

**DISTRICT OF COLUMBIA
Office of Administrative Hearings**

One Judiciary Square
441 Fourth Street, NW
Washington, DC 20001-2714
TEL: (202) 442-9094
FAX: (202) 442-4789

DISTRICT OF COLUMBIA
OFFICE OF
ADMINISTRATIVE HEARINGS

2010 JUL -1 P 3: 25

CHRISTOPHER KOEFOED,
Tenant/Petitioner,

v.

RENEAU REAL ESTATE, LLC,
Housing Provider/Respondent.

Case No.: RH-TP-09-29527
In re 4560 MacArthur Blvd., NW
Unit 303

FINAL ORDER

I. Introduction

On January 30, 2009, Tenant/Petitioner Christopher Koefoed, filed Tenant Petition (“TP”) 29,527 against Housing Provider/Respondent Reneau Real Estate, LLC alleging that Housing Provider substantially reduced the services and facilities provided as part of the rent and/or tenancy violating the Rental Housing Act of 1985 (the “Rental Housing Act” or the “Act”) at the Housing Accommodation located at 4560 MacArthur Boulevard NW, Unit 303.

I find Tenant prevails in part on his claim that Housing Provider substantially reduced services and/or facilities provided as part of the rent and/or tenancy.

II. Procedural Background

On May 1, 2009, I issued a Case Management Order (“CMO”) scheduling a hearing for June 3, 2009, and setting forth the parties rights and procedural requirements for the hearing. On June 3, 2009, Tenant appeared pro se. Ken Ross, representative for Housing Provider appeared.

Tenant testified on his own behalf. Tenant offered ten exhibits into evidence, all of which were received. Housing Provider offered two exhibits into evidence which were admitted.¹ Based on the testimony of the witnesses, the exhibits in evidence, and the record as a whole, I make the following Findings of Fact and Conclusions of Law.

III. Findings of Fact

1. The Housing Accommodation is located at 4560 MacArthur Boulevard, NW Unit 303 and is one of 11 units in the building.
2. Tenant began his tenancy in March 2006.² The monthly rent for the Housing Accommodation is \$1500.
3. The heat is generated by radiators in Tenant's unit. Tenant's rental unit was insufficiently heated from September 2006 until the date of the hearing, June 3, 2009. Tenant complained to Housing Provider as early as September 2006. Housing Provider sent repair personnel to adjust Tenant's heat after Tenant's complaint but the lack of heat remained a problem when the temperature dropped in the Fall and Winter in 2006, 2007, 2008, and 2009. Petitioner's Exhibits ("PXs") 104, 107.
4. Tenant used space heaters to heat the rental unit some of which were supplied by Housing Provider. Tenant used the space heaters in April 2009. PXs 100, 103, 104 and 107.
5. Because of the problems with the heat, Housing Provider gave Tenant a rent credit of \$250 for both November and December of 2007.

¹ A list of the exhibits received in evidence is set forth in Appendix A attached to this Final Order.

² The tenant petition indicates that Tenant began his tenancy on January 13, 2009. Tenant testified at the hearing that he began his tenancy in March 2006.

6. When Tenant began his tenancy, there was one washing machine and one clothes dryer in the 11 unit building in which Tenant's unit was located. Housing Provider installed two additional washing machines and two additional clothes dryers some time during Tenant's residency.
7. The clothes dryers have chronic problems leaving one operational clothes dryer at all times relevant during Tenant's residency.
8. The kitchen exhaust fan was replaced in November of 2008, with one with the same capabilities.
9. On January 30, 2009, Tenant filed TP 29,527 alleging that Housing Provider substantially reduced the services and/or facilities provided as part of the rent and/or tenancy.
10. On May 1, 2009, this administrative court issued a CMO scheduling a hearing of this matter on June 3, 2009, at 9:30 a.m.

III. Conclusions of Law

A. Jurisdiction

This matter is governed by the District of Columbia Administrative Procedure Act (D.C. Official Code §§ 2-501 *et seq.*) ("DCAPA"); the Rental Housing Act of 1985 (D.C. Official Code §§ 42-3501.01 *et seq.*); substantive rules implementing the Rental Housing Act at 14 District of Columbia Municipal Regulations ("DCMR") 3800 - 4399; the Office of Administrative Hearings Establishment Act at D.C. Official Code § 2-1831.03(b-1)(1), which authorizes OAH to adjudicate rental housing cases; and OAH procedural rules at 1 DCMR 2800 *et seq.* and 1 DCMR 2920 *et seq.*

B. Tenant's claim that Housing Provider substantially reduced the services and/or facilities provided as part of the rent and/or tenancy

Tenant alleges that Housing Provider substantially reduced the services and/or facilities provided as part of the rent and/or tenancy by not providing adequate heat, a properly functioning clothes dryer, and adequate kitchen ventilation.

