housing provider decided to wait until the wall dried, scrape the walls, and redo the work. During the hearing, the housing provider's repairman discussed the steps that the housing provider needed to take to remedy the dampness that caused the reoccurring damage to the walls. Ms. Reaves made a verbal commitment to complete the work within a week of the hearing.

In addition to the oral testimony, the Commission reviewed the documentary evidence that the ALJ considered. See Decision at 2. Most notable were the photographs that depicted the unsightly damage to the ceilings and walls in the tenant's unit. The pictures revealed grossly peeling paint in three different colors, water stains, exposed plaster, and numerous cracks emanating from the ceiling down the walls.

In Bonheur v. Oparaocha, TP 22,970 (RHC Feb. 4, 1994) at 9, the Commission held that "a landlord is required to maintain the habitability of a rental unit by making necessary repairs in a reasonable, prompt, and complete manner, once the need for such repairs has been brought to his attention." In

Young v. Kinder, TP 11,988 (RHC Sept. 4, 1987), the Commission held that the housing provider's failure to make satisfactory repairs to a damaged ceiling and correct a leak and falling plaster constituted a substantial reduction in services and facilities.

In the instant case, the tenant's unit sustained water damage in the living room and kitchen, which impeded the full use and occupancy of the rental unit. The housing provider failed, for more than six months, to correct the dampness and cracks in the walls and make effective repairs. The photographs in the record buttressed the testimony concerning the cracks, peeling paint and plaster. The record evidence mirrors the evidence that constituted a substantial reduction in services and facilities in Young.

ALJ McCoy acknowledged the damage to the tenant's unit. In addition, he made the following pertinent findings of fact:

> 2. Shortly after midnight on the morning of January 3, 2001, the Petitioner experienced water damage in the living room and kitchen of his apartment caused by a broken water pipe on one of the floors above his unit.
>
> 3. The Petitioner called the Respondent's emergency number to notify them [sic] of the problem and also called the fire department, police department, and the Mayor's Command Center.
>
> 5. The Petitioner has not had full use and enjoyment of his living room and kitchen since January 3, 2001 while repairs have been in progress.
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> 6. The Respondent started repairs on the Petitioner's apartment in February 2001 with work still remaining to be done on the kitchen cabinets and the living room wall sustaining the most damage.
>
> 7. The delay in making repairs resulted from scheduling miscommunications, the quality of the repairs, and dampness in the walls.

Decision at 3. These facts constituted a substantial reduction in services. However, the ALJ injected an element of fault and imposed a higher standard for substantiality than the statute requires. See id. at 5.

"The question of substantiality goes simply to the degree of loss. The degree of loss ... is substantiated by the length of time that that tenants were without service." Interstate, 501 A.2d at 1263 (emphasis added). After interposing the concept of fault and a health, safety, welfare test, the ALJ stated: "To the extent this can be classified as a reduction in services and/or facilities, it does not rise to the level of being a substantial reduction." Decision at 5.

The Act empowers the Commission to reverse any decision of the Rent Administrator that is 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. See D.C. OFFICIAL CODE § 42-3502.16(h) (2001).

In accordance with § 42-3502.16(h), the Commission reverses the ALJ's decision. The substantial record evidence and the ALJ's findings of fact did not support the decision. The substantial record evidence, as recounted in the ALJ's findings, demonstrated that the tenant experienced water damage on January 3, 2001 caused by a broken water pipe; the tenant "has not had full use and enjoyment of his living room and kitchen since January 3, 2001 while repairs have been in progress; the housing provider started repairs in February 2001, but work still remains to be done on the kitchen cabinets and the living wall sustaining the most damage; and the delay in making repairs resulted from scheduling miscommunications, the quality of repairs, and dampness in the walls."

Id. at 3. This evidence reflects a substantial reduction in services and facilities from January 3, 2001 through July 17, 2001.[2]

"Any person who ... substantially reduces or eliminates related services previously provided for a rental unit shall be held liable by the Rent Administrator or Rental Housing Commission ... for the amount by which the rent exceeds the applicable rent ceiling or for treble that amount (in the event of bad faith) and/or for a roll back of the rent to the amount the Rent Administrator or Rental Housing Commission determines." D.C. OFFICIAL CODE § 42-3509.01(a) (2001).

Accordingly, the ALJ's decision is reversed and this matter is remanded. The ALJ shall establish a value of the reduced services by drawing upon his experience and the evidence of the existence, duration, and severity of the reduced services or facilities. See Borger v. Woodson, TP 11,848 (RHC June 10, 1987) (holding that the Rent Administrator may establish the monetary value of reduced services or facilities without expert or other direct testimony). The ALJ shall issue findings of fact that state the tenant's legal rent ceiling and rent charged. Thereafter, the ALJ shall reduce the ceiling by the monthly value of the reduced services or facilities.

"The housing provider is liable for a rent refund only if the rent charged is higher than the reduced rent ceiling. Where the rent actually charged is equal to or lower than the reduced rent ceiling, there was no excess rent was collected and no refund is required." Kemp v. Marshall Heights Community Dev., TP 24,786 (RHC Aug. 1, 2000)

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[2] This evidence also reflects substantial violations of the housing code. The regulation, 14 DCMR § 4216.2, provides that the following conditions are housing code violations: "Curtailment of utility service, such as gas or electricity; leaks in the roof or walls, plaster failing or in immediate danger of falling; and floor, wall, or ceilings with substantial holes. Moreover, § 4216.2(u) provides that a "large number of housing code violations, each of which may be either substantial on non-substantial, the aggregate of which is substantial, because of the number of violations."

at 8 citing Hiatt Place P'ship v. Hiatt Place Tenants Ass'n, TP 21,149 (RHC May 10, 1991). If on the other hand, the rent charged exceeds the reduced rent ceiling, the ALJ shall order a refund.

IV. CONCLUSION

The ALJ erred when he concluded, as a matter of law, that the housing provider did not reduce the services and facilities provided in connection with the tenant's rental unit. The ALJ improperly interposed an element of fault and applied a health, safety, welfare test that exceeded the provisions of D.C. OFFICIAL CODE § 42-3502.11 (2001).

For the foregoing reasons, the decision and order issued in TP 27,034 on October 11, 2001 is reversed and remanded, because the decision was not in accordance with the Act and the substantial evidence of record did not support it. This matter is remanded for the ALJ to determine the value of the reduced services and facilities and calculate any refund that the tenant may be entitled to recover.

SO ORDERED.

RUTH R. BANKS, CHAIRPERSON

RONALD A. YOUNG, COMMISSIONER

JENNIFER M. LONG, COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Decision and Order in TP 27,034 was mailed by priority mail with delivery confirmation, postage prepaid, this 29th day of May 2002 to:

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