

DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION

TP 27,084

Ward Six (6)

In re: 116 P Street, S.W., Unit One (1)

BARBARA SCHAUER
Housing Provider/Appellant

v.

AHMED ASSALAAM
Tenant/Appellee

DECISION AND ORDER

April 15, 2004

BANKS, CHAIRPERSON. This case is on appeal to the Rental Housing Commission from a decision and order issued by the Rent Administrator, based on a petition filed in the Rental Accommodations and Conversion Division (RACD). The applicable provisions of the Rental Housing Act of 1985 (Act), D.C. Law 6-10, 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 April 26, 2001, Ahmed Assalaam, filed tenant petition (TP) 27,084. On July 15, 2002, Administrative Law Judge (ALJ) Henry McCoy issued the initial decision and order for the Rent Administrator. On August 1, 2002, Barbara Schauer, Housing Provider filed an appeal to the Commission. On December 31, 2002, the Commission

issued a decision and order, which inter alia, remanded this case to the ALJ for findings of fact on whether treble damages should be awarded pursuant to D.C. OFFICIAL CODE § 42-3509.01(a) (2001), and whether the Housing Provider acted willfully and a fine should be imposed, pursuant to D.C. OFFICIAL CODE § 42-3509.01(b) (2001). On December 12, 2003, the ALJ issued the remand decision and order, in which the ALJ made findings of fact for the imposition of treble damages and findings of fact that the Housing Provider willfully violated the Act, which supported the imposition of the civil fine. The findings of fact stated:

1. The Petitioner informed the Respondent of the following conditions in his apartment: the windows in the living room and bedroom with defective hardware and missing parts, no weatherproofing, and not fitting well within their frames; the living room walls with loose and peeling paint and with dampness; the entrance door not fitting in its frame, defective hardware, and no weatherproofing; the rear door with no weatherproofing and defective hardware; the kitchen floor covering with missing parts; and, rear porch ceiling with missing and rotten parts.
2. The Respondent made capital improvements including the replacement of windows in adjacent occupied and vacant apartments owned by her.
3. The Respondent made no capital improvements to the Petitioner's apartment.
4. The Respondent refused to correct any of the problems identified by the Petitioner.
5. At the time of the hearing, the defects in Petitioner's apartment existed for fourteen (14) months and continued unabated.
6. The Respondent made a reasoned and conscious decision not to replace the windows in the Petitioner's apartment based on her own cost benefit analysis that is was not economically viable to do so.
7. The Respondent knew she had a duty under the law to make repairs upon notice of that need by the Petitioner but made a conscious decision not to meet that obligation.

Based on the forgoing Additional Finding of Fact Discussion in the

matter of TP 27,084, I conclude, as a matter of law:

1. The Respondent acted in bad faith in substantially reducing the petitioner's services and facilities which warrants trebling the rent refund awarded pursuant to D.C. Official Code § 42-3509.01(a) (2001).
2. The Respondent willfully violated the Act and is subject to a civil fine pursuant to D.C. Official Code § 42-3509.01 (b) (2001).

Assalaam v. Schauer, TP 27,084 (OAD Dec. 12, 2003) at 2-4.

On January 23, 2004, Barbara Schauer, Housing Provider, filed a second notice of appeal in the Commission, which held its hearing on March 25, 2004.

II. THE NOTICE OF APPEAL

The notice of appeal raised one issue:

Whether the arithmetic calculations for the award of treble damages were correct.

III. DISCUSSION

In the initial decision, Assalaam v. Schauer, TP 27,084 (OAD July 15, 2002) at 9, the ALJ calculated the rent refund to be \$1050.00,¹ and that amount was trebled to \$3150.00² with \$274.05 added as interest³ at 4% to the date of the decision for the total of \$3424.00. The Housing Provider appealed the rent refund (\$1050.00), the treble amount (\$3150.00), and the imposition of interest (\$274.05). The first notice of appeal stated, in relevant part:

The hearing examiner erred in awarding the tenant a refund of rent when the tenant had not paid the rent to be refunded; in awarding interest on the rent never paid; and in trebling the award, as more fully set out in the Motion for Reconsideration filed herewith. The hearing examiner erred in fining the housing provider \$2000 for retaliation and reduction of services which were not authorized by law and were unwarranted. The hearing

¹ Rent refunds are authorized by D.C. OFFICIAL CODE § 42-3509.01(a) (2001).

² Treble damages are authorized by D.C. OFFICIAL CODE § 42-3509.01(a) (2001).

³ Interest is authorized by 14 DCMR § 3826 (1991).

examiner's award was excessive and not warranted under existing precedent.

Notice of Appeal, pp. 1 & 2.

The Commission issued its appeal decision, Schauer v. Assalaam, TP 27,084 (RHC Dec. 31, 2002), which affirmed both the rent refund and interest on the refund. However, the Commission remanded for findings of fact on bad faith, which were missing from the hearing examiner's analysis for treble damages, as required by D.C. OFFICIAL CODE § 42-3509.01(a) (2001). Id. at 9 & 10.

