

DISTRICT OF COLUMBIA
OFFICE OF ADMINISTRATIVE HEARINGS
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2009 APR 14 A 9:33

CARLA C. JOHNSON,
Tenant/Petitioner,

v.

PENNRose MANAGEMENT CO.,
Housing Provider/Respondent.

Case No.: RH-TP-07-29047
In re 1375 Fairmont St. NW, Unit 609

FINAL ORDER

I. Introduction

On August 20, 2007, Tenant/Petitioner Carla C. Johnson filed tenant petition ("TP") 29,047 against Housing Provider/Respondent Penrose Management Co. alleging violations of the Rental Housing Act of 1985 at Tenant's Housing Accommodation at 1375 Fairmont Street N.W., Unit 609. The petition alleged that: (1) a rent increase was taken while the unit was not in substantial compliance with the District of Columbia Housing Regulations; (2) the building in which the rental unit is located is not properly registered with the Rental Accommodations and Conversion Division ("RACD");¹ and (3) retaliatory action had been directed against Tenant by Housing Provider for exercising Tenant's rights in violation of Section 502 of the Rental Housing Act.

¹ On October 1, 2007, the rental housing functions of the Department of Consumer and Regulatory Affairs were transferred to the Department of Housing and Community Development ("DCHD"). The RACD functions were assumed by the Rental Accommodations Division of DCHD. The transfer does not affect any of the issues in this case.

On November 9, 2007, Housing Provider filed a Motion for Dismissal of All Claims Except for Retaliation. Housing Provider asserted that: (1) the Housing Accommodation was exempt from the rent stabilization provisions of the Rental Housing Act under D.C. Official Code § 42-3502.05(a)(4) on account of having been vacant in January 1985; and (2) Tenant's claim that the property was not properly registered had previously been litigated in a prior tenant petition, TP 28,432, and was barred as *res judicata* as a result of Tenant's agreement to dismiss that petition with prejudice. Tenant opposed the motion to dismiss.

This administrative court scheduled an evidentiary hearing on Tenant's claims on January 8, 2008. Both parties were represented by counsel at the hearing. On March 28, 2008, following the hearing, and submission of a post-hearing supplemental argument by Tenant, I issued an order dismissing all of Tenant's claims except for the claim of retaliation on the grounds that the Housing Accommodation was exempt from the rent stabilization provisions of the Rental Housing Act under D.C. Official Code § 42-3502.05(a)(4).

On July 31, 2008, following a failed attempt at mediation, I conducted a hearing on Tenant's retaliation claim. Tenant Carla C. Johnson testified on her own behalf. Tiza L. Wilson, property manager, testified for the Housing Provider. The only exhibit offered and received in evidence was a Praecipe filed on November 29, 2005, in a tenant petition brought before the Housing Regulation Administration of the Department of Consumer and Regulatory Affairs (DCRA), No. TP 28,432. Petitioner's Exhibit (PX) 100. Based on the testimony of the witnesses, the exhibit in evidence, and the record as a whole, I conclude that Tenant has failed to sustain her burden to prove that Housing Provider retaliated against her.

II. Findings of Fact

The Housing Accommodation, 1375 Fairmont Street NW, contains 90 rental units. Sixty-one of the units have two bedrooms. The remaining 29 have one bedroom. The building is located in Columbia Heights, an area of the city in which rental values have increased considerably since Tenant first rented her apartment, partly as a result of the construction of a nearby Metro station. Tenant occupies a two-bedroom apartment, No. 609. Tenant moved in to her apartment on January 1, 1999, at a rent of \$625 per month.

In 2004 Housing Provider attempted to raise Tenant's rent. PX 100. Tenant, who was then paying \$750 per month, filed a tenant petition with the RACD protesting the rent increase. Housing Provider filed an action to collect unpaid rent in the Superior Court of the District of Columbia Landlord and Tenant Branch. *Id.* In November 2005 the parties settled the dispute. Under the settlement terms Housing Provider agreed not to raise Tenant's rent before August 1, 2006, and not to increase the rent then by more than \$50. *Id.* In August, 2006, Housing Provider increased Tenant's rent to \$800 per month in accord with the settlement agreement.

In August 2007 Housing Provider again increased Tenant's rent from \$800 to \$900 per month. Tenant protested the rent increase by filing the present tenant petition with the RACD on August 20, 2007. Prior to the hearing Tenant received notice from Housing Provider that her rent would increase by an additional \$100 as of August 1, 2008.

The apartments numbered "09" in Tenant's tier are identically configured and contain the same amount of floor space. As of the date of the hearing the rent for unit 209 was \$1,150 per month, unit 309 was \$1,140, unit 409 was \$1,350, unit 509 was \$1,200, unit 709 was \$1,125, and unit 809 was \$1,300. The only units in the tier with rents of less than \$1,000 per month were

Tenant's apartment and unit 909, with a rent of \$800 that was scheduled to increase to \$1,000 in August 2008. Seven other units had rent increases of \$100 in 2008, although most of the units had smaller rent increases.

