

DISTRICT OF COLUMBIA
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ADMINISTRATIVE HEARINGS
2009 MAR 30 P 2:31

TACRETIA MYERS
Tenant/Petitioner,

v.

APRIL L. TRIBBLE
Housing Provider/Respondent.

Case No.: RH-TP-07-29133
In re 38 Porter Street, N.E.
Unit 1

FINAL ORDER

I. Introduction

On December 17, 2007, Tenant/Petitioner Tacretia Myers filed Tenant Petition 29,133 alleging (1) the property was not properly registered with the Rental Accommodations and Conversion Division ("RACD") or the Department of Consumer and Regulatory Affairs ("DCRA") and (2) Services and facilities provided as part of rent and/or tenancy have been substantially reduced.

This matter is governed by the Rental Housing Act of 1985 (D.C. Official Code §§ 42-3501.01 *et. seq.*) ("Rental Housing Act" or "the Act"), Chapters 41-43 of 14 District of Columbia Municipal Regulations ("DCMR"), the District of Columbia Administrative Procedures Act (D.C. Official Code §§ 2-501 *et. seq.*) ("DCAPA"), and OAH Rules (1 DCMR 2800 *et. seq.* and 1 DCMR 2920 *et. seq.*).

For the reasons that will be more specifically set forth below, the Tenant Petition in this matter is dismissed because Housing Provider has established that she is a small landlord and as a direct consequence is exempt from the rent stabilization provisions of the Act.

II. Procedural History

On January 7, 2008, this administrative court issued a Case Management Order scheduling a hearing in this matter. A hearing was held on February 26, 2008. Tenant Tacretia Myers (“the tenant”) appeared *pro se*. Housing Provider April Tribble (“the Housing Provider”) appeared and was also *pro se*. During the hearing, I admitted into evidence Petitioner’s Exhibits (PX) 100-102 which are listed in Appendix A attached to this Order.

III. Findings of Fact

Housing Provider April Tribble is the sole owner of the property located at 38 Porter Street, N.E.. The Property is the only property Housing Provider owns in the District of Columbia. Housing Provider resided upstairs and the tenant rented out the basement unit. Tenant signed a lease to rent the unit on May 1, 2007 for one year at a rate of \$ 1,000 per month.

From the inception of the tenancy the garbage disposal was not operational. On at least four occasions, water came into the basement unit. In May of 2007, the Housing Provider was put on notice relative to both of these issues. In August of 2007 the Housing Provider had a contractor to waterproof the basement. Because of the water issue and the inconvenience Tenant experienced relative thereto, in September, 2007, Housing Provider and Petitioner agreed to a reduced rental payment of \$ 700.

Housing Provider is a software improvement manager. Housing Provider was not aware that she needed to register her property or file a claim of exemption. Housing Provider is not in the business of renting units and does not own any other property in the District of Columbia.

III. Discussion and Conclusions of Law

A. Small Landlord Exemption

Tenant's petition alleges that the property was not properly registered as required by the Rental Housing Act. Housing Provider acknowledges that the property was not registered but asserts that she should be excused for her failure to register the property because she is a small landlord who was unaware of the requirement to register the property to obtain an exemption.

Most rental housing units in the District of Columbia are subject to the rent stabilization provisions of the Rental Housing Act with requirements that include registration and regulation of rents that housing providers may charge. However, the Act contains a "small landlord exemption" for housing providers who are not professional landlords and who own four or fewer units. D.C. Official Code § 42-3505.02(a).¹ The Rental Housing Act requires housing providers

¹ Specifically, the Act provides that the Rent Stabilization Program, D.C. Official Code §§ 42-3502.05(f) through 42-3502.19 (except § 42-3502.17), "shall apply to each rental unit in the District except:"

(3) Any rental unit in any housing accommodation of 4 or fewer rental units, including any aggregate of 4 rental units whether within the same structure or not, provided:

(A) The housing accommodation is owned by not more than 4 natural persons;

(B) None of the housing providers has an interest, either directly or indirectly, in any other rental unit in the District of Columbia;

either to register a housing accommodation containing rental units or to file a claim of exemption. D.C. Official Code § 42-3502.05(a)(3)(f); 14 DCMR 4102.2. It is undisputed that Housing Provider in this case had not registered the property or filed a claim of exemption for the housing accommodation with the RACD. A housing provider who fails to properly register rental property is prohibited from increasing the rent and may be subject to a fine.

Notwithstanding the registration requirements of the Act, a housing provider can claim the benefits of the small landlord exemption and will not be penalized for failing to file a claim of exemption if the housing provider can prove that special circumstances exist. *Hanson v. D.C. Rental Hous. Comm'n*, 584 A.2d 592, 597 (D.C. 1991). Those special circumstances are: (1) the housing provider was reasonably unaware of the requirement of filing a claim of exemption; (2) the rent charged was reasonable; and (3) the housing provider is not a real estate professional. *Id.* at 597; *Beamon v. Smith*, TP 27,863 (RHC July 1, 2005) at 7 (citing *Gibbons v. Hanes*, TP 11,076 (RHC July 11, 1984) at 3); *Boer v. D.C. Rental Hous. Comm'n*, 564 A.2d 54, 57 (D.C. 1989). If a housing provider meets the special circumstances test, she is excused from the requirements of registering the property for the period of time she was reasonably unaware of the requirements for registration.

