

DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION

TP 27,042

In re: 1442 Somerset Place, N.W.

Ward Four (4)

RECAP – BRADLEY GILLIAN¹
Housing Provider/Appellant

v.

HELEN POWELL
Tenant/Appellee

DECISION AND ORDER

December 19, 2002

BANKS, CHAIRPERSON. This case is on appeal to the Rental Housing Commission from a decision and order issued by the Rent Administrator. 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 (DCMR), 14 DCMR §§ 3800-4399 (1991) govern the proceedings.

I. THE PROCEDURES

On March 15, 2001, Helen W. Powell, Tenant/Appellee, filed Tenant Petition (TP) 27,042, which alleged only one count, that services and facilities were substantially reduced, because the laundry room at the housing accommodation was not accessible or

¹ The Housing Provider referred to RECAP as a partnership in the text of the notice of appeal. *See* p. 3, *infra*. However, the record shows that the caption on the decision and order issued by OAD and the caption on the notice of appeal filed in the Commission by the Housing Provider do not contain the word “partnership.” Therefore, the Commission “continue[d] the caption of the case as determined by the Rent Administrator in accordance with § 3905” *See* 14 DCMR § 3809.1 (1991).

operative for several months. Henry McCoy, Administrative Law Judge (ALJ), in the Office of Adjudication (OAD) held the hearing on the petition on July 19, 2001, and issued the decision and order on April 2, 2002.²

The decision and order contained the following findings of fact:

3. The two washers and two dryers in the laundry room at the subject premises suffered permanent damages due to a break-in and were rendered inoperable on or about October 21, 2000.
4. Petitioner was without access to the on site laundry room facility from October 2000 until February 2001.
5. On October 19, 2000, Respondent went to John's Hopkins University Hospital to have a kidney removed and did not return to work until January 2001.
6. Respondent replaced one each of the inoperative washer and dryer in the laundry room after January 2001.
7. Respondent restricted Petitioner's access to the laundry room in February 2001 by requiring Petitioner to have Respondent's employee, Sherman Ruff, open the laundry room upon her request to utilize the facility.
8. Respondent provided Petitioner with a key to the laundry room in late February 2001.
9. At all relevant times for this petition, Petitioner's rent was \$395.00 and the rent ceiling was \$392.00.
10. Respondent substantially reduced petitioner's services by failing to timely repair or replace the damaged laundry room machines for over four months.
11. Petitioner failed to demonstrate that Respondent acted in bad faith.

OAD Decision at 2-3.

The ALJ made the following conclusions of law:

² Powell v. RECAP-Gillian, TP 27,042 (OAD Apr. 2, 2002).

1. Respondent substantially reduced Petitioner's use of the laundry facility by failing to timely replace or repair the damaged washer and dryer for approximately four months, in violation of 14 DCMR 4211.6 [sic].
2. Respondent knowingly reduced Petitioner's use of the laundry facility pursuant to D.C. [sic] Code § 42-3509.01(a) (2001).
3. Petitioner is entitled to a rent refund for Respondent's substantial reduction in her use of the laundry facility from October 2000 – February 2001, in violation of D.C. [sic] Code § 42-3509.01.01(a) [sic].
4. Respondent charged Petitioner rent that exceeds the legally calculated rent ceiling for her unit.

Id. at 7.

Finally, the ALJ ordered a rent refund, interest, and rollback of the Tenant's rent to the rent ceiling of \$392.00. He also ordered a fine of \$500.00 for knowingly reducing the Tenant's services and facilities in violation of § 42-3509.01(a), and a second fine of \$500.00 for charging the Tenant a rent that exceeded the rent ceiling in violation of § 42-3502.06(a). Id. at 8.

On April 19, 2002, the Housing Provider filed in the Commission an appeal of the two \$500.00 fines.

II. THE APPEAL

The notice of appeal stated:

- 1) Appeal of \$500 fine for charging Mrs [sic] Powell more than her rent ceiling.