III. Conclusions of Law

A. Jurisdiction

This matter is governed by the Rental Housing Act of 1985, D.C. Official Code §§ 41-3501.01 – 3509.07, the District of Columbia Administrative Procedure Act (DCAPA), D.C. Official Code §§ 2-501 – 510, the District of Columbia Municipal Regulations (DCMR), 1 DCMR 2800 – 2899, 1 DCMR 2920 – 2941, and 14 DCMR 4100 – 4399. As of October 1, 2006, the Office of Administrative Hearings has assumed jurisdiction of rental housing cases pursuant to the OAH Establishment Act, D.C. Official Code § 2-1831.03.

B. Tenant's Claim of Retaliation

The sole issue remaining for resolution at the hearing of this case was Tenant's retaliation claim. Tenant asserts in the tenant petition that "Retaliatory action has been directed against me/us by my/our Housing Provider, manager or other agent for exercising our rights in violation of section 502 of the [Rental Housing Act]." The Act provides:

No housing provider shall take any retaliatory action against any tenant who exercises any right conferred upon the tenant by this chapter Retaliatory action may include any action or proceeding not otherwise permitted by law which seeks to recover possession of a rental unit, action which would unlawfully increase rent, decrease services, increase the obligation of a tenant, or constitute undue or unavoidable inconvenience, violate the privacy of the tenant, harass, reduce the quality or quantity of service, any refusal to honor a lease or rental agreement or any provision of a

lease or rental agreement, refusal to renew a lease or rental agreement, termination of a tenancy without cause, or any other form of threat or coercion.

D.C. Official Code § 42-3505.02(a).

The Act creates a presumption of retaliation in situations where a housing provider engages in certain activities within six months of when a tenant exercises rights under the Act. D.C. Official Code § 42-3505.02(b). *See also* 14 DCMR 4303.4. Here, Tenant offered no proof that she had exercised any rights in the six months prior to Housing Provider's rent increase so as to trigger a presumption under the Code or the Regulations. Therefore it is Tenant's burden to prove retaliation by a preponderance of the evidence. 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"); *Allen v. D.C. Rental Hous. Comm'n*, 538 A.2d 752, 754 (D.C. 1988) (burden of proof "cannot be sustained simply by showing a lack of substantial evidence to support a contrary finding").

Here Tenant has not adduced any proof that Housing Provider's August 2007 rent increase was motivated by retaliatory intent.² Because the Housing Accommodation was exempt from rent control, Housing Provider was free to raise the rents to any reasonable level. I credit the testimony of Housing Provider's property manager, Ms. Wilson, that Tenant's rent was lower than that of all but one of the comparable units in Tenant's tier and that Housing Provider raised Tenant's rent solely to bring it into line with the market value for similar units in the building

² Housing Provider's August 2008 rent increase was implemented after the date that the tenant petition was filed and therefore was not part of Tenant's retaliation claim. *See Zucker v. NWJ Mgmt.*, TP 27,690 (RHC May 16, 2005) at 7 (citing *Menor v. Williams*, TP 22,769 (Aug. 4, 1993) at 5 n.6).

and in the neighborhood. Moreover, because Tenant's rent had been frozen as a result of the November 2005 settlement agreement, PX 100, Housing Provider had not had the opportunity to implement rent increases in 2005 and 2006 to keep Tenant's unit in balance with comparable units.

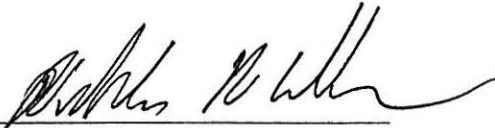
Because I find that Tenant has failed to prove that the 2007 rent increase was an act of retaliation under the Rental Housing Act, I will dismiss the tenant petition.

IV. Order

Accordingly, it is this 13th day of **April, 2009**,

ORDERED that TP 29,047 be and is **DISMISSED WITH PREJUDICE**; and it is further

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



Nicholas H. Cobbs
Administrative Law Judge

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
941 North Capitol Street, N.E.
Suite 9200
Washington, D.C. 20002
(202) 442-8949

Certificate of Service:

**By Priority Mail with Delivery
Confirmation (Postage Paid) to:**

Bernard A. Gray, Sr., Esq.
2009 18th Street SE
Washington, DC 20020-4201

Jonathan R. Schuman, Esq.
Schuman & Felts, Chtd.
4804 Moorland Lane
Bethesda, MD 20814

By Inter-Agency Mail:

District of Columbia Rental Housing
Commission
941 North Capitol Street, NE, Suite 9200
Washington, DC 20002

Keith Anderson, Acting Rent Administrator
District of Columbia Department of Housing
and Community Development
Housing Regulation Administration
1800 Martin Luther King Jr. Avenue SE
Washington, DC 20020

I hereby certify that on 4-14,
2009, this document was caused to be served
upon the above-named parties at the
addresses and by the means stated.

Beneddta Rhames
Clerk / Deputy Clerk