The Rental Housing Act contains separate definitions for "related services" and "related facilities." "Related services" are defined as:

services provided by a housing provider, required by law or by the terms of a rental agreement, to a tenant in connection with the use and occupancy of a rental unit, including repairs, decorating and maintenance, the provision of light, heat, hot and cold water, air conditioning, telephone answering or elevator services, janitorial services, or the removal of trash and refuse.

D.C. Official Code § 42-3501.03(27).

"Related facility" is defined as:

any facility, furnishing, or equipment made available to a tenant by a housing provider, the use of which is authorized by the payment of the rent charged for a rental unit, including any use of a kitchen, bath, laundry facility, parking facility, or the common use of any common room, yard, or other common area.

D.C. Official Code § 42-3501.03(26).

The key difference between the two definitions is that services are related only when they are required by law or agreement, while related facilities may include any equipment that is made available to a tenant under the lease.

To establish a claim for reduction in services and facilities, Tenant "must present competent evidence of the existence, duration, and severity of the reduced services." *Jonathan Woodner Co. v. Enobakhare*, TP 27,730 (RHC Feb. 3, 2005) at 11. Further, if the reduced

service is within the tenant's unit he must show that he notified the housing provider that service was required. *Id.*; *Hudley v. McNair*, TP 24,040 (RHC June 30, 1999) at 11.

a. Heat

The heat is generated by several radiators in Tenant's rental unit. In September of 2006, Tenant complained to Housing Provider that the radiators were not generating sufficient heat for the unit. Tenant did not know what the temperature was in the unit but testified that the unit was cold. Tenant used space heaters to make the unit warm. On November 8, 2007, Tenant complained to Housing Provider that there had been no heat in his unit for two days and in response Housing Provider sent a repair person and also supplied Tenant with more space heaters on November 11, 2007. PX 103. On December 5, 2007, Tenant complained that the heat in his unit was not working and requesting additional space heaters. PX 103. On December 8, 2007, Housing Provider supplied space heaters and corresponded with Tenant in an email that repairs would be made to the heating system. PX 103.

Heating problems plagued the unit into 2008. Tenant contacted Housing Provider via email on December 3, 2008 to let him know that when Tenant used the space heaters supplied by Housing Provider they blew a fuse. When the space heaters were not in use, the unit remained cold. PX 107. Housing Provider responded via email that same day indicating that a work order had been placed to check the heaters and on December 5, 2008 Housing Provider sent a repairman to look at the heating issue. On December 6, 2008 Tenant further complained to Housing Provider that he is using space heaters to warm the unit and that the heating issue remains. PX 107.

At the hearing, Tenant testified that the heating issue improved later in the winter of 2008, but the unit was still not sufficiently warm and that he still used space heaters throughout the winter of 2009 until April of 2009.

Housing Provider presented a receipt from Washington Heating & Cooling, Inc. dated January 14, 2009 with notations that read, "35 degrees outside," and "70 degrees in apartment with window opened." Respondent's Exhibit ("RX") 201. However, Tenant nor Housing Provider were present in the unit at the time the repair person visited the unit nor did Housing Provider know who wrote these notations. Therefore, I do not find it conclusive as to what the temperature was in the unit.

The housing regulations define lack of sufficient heat as a "substantial housing code violation." 14 DCMR 4216.2(c). "[E]vidence of the existence, duration, and severity of a housing code violation is competent evidence on which to find the dollar value of the rent abatement" to assess the value of reduced services and facilities. *Cascade Park Apartments v. Walker*, TP 26,197 (RHC Jan. 14, 2005) at 32, (quoting *George I Borgner, Inc. v. Woodson*, TP 11, 848 (RHC June 10, 1987). *Jonathan Woodner Co. v. Enobakhare*, TP 27,730 (RHC Feb. 3, 2005) at 11. Expert or other direct testimony is not required.

I find that Housing Provider substantially reduced the services and/or facilities in Tenant's unit by not providing adequate heat. For the months of September and October, I do not find Tenant's testimony credible that the unit was cold. Generally, the months of September and October experience relatively mild temperatures and Tenant provided no evidence that those months were exceptionally extreme. Therefore, I am not awarding a deduction for September but will make a modest deduction for the month of October in the years of 2006, 2007, 2008, and 2009. I am awarding a deduction for the month of November and the Winter of 2006, 2007,

2008, and 2009. A housing provider who knowingly substantially reduces the services and/or facilities in a rental unit shall be held liable by the [Administrator Law Judge] for the amount by which the rent exceeds the applicable rent charged.³ “Knowing” only requires knowledge of the essential facts which bring the conduct within the purview of the Act, and from such conduct, the law presumes knowledge of the resulting legal consequences. *Quality Mgmt. Co., v. D.C. Rental Hous. Comm’n*, 505 A.2d 73 (D.C. 1986).