The Housing Provider, as the party claiming an exemption, has the burden of proving entitlement to the exemption. *Goodman v. D.C. Rental Hous. Comm'n*, 573 A.2d 1293, 1297

(C) The housing provider of the housing accommodation files with the Rent Administrator a claim of exemption statement which consists of an oath or affirmation by the housing provider of the valid claim to the exemption. The claim of exemption statement shall also contain the signatures of each person having an interest, direct or indirect, in the housing accommodation

D.C. Official Code § 42-3502.05(a)(3) (emphasis added).

(D.C. 1990); *Saryinski v. Ken Ross/Ross LLC.*, TP 28,162 (RHC April 3, 2008) at 6. The standard for satisfying a housing provider's burden of proof of exemption is "credible, reliable evidence." See *Revithes v. D.C. Rental Hous. Comm'n*, 536 A.2d 1007, 1017 (D.C. 1987); *Saryinski*, TP 28,162 at 7.

The evidence establishes that Ms. Tribble is a software process improvement manager and is not in the business of renting houses. Ms. Tribble is the sole owner of the property and does not own any other rental property in the District of Columbia..

The rent charged for the unit was \$ 1,000 per month. There was no testimony regarding the reasonableness of the rent, nor did Tenant allege that the rent was too high for the area. Absent evidence to the contrary, I find the rent was reasonable. It follows that Housing Provider is eligible for the small landlord exemption in this case because the record demonstrates that the housing accommodation was owned by one person; Housing Provider did not have an interest in any other rental unit in the District of Columbia; the rent charged was reasonable; and Housing Provider was reasonably unaware of the requirement to file an exemption. *Hanson*, 584 A.2d at 597.

B. Tenant's Allegation that the Property Was Not Properly Registered

The registration and coverage provisions of the Rental Housing Act apply to exempt and non-exempt rental units and housing accommodations. *Hammer v. Manor Mgmt. Corp.*, TP 28,006 (RHC May 17, 2006). The only units that are not subject to the registration requirements are those units that the Act excludes from coverage. See D.C. Official Code § 42-3502.05(e). The Act also requires that all housing providers, including an exempt provider, have a business license and a certificate of occupancy. D.C. Official Code §§ 42-3502.05(f),

47-2828. The registration requirements for exempt and non-exempt housing accommodations are found in the regulations at 14 DCMR 4101 and 4102.²

Tenant's petition alleges that the property was not properly registered because Housing Provider did not file a claim of exemption and did not possess a business license as required by the Act. Because Housing Provider has met the requirements of the special circumstances test, she is excused from the requirements for registering the property and filing a claim of exemption. It therefore follows that she is also excused for her failure to obtain a basic business license.

The penalty for failing to properly register the property is a fine. D.C. Official Code § 42-3509.01(d). To impose a fine, it must be proven that Housing Provider "intended to violate or was aware that it was violating a provision of the Rental Housing Act." *Quality Mgmt., Inc., v. D.C. Rental Hous. Comm'n*, 505 A.2d 73, 76 (D.C. 1986); *see also Miller v. D.C. Rental Hous. Comm'n*, 870 A.2d 556, 558 (D.C. 2005). Having met the special circumstances test for a small landlord, Housing Provider has also established that her failure to comply with the Act was not willful. In analyzing the small landlord exemption, the District of Columbia Court of Appeals

² "The registration requirements of this section shall apply to each rental unit covered by the Act as provided in § 4100.3 and to each housing accommodation of which the rental unit is a part, including each rental unit exempt from the Rent Stabilization Program. 14 DCMR 4101.1 (emphasis added).

"The terms 'to register' and 'registration' shall be understood to include filing with the Rent Administrator the following:

(b) For rental units exempt from the Rent Stabilization Program the information required to establish the claim of exemption pursuant to § 205(a) of the Act and § 4103 [of the regulations]."

14 DCMR 4102.2 (emphasis added).

("Court of Appeals") affirmed the Rental Housing Commission's conclusion that "a landlord should not be penalized if he can establish to the satisfaction of the Examiner that he is *not a landlord regularly.*" *Boer*, 564 A.2d at 57 (quoting *Gibbons, supra*, at 3) (emphasis added). Housing Provider in this case has established that she is not regularly a landlord and is therefore entitled to the exemption from the time she began renting the accommodation.

Tenant has failed to prove any of the allegations in her petition. Therefore, the tenant petition in this matter is dismissed.

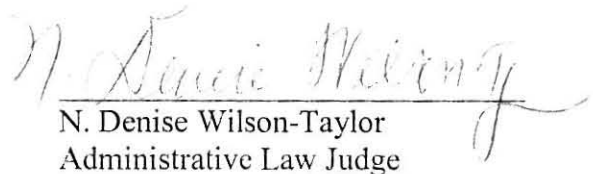
V. Order

Therefore, it is this 30th day of March, 2009:

ORDERED, that the tenant petition is **DISMISSED with prejudice**; and it is further

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.


N. Denise Wilson-Taylor
Administrative Law Judge

APPENDIX A

	Description
PX 100	Timeline
RX 101	Rent Receipts
RX 102	Copies of E-Mails

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 NE
Suite 9200
Washington, D.C. 20002
(202) 442-8949

**Certificate of Service:
By Priority Mail with Delivery
Confirmation (Postage Paid):**

Tacretia Myers
151 S Street, N.W.
Washington, D.C. 20001


April Tribble
11428 Deepwood Drive
Bowie, Maryland 20720

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

I hereby certify that on 3-30,
2009, this document was caused to be served
upon the above-named parties at the
addresses listed and by the means stated.


Clerk / Deputy Clerk