The ALJ issued the remand decision, Assalaam v. Schauer, TP 27,084 (OAD Dec. 12, 2003) with the requisite findings of fact on bad faith. The remand decision ordered both the original trebled refund and interest for \$3424.05.

The Housing Provider filed in the Commission the instant second appeal, which raised whether the calculations in the ALJ's remand decision were correct. The Housing Provider argued in the second notice of appeal.

Respondent seeks only an arithmetic clarification and correction in the Remand Decision and Order. Pursuant to the Rental Housing Commission Decision of December 30, 2002, the hearing examiner, on remand was to make further findings of fact and conclusions of law on the issue of treble damages. The basic rent refund of \$1,050.00 was affirmed. The hearing examiner in the Remand Decision and Order gives his rationale supporting the determination that treble damages are due. His order, in effect, reinstates his original determination of a total refund of \$3,150.00 (plus interest) i.e. \$1,050.00 in rent refund, plus \$2,100.00. Since the rent refund component of \$1,050.00 has already been affirmed by the Rental Housing Commission in the Remand Decision and Order the examiner should have awarded the additional \$2,100 to petitioner [sic]. Instead, the Order provides for \$3,424.05 is [sic] to be paid to Petitioner.

Since closing of the record of the case in 2001, the parties, on July 29, 2003 had a full trial before the D.C. Superior Court on the issue of rent due over the 53 month period between July 1, 1999 and July 31, 2003. The trial judgment credited to Mr. Assalaam the \$1050.00 rent refund

(plus interest) that had been affirmed by the Rental Housing Commission order of December 31, 2002. (emphasis added.)

Notice of Appeal at 2 & 3.

The Commission holds that the ALJ's remand decision is affirmed, because the trebled rent refund calculations are accurate, as demonstrated below:

Rent refund	\$1050.00	credited to the Tenant in Superior Court
Trebled	\$3150.00	above rent refund trebled (multiplied by three (3))
Interest 4%	\$ 274.05	credited to the Tenant in Superior Court
Total	\$3424.05	the total includes the first rent refund in the trebled amount, which was added to the interest.

The ALJ's remand decision and order did not add "an additional \$2100.00 to be paid to the Tenant," as stated in the second notice of appeal. The calculation was \$3150.00 (trebled rent refund) minus \$1050.00 (credited rent refund) equals \$2100.00; alternatively stated \$1050.00 plus \$2100.00 equals \$3150.00, the trebled amount. After the ALJ's remand decision, a proceeding was held in the Superior Court that enforced the rent refund (included in the treble damages) and interest, by crediting the Tenant's account at the Superior Court, since the rent refund (\$1050.00) and interest (\$274.05) were affirmed by the Commission. The issue of treble rent refund (\$3150.00) remained undecided on appeal. However, it was later affirmed by the Commission in its decision dated December 31, 2002.

IV. CONCLUSION

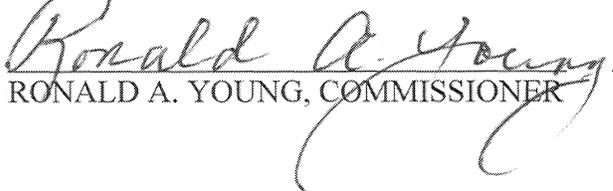
Since the Commission affirmed the treble damages, and the court credited the

Tenant with one-third of the treble damages (\$1050.00), the Tenant is entitled to the remaining two-thirds of the treble damages, which is \$2100.00.

SO ORDERED.



RUTH R. BANKS, CHAIRPERSON



RONALD A. YOUNG, COMMISSIONER

MOTIONS FOR RECONSIDERATION

Pursuant to 14 DCMR § 3823 (1991), final decisions of the Commission are subject to reconsideration or modification. The Commission's rule, 14 DCMR § 3823.1 (1991), provides, "[a]ny party adversely affected by a decision of the Commission issued to dispose of the appeal may file a motion for reconsideration or modification with the Commission within ten (10) days of receipt of the decision."

JUDICIAL REVIEW

Pursuant to D.C. OFFICIAL CODE § 42-3502.19 (2001), "[a]ny person aggrieved by a decision of the Rental Housing Commission ... may seek judicial review of the decision ... by filing a petition for review in the District of Columbia Court of Appeals." Petitions for review of the Commission's decisions are filed in the District of Columbia Court of Appeals and are governed by Title III of the Rules of the District of Columbia Court of Appeals. The Court's Rule, D.C. App. R. 15(a), provides in part: "Review of orders and decisions of an agency shall be obtained by filing with the clerk of this court a petition for review within thirty days after notice is given, in conformance with the rules or regulations of the agency, of the order or decision sought to be reviewed ... and by tendering the prescribed docketing fee to the clerk." The Court may be contacted at the following address and telephone number:

D.C. Court of Appeals
Office of the Clerk
500 Indiana Avenue, N.W., 6th Floor
Washington, D.C. 20001
(202) 879-2700

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Decision and Order in TP 27,084 was mailed by priority mail, with confirmation of delivery, postage prepaid this 15th day of April, 2004, to:

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