Recap Partnership (Bradley Gillian) notified Mrs [sic] Powell on 6-29-00 (on a tenant notice of increase of general applicability form) that her rent would increase to \$392.00 on 8-1-00. Mrs [sic] Powell paid 392.00 for the months of Aug., Sept., Oct., Nov., and Dec. 2000 and for some unexplained reason she began paying \$395.00 Jan. 2001. After I was released from the hospital and recovered from my left kidney removal in March of 2001, I called Mrs [sic] Powell and spoke to her daughter

informing her that Mrs [sic] Powell was paying \$3.00 a month too much in rent and asked her to tell Mrs. Powell. In June the over payments continued so I began to credit her account \$3.00 each month there after [sic]. It is clear that the decision to pay \$395.00 per month was the tenants' [sic] and not Recap Partnership or Bradley Gillian.

- 2) Appeal of the \$500.00 fine levied for not having the laundry room available to Mrs [sic] Powell during late Oct. 2000 to Feb. 2001.

As I stated at the last hearing, I was taken to the hospital for an Emergency kidney removal (this did not allow me time [] set up backup to cover my duties in late Oct. 2000 and during my stay at the hospital the laundry room was broken into and destroyed. Because of my condition I was not able to get it back on line until late Feb. 2001 at which time all of the work installing and connecting new machines was performed by me alone. As stated in the last hearing, [sic] Mr [sic] Sherman Ruff did limited work as a resident person at the property for a reduction in rent. But was not a employee of Recap and was not authorized to install or repair any equipment. I am a small landlord with limited means, therefore, the responsibility was mine only. I find it difficult to believe that a city which cares so much about tenants rights would fine a good hard working landlord for being in the hospital having a Emergency [sic] kidney removal!

Notice of Appeal at 1.

The Commission held its hearing on July 16, 2002.

III. THE COMMISSION'S DECISION

A. The Law

The Act provides:

Any person who knowingly (1) demands or receives any rent for a rental unit in excess of the maximum allowable rent applicable to that rental unit under the provisions of subchapter II of this chapter, or (2) substantially reduces or eliminates related services previously provided for a rental unit, shall be held liable by the Rent Administrator or Rental Housing Commission, as applicable, 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) (emphasis added).

Any person who willfully (1) collects a rent increase after it has been disapproved under this chapter, until and unless the disapproval has been reversed by a court of competent jurisdiction, (2) makes a false statement in any document filed under this chapter, (3) commits any other act in violation of any provision of this chapter or of any final administrative order issued under this chapter, or (4) fails to meet obligations required under this chapter shall be subject to a civil fine of not more than \$5,000 for each violation.

D.C. OFFICIAL CODE § 42-3509.01(b) (2001) (emphasis added.).

In Quality Mgmt., Inc. v. District of Columbia Rental Hous. Comm'n, 505 A.2d 73, 75-76 (D.C. 1986) the court quoted the legislative history of the penalty section of the Act to explain the distinction between a “knowing” violation of the Act under § 42-3509.01(a) and § 42-3509.01(b), which requires a housing provider to act “willfully” in violation of the Act. The court stated the distinction, “is further supported by the necessity to draw some independent meaning from the word “willfully,” as used in ... [§ 42-3509.01(b)].” Id. The Council created legislative history during debates on the distinctions, which states:

From the context it is clear that the word ‘willfully’ as it is used in [§ 42-3509.01(b)] demands a more culpable mental state than the word “knowingly” as used in [§ 42-3509.01(a)].... There is a difference. ‘Willfully’ goes to intent to violate the law. ‘Knowingly’ is simply that you know what you are doing. A different standard. If you know that you are increasing the rent, the fact that you don’t intend to violate the law would be ‘knowingly.’ If you also intended to violate the law, that would be ‘willfully.’ Knowingly [is a] lower ... standard.

Id. n.6.