Housing Provider knew that the heating system in Tenant’s unit was not properly operational and, despite the fact that Housing Provider provided space heaters and dispatched repair personnel to Tenant’s unit, they were unable to rectify the problem. Therefore, Housing Provider substantially reduced the services and/or facilities in Tenant’s unit. I refund Tenant \$100 a month for October 1, 2006 and \$200 a month from November until March 30, 2007; and October 2007. For the months of November and December 2007, I will not award Tenant an additional amount because Housing Provider gave Tenant a rent credit of \$250 to compensate Tenant for the lack of sufficient heat. I refund Tenant \$200 a month from January until March 30, 2008 and October 1, 2008 until March 30, 2009. Appendix B attached to this Final Order details Tenant’s award.

Further, I find that Tenant’s testimony and corroborating evidence credible that the unit experienced excessive and prolonged periods of insufficient heat during the Fall and Winter of 2006, 2007, 2008, and 2009, despite efforts made by Housing Provider to rectify the problem. Where [the Administrative Law Judge] finds there have been excessive and prolonged violations of the housing regulations affecting the ... habitability of the housing accommodation in which the tenants reside and that the housing provider has failed to correct the violations, the

³ D.C. Official Code § 42-3509.01(a).

[Administrative Law Judge] may roll back the rents for the affected rental units to an amount which shall not be less than the September 1, 1983, base rent for the rental units until the violations have been abated.⁴

I rollback Tenant's rental amount by \$100. Therefore, Tenant's rent of \$1500 is rolled back to \$1400 from June 3, 2009, the date of the hearing, until the time when Housing Provider abates the problem with the heating system.

b. Clothes Dryer

There are two clothes washers and two clothes dryers for the 11 unit building in which Tenant's rental unit is located. Tenant testified that he often has to wash and dry his clothes at another location because one of the dryers chronically breaks down leaving only one clothes dryer operational at a time. Tenant introduced into evidence emails in which he notifies Housing Provider of the inoperable dryer on November 24, 2008, November 26, 2008, December 3, 2008 and December 6, 2008. PX 100. At the date of the hearing, one of the clothes dryers had not been operational since April 2009.

Tenant testified that when he moved into the housing accommodation only one washer and dryer existed in the basement and, at Tenant's urging, Housing Provider supplied two new washers and dryers for the building. Tenant did not introduce the lease agreement into evidence. Housing Provider testified and Tenant's own evidence indicates that a third party maintains the washers and dryers. PX 108.

There is no evidence in the record that the use of the clothes dryer is authorized by the payment of the rent making it a related facility. Tenant has the burden of proof in this matter and

⁴ D.C. Official Code § 42-3502.08(a)(2).

has not met his burden of proof.⁵ Further, even if the use of the clothes dryer was a related facility, Tenant testified that when he moved in there was one working dryer and, although Housing Provider added other clothes dryers at all times relevant, there remained one fully operational clothes dryer. Based upon the above, Housing Provider did not substantially reduce a related facility because the basement consistently contained one functioning clothes dryer.

c. Exhaust Fan in Kitchen

Since the beginning of his tenancy in March 2006, Tenant has had problems with the kitchen ventilation. Tenant notified Housing Provider of this problem in November of 2008. Housing Provider replaced the exhaust fan with a new one with the same capabilities in November of 2008. Tenant testified that the new exhaust fan is operational but was inadequate and that the ventilation problems persist to the date of the hearing. Housing Provider testified that it replaced the existing 75-80 cubic feet per minute (“cfm”) motor with a new 75-80 cfm motor and was not required to upgrade it to 150 cfm, as Tenant requested. Tenant was vague as to the ventilation problems that remain.

Kitchens shall be provided with at least four air changes per hour.⁶ However, Tenant provided no evidence of the dimensions of the kitchen or what were the ventilation problems that persisted. Therefore, there is no way for this administrative court to determine whether the 75-80 cfm motor complies with the 4 changes of air per hour as required.

⁵ OAH Rule 2932.1, 1 DCMR 2932.1 (“the proponent of an order shall have the burden of establishing each fact essential to the order by a preponderance of the evidence”); DCAPA, D.C. Official Code § 2-509(b) (“in contested cases. . . the proponent of a rule or order shall have the burden of proof”).