See also Webb v. District of Columbia Rental Hous. Comm'n, 505 A.2d 467 (D.C. 1986) for a discussion of knowingly. It quoted Quality Mgmt., Inc. v. District of Columbia Rental Hous. Comm'n, 505 A.2d 78 (D.C. 1986) where the court stated:

‘[K]nowingly’ imports only a knowledge of the essential facts bringing petitioner’s conduct within the reach of [§ 42-3509.01(a)]; and, from such

knowledge of the essential facts, the law presumes knowledge of the legal consequences arising from performance of the prohibited conduct. In other words... actual knowledge of the unlawfulness of the act or omission is not required.

Webb, 505 A.2d at 469 & 70.

Interstate General Corp. v. District of Columbia Rental Hous. Comm'n, 501 A.2d

1261, 1363 (D.C. 1985) stated:

[T]here [must] 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. (emphasis added.)

B. The Issues

Issue 1: Whether the Housing Provider overcharged the Tenant above the rent ceiling, and whether the \$500.00 fine is supported by the substantial evidence in the record.

The hearing testimony and OAD record do not contain any facts that the Housing Provider acted knowingly or acted willfully to intentionally increase the Tenant's monthly rent from \$392.00 to \$395.00 per month. In fact, the Tenant did not bring a charge in the tenant petition nor testify about a rent overcharge above her rent ceiling. There is simply no charge in the petition or evidence in the record related to a rent overcharge above the \$392.00 rent ceiling to \$395.00 per month rent by the Housing Provider. Accordingly, the Commission's review, pursuant to D.C. OFFICIAL CODE § 42-3502.16(h) (2001), determined there was no substantial evidence in the record to support the finding and conclusion that the Housing Provider charged the Tenant rent of \$395.00 instead of \$392.00. The lack of substantial evidence in the record to support findings of fact is contrary to the Act, D.C. OFFICIAL CODE § 42-3502.16(h) (2001), which provides

the Commission may review for substantial evidence in the record, and the DCAPA, D.C. OFFICIAL CODE § 2-509(e) (2001); King v. District of Columbia Dep't of Employment Servs., 742 A.2d 460 (1999); Perkins v. District of Columbia Dep't of Employment Servs., 482 A.2d 402 (D.C. 1981), which also provides for substantial evidence in the record to support findings of fact.

The issue of rent overcharge was placed in the decision and order by the Hearing Examiner, who stated in the decision:

The RACD Registration File [sic] indicates that Petitioner's rent ceiling was \$392.00³ at all relevant times. Petitioner's rent ceiling shall be reduced to \$367.00 based on the \$25.00 value of the reduction in service caused by Respondent's failure to timely replace or repair the damaged laundry room equipment. The rent charged for each month of the violation period was \$395.00.^{4,5} Therefore, the amount of rent charged, \$395.00, exceeded the \$367.00 reduced rent ceiling amount by \$28.00. Accordingly, Petitioner is entitled to a rent refund, in the amount of \$28.00 for each of the four months of the substantial reduction in related services resulting from the lack of access to the laundry facility. The Examiner finds that there has been no evidence that Respondent acted in bad faith, therefore, no basis exists to treble the refund to Petitioner in the instant matter.

OAD Decision at 5 & 6 (emphasis added).

³ The ALJ took official notice of the contents of the official RACD registration file for the subject address with specific reference to the rent ceiling. This action is taken pursuant to the District of Columbia Administrative Procedure Act (DCAPA), D.C. Code § 1-1509(b), which provides that where the decision of an agency in a contested case rests upon official notice of a material fact not appearing in the evidence in the record, any party to such a case, upon timely request, shall be afforded an opportunity to show the contrary. Therefore, in accordance with D.C. Code § 1-1509(b), the parties have ten (10) days from the date of this decision to show facts contrary to those found in the official RACD registration file for 1442 Somerset Place, N.W.

⁴ The Tenant stated at the Commission's hearing that she "made a mistake" and initiated the increase in the rent payment from \$392.00 to \$395.00. She did not claim any words, or correspondence, or other documentation from the Housing Provider as a demand for an increase in the rent charged.