⁶ 14 DCMR 506.6.

Again, Tenant has the burden of proof in this matter and has not met his burden of proof. Based upon the above, there is no evidence that Housing Provider substantially reduced the services and/or facilities by not providing proper ventilation in the kitchen.

V. Order

Based upon the foregoing Findings of Fact and Conclusions of Law and the entire record in this matter, it is, this 1st day of **July 2010**:

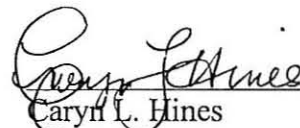
ORDERED, that Tenant's claim that Housing Provider substantially reduced the facilities provided as part of the rent and/or tenancy is **GRANTED** in part and **DENIED** in part; and it is further

ORDERED, that Housing Provider must pay Tenant **THREE THOUSAND-NINETY DOLLARS AND FIFTY CENTS (\$3,090.50)** which includes interest for substantially reducing the services and/or facilities by not providing sufficient heat; and it is further

ORDERED, that Tenant's rent is rolled back to \$1400 until the heating system issue is abated;

ORDERED, that either party may move for reconsideration of this Final Order within 10 days under OAH Rule 2937; and it is further

ORDERED, that the appeal rights of any party aggrieved by this Order are set forth below.


Caryn L. Hines
Administrative Law Judge

Appendix A
Exhibits in Evidence

Petitioner		
Exhibit No.	No(s). of Pages	Description
PX 100	1	Email dated 12-6-08
PX 101	1	Email dated 1-13-09
PX 102	4	Tenant's Opening Statement
PX 103	3	Email dated 12-6-08
PX 104	2	Email dated 10-10-07 re: Washington Gas & Heat
PX 105	3	Email dated 11-24-08 re: washer
PX 106	3	Letter dated 12-28-07 re: rent increase
PX 107	2	Email dated 12-3-08 re: apartment is freezing
PX 108	2	Email dated 12-6-08 re: dryer
PX 109	2	Laundry receipt dated 1-13-09
PX 110	2	Tenant's statement dated 1-13-09
Respondent		
Exhibit No.	No(s). of Pages	Description
RX 200	1	Heating and cooling repair receipt dated 11/4/07
RX 201	1	Heating and cooling repair receipts dated 12/4/07 and 1/14/09

Appendix B

Amount of Award

I. Insufficient Heat

DATES OF OVERCHARGES	AMOUNT OF OVERCHARGES	MONTHS HELD BY HOUSING PROVIDER	MONTHLY INTEREST RATE	INTEREST DUE
Oct-06	\$100.00	34	0.0025	\$8.50
Nov-06	\$200.00	33	0.0025	\$16.50
Dec-06	\$200.00	32	0.0025	\$16.00
Jan-07	\$200.00	31	0.0025	\$15.50
Feb-07	\$200.00	30	0.0025	\$15.00
Mar-07	\$200.00	29	0.0025	\$14.50
Oct-07	\$100.00	28	0.0025	\$7.00
Jan-08	\$200.00	27	0.0025	\$13.50
Feb-08	\$200.00	26	0.0025	\$13.00
Mar-08	\$200.00	25	0.0025	\$12.50
Oct-08	\$100.00	24	0.0025	\$6.00
Nov-08	\$200.00	23	0.0025	\$11.50
Dec-08	\$200.00	22	0.0025	\$11.00
Jan-09	\$200.00	21	0.0025	\$10.50
Feb-09	\$200.00	20	0.0025	\$10.00
Mar-09	\$200.00	19	0.0025	\$9.50
Total	\$2,900.00			\$190.50

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 Prepaid):

Christopher Koefoed
c/o Palisades Pizzeria and Clam Bar
4885 MacArthur Boulevard NW
Washington, DC 20002

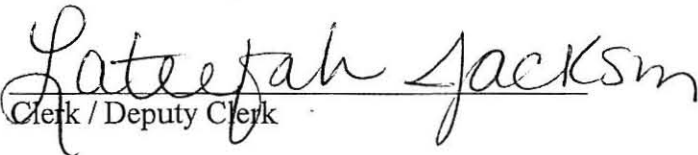
Thomas B. Martin, Esq.
1213 K Street, NW
Washington, DC 20005

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
Rental Accommodations Division
Department of Housing and Community Development
1800 Martin Luther King, Jr., Avenue SE
Washington, DC 20020

I hereby certify that on 7-1, 2010 this document was caused to be served upon the above-named parties at the addresses and by the means stated.


Clerk / Deputy Clerk