⁵ The hearing examiner does not explain in the decision and order where he obtained the figure of \$395.00 rent per month.

The Housing Provider argued to the Commission at its hearing, that the hearing examiner added an issue that was not raised by the petition. That issue was the rent charge of \$395.00 per month instead of \$392.00. There are no facts in the record to support with substantial evidence finding of fact number nine (9) and conclusion of law number four (4), that the Housing Provider raised the Tenant's monthly rent above the rent ceiling of \$392.00 to \$395.00. Therefore, there was no basis for the \$500.00 fine under D.C. OFFICIAL CODE § 42-3509.01(b) (2001), which requires that the record contain facts that show the Housing Provider acted willfully to violate the Act. Accordingly, the part of the OAD decision awarding the rent refund for \$3.00 per month rent overcharge is reversed, and the \$500.00 fine is vacated. See Ratner Mgmt. Co. v. Tenants of Shipley Park, TP 11,613 (RHC Nov. 4, 1988).

Issue 2: Whether the appeal of the \$500.00 fine levied for not having the laundry room available to the Tenant, Mrs. Powell, during late October 2000 to February 2001 was supported by substantial evidence.

Again, there is no evidence in the hearing record that the Housing Provider acted "willfully" by withholding laundry room services and facilities from the Tenant. The record is that the Housing Provider was in the hospital for an emergency kidney removal and subsequent operation on his intestines at the time of the break-in to the laundry room. He was not able to physically perform the repairs until February 2001, after he recovered from his two surgeries. He had no one who was authorized to perform the repairs in his absence. The Housing Provider does not appeal the rent refund for knowingly reducing the laundry room services and facilities, while he was recovering from his surgeries. The issue is whether he acted willfully to deny laundry room services and facilities to the Tenant.

On this issue, the OAD hearing record shows the Housing Provider took no action to intentionally deprive the Tenant of laundry room services and facilities, while he was in the hospital. He was incapacitated and performed the needed repairs when he was released and able to do the repairs. There is no evidence in the hearing record to support the fine for willfully, meaning intentionally, committing an act to deprive the Tenant of the use of the laundry room. There must be substantial evidence in the record of intention to violate the law to support the fine. Quality Mgmt., Inc. v. District of Columbia Rental Hous. Comm'n, 505 A.2d at 75-76 & n.6 (D.C. 1986). See also Webb v. District of Columbia Rental Hous. Comm'n, 505 A.2d at 469 & 70 (D.C. 1986) for a discussion of a knowing violation and a willful violation. In this case, the Housing Provider does not appeal the rent refund for the “knowing” violation of reduction of services and facilities in the laundry room. However, there is no evidence in the record to support the \$500.00 fine that the Housing Provider intentionally reduced the services and facilities in the laundry room. The lack of substantial evidence in the record to support findings of fact is contrary to the DCAPA, D.C. OFFICIAL CODE § 2-509(e) (2001); King v. District of Columbia Dep't of Employment Servs., 742 A.2d 460 (1999); Perkins v. District of Columbia Dep't of Employment Servs., 482 A.2d 402 (D.C. 1981).

The Commission held in Ratner, *supra*:

We do not find present the element of intent and conscious choice necessary to sustain a finding of wilfulness. There is no doubt that the proof sustains the finding that the violations were “knowing” as that word is used in [§ 42-3509.01(a)] of the Act, but no testimony was presented to meet the heavier burden imposed by [§ 42-3509.01(b)] of showing that the landlord's conduct was intentional, or deliberate or the product of a conscious choice. Accordingly, the fine will be vacated.

Id. at 4 & 5.

The instant case has the same problems as Ratner, because “no testimony was presented to meet the heavier burden imposed by [§ 3509.01(b)] of showing that the landlord’s conduct was intentional, or deliberate or the product of a conscious choice.” Id. at 5. Ratner requires that testimony, a type of proof or evidence, must be in the record to support a fine. The Housing Provider stated at the Commission’s hearing that he accepted that his conduct showed the “knowing” violation under § 42-3509.01(a), and he owed the Tenant a rent refund. However, he argued the absence of conduct on his part showing he intentionally, or deliberately, or consciously violated the Act. Thus, the record lacked substantial evidence to impose the \$500.00 fine for willfull reduction of services and facilities in the laundry room. Therefore, the hearing examiner’s imposition of the \$500.00 fine is reversed and vacated.

Issue 3: Whether the Hearing Examiner Committed Plain Error in the Calculation of Interest on the Rent Refund.

The Commission, pursuant to 14 DCMR § 3807.4 (1991),⁶ noted the plain error of the hearing examiner in the calculation of the award of interest on the rent refund for reduction of services and facilities. See 14 DCMR § 3826 (1998). The hearing examiner failed to award interest for each month the rent refund was held by the Housing Provider. On remand, the hearing examiner is instructed to calculate the interest for each month the rent refund was held in accordance with the method used in Johnson v. Gray, TP 21,400 (RHC Aug. 1, 1994); See also Noori v. Whitten, TPs 27,045 & 27,046 (RHC Sept. 13, 2002) (where the majority of the Commission remanded due to the failure of the hearing examiner to calculate interest for each month the rent refund was held.)

⁶ See Proctor v. District of Columbia Rental Hous. Comm’n, 484 A.2d 542, 550 (D.C. 1984) (where the court approved the Commission’s notice of plain error.)

IV. CONCLUSION

On issue one (1), the Commission concludes that there was no substantial evidence in the certified record to support a rent refund of \$3.00 per month for four months, based on a rent overcharge of \$395.00 instead of \$392.00 per month. As a consequence, there was no basis for a fine for the rent overcharge. Moreover, there was no evidence that the Housing Provider acted willfully to violate the Act, which provides for fines for willful violations of the Act. The refund is vacated and the issue is remanded to the hearing examiner for recalculation of the refund to the Tenant for lack of laundry room services and facilities without the three (\$3.00) dollar per month included in the refund. In addition, the hearing examiner must properly calculate the interest by awarding interest for each month the rent refund was due the Tenant, but held by the Housing Provider, as stated in issue three (3).

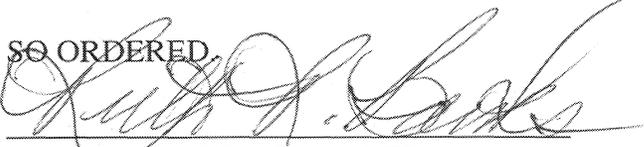
On issue two (2), the \$500.00 fine the hearing examiner imposed is reversed, because there was no evidence that the Housing Provider acted willfully or intentionally to withhold laundry room services, under circumstances that a break-in occurred in the laundry room which resulted in two washing machines and two dryers being destroyed, while the Housing Provider was in the hospital.

The Commission determined that plain error occurred by the hearing examiner's failure to calculate interest for each month the rent overcharge was held by the Housing Provider for the reduction of services and facilities in the laundry room. Therefore, the rent refund must be recalculated to reflect each month the rent refund was withheld by the Housing Provider, and the simple interest for each month.

This case is remanded to OAD for proper calculation of the rent overcharge based on

the knowing violation of the reduction of services and facilities and proper calculation of the interest on the refund. No fines are supported by substantial evidence in the record. No hearing is ordered, because the record is complete for the remand proceedings.

SO ORDERED.


RUTH R. BANKS, CHAIRPERSON


RONALD A. YOUNG, COMMISSIONER


JENNIFER M. LONG, COMMISSIONER

CERTIFICATE OF SERVICE

I certify that a copy of the Decision and Order in TP 27,042 was served by priority mail, delivery confirmation, postage prepaid, this **20th day of December, 2002**, to:

Helen Powell
1442 Somerset Place, N.W.
Unit 101
Washington, D.C. 20011

Bradely Gillian
410 Cedar Street, N.W.
Washington, D.C. 20012


LaTonya Miles
Contact Representative