

DISTRICT OF COLUMBIA
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DISTRICT OF COLUMBIA
OFFICE OF
ADMINISTRATIVE HEARINGS

2009 JUN 29 P 1: 28

PASTORA BENITEZ,
Tenant/Petitioner,

v.

OGDEN GARDENS, INC., CAFRITZ
COMPANY, AND THE MORRIS &
GWENDOLYN CAFRITZ
FOUNDATION/AMBASSADOR, INC.,
Housing Providers/Respondents.

Case No.: RH-TP-08-29189
In re 1445 Ogden Street NW
Unit No. 214

ORDER GRANTING PETITIONER'S MOTION FOR ATTORNEYS' FEES

I. Introduction

On March 31, 2009, this administrative court issued a Final Order in this case awarding Tenant/Petitioner Pastora Benitez \$11,333.62 in rent refunds and rolling back the rent in Tenant's apartment to \$705 per month. On April 22, 2009, Tenant filed a motion for attorney's fees, seeking an award of \$21,689.00 in attorney's fees. Housing Provider did not oppose this motion. For reasons discussed below, I grant the motion and award Tenant the fees she requests.

II. Analysis

The Rental Housing Act provides that: "The [Administrative Law Judge] . . . may award reasonable attorney's fees to the prevailing party in any action under this chapter, except actions for eviction authorized under [D.C. Official Code] § 42-3509.02." The Rental Housing

Regulations, in turn, provide that a “presumption of entitlement to an award of attorney's fees is created by a prevailing tenant, who is represented by an attorney.” 14 District of Columbia Municipal Regulations (“DCMR”) 3825.2.

The Regulations require that an award of attorney's fees “be based on an affidavit executed by the attorney of record itemizing the attorney’s time for legal services and providing the applicable information listed in [14 DCMR] § 3825.8.” 14 DCMR 3825.7. The application “must be sufficiently detailed to permit the [administrative court] to make an independent determination whether or not the hours claimed are justified.” *Hampton Courts Tenant’s Ass’n. v. D.C. Rental Hous. Comm’n*, 599 A.2d 1113, 1117 (D.C. 1991) (quoting *Nat’l Ass’n. of Concerned Veterans v. Sec’y of Defense*, 675 F.2d 1319, 1327 (D.C. Cir. 1982)).

The documentation submitted by Tenant’s counsel, Alysia Robben Esq., conforms to this requirement. Ms. Robben submitted a detailed affidavit describing her qualifications and the activities and time she spent in preparation of the case. The affidavit is supported by a table of 103 entries detailing dates, activities, and time spent, in tenths of an hour, totaling 166.9 hours of attorney time.¹

Under the Rental Housing Act and the Rental Housing Regulations, attorney's fees are only available to a tenant who is a “prevailing party.” To be deemed a prevailing party “it is necessary only that the plaintiff ‘succeed on any significant issue in litigation which achieves some of the benefit the parties sought in bringing the suit.’” *District of Columbia v. Jerry M.*, 580 A.2d 1270, 1274 (D.C. 1990) (quoting *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983) (quoted in *Slaby v. Bumper*, TP 21,518 (RHC Sep. 21, 1995) at 14). Here Tenant received an

¹ Tenant computed the total as 164.7 hours. Pet’r’s Mot. for Att’y’s Fees at 6.

award of \$11,333.62 and a significant roll back of Tenant's rent. Tenant is the prevailing party and is entitled to attorney's fees.²

The regulations establish a two-step process for assessment of attorney's fees. "The starting point shall be the lodestar, which is the number of hours reasonably expended on a task multiplied by a reasonable hourly rate." 14 DCMR 3825.8(a). The lodestar amount then "may be reduced or increased" in consideration of thirteen factors:

- (1) the time and labor required;
- (2) the novelty, complexity, and difficulty of the legal issues or questions;
- (3) the skill requisite to perform the legal service properly;
- (4) the preclusion of other employment by the attorney, due to acceptance of the case;
- (5) the customary fee or prevailing rate in the community for attorneys with similar experience;
- (6) whether the fee is fixed or contingent;
- (7) time limitations imposed by the client or the circumstances;
- (8) the amount involved and the results obtained;
- (9) the experience, reputation, and ability of the attorney;

² In addition, Housing Provider renovated Tenant's apartment while the case was pending, correcting almost all of the services and facilities complaints that Tenant asserted.

- (10) the undesirability of the case;
- (11) the nature and length of the professional relationship with the client;
- (12) the award in similar cases; and
- (13) the results obtained, when the moving party did not prevail on all the issues.

14 DCMR 3825.8(b). *See Covington v. Foley Props.*, TP 27,985 (RHC June 12, 2007) at 2-3. The 13 factors prescribed in the Rental Housing Regulations are virtually identical to the 12 factors enumerated in *Frazier v. Ctr. Motors, Inc.*, 418 A.2d 1018, 1025 (D.C. 1980), with the addition of a thirteenth factor: “The results obtained, when the moving party did not prevail on all the issues.”

Tenant’s counsel, an attorney with a legal services provider, seeks an award under the hourly rate prescribed in the Laffey Matrix. The Laffey Matrix is maintained by the United States Attorney’s Office for the District of Columbia. It originated with the hourly rates allowed by the United States District Court for the District of Columbia in *Laffey v. Northwest Airlines, Inc.*, 572 F.Supp. 354 (D.D.C. 1983), *aff’d in relevant part*, 746 F.2d 4 (D.C. Cir. 1984). The Matrix provides a schedule of hourly rates prevailing in the Washington, D.C. Metropolitan Area for attorneys at various levels of experience. Use of the Laffey Matrix has been approved by the District of Columbia Court of Appeals for awards in cases where attorney’s fees are permitted by statute. *Lively v. Flexible Packaging Ass’n*, 930 A.2d 984, 988-89 (D.C. 2007). The District of

Columbia Circuit has approved its use by pro bono attorneys, such as Tenant's counsel here. *See Covington v. District of Columbia*, 57 F.3d 1101, 1109 (D.C. Cir. 1995).³

Ms. Robben, a 2007 graduate of the University of the District of Columbia David A. Clarke School of Law who was admitted to the D.C. Bar in November 2007, seeks an hourly rate of \$205 under the Laffey Matrix. The rate is applicable to attorneys with 1-3 years of experience for work performed in 2006-07. Pet'r's Mot. for Att'y's Fees, Attach. B. The Matrix would permit an award of \$215 per hour for work performed in 2007-08, and \$225 per hour for work performed in 2008-09. I conclude that the \$205 hourly rate that Tenant seeks is reasonable for the services of Ms. Robben, an attorney who graduated magna cum laude from law school and began to specialize in rental housing and landlord and tenant cases while she was still a student in law school.

The lodestar rate applies to the number of hours that are "reasonably expended" in prosecuting the case. Tenant has reduced the number of hours for which she requests reimbursement by more than 35%, from 166.1 to 105.4 hours, as adjustments for the following factors: (1) Tenant did not prevail on all of her claims; (2) Tenant did not obtain treble damages; (3) counsel spent excessive time on certain tasks, including the post-hearing memorandum of law; and (4) some of the time spent preparing Tenant's case also involved related cases brought by other tenants in the building.

I conclude that the 105.4 hours of attorney time for which Tenant seeks reimbursement is reasonable in the circumstances here. The case required eight days of hearings in which

³ The Laffey Matrix is available on the website of the United States Attorney's Office for the District of Columbia:
http://www.usdoj.gov/usao/dc/Divisions/Civil_Division/Laffey_Matrix_7.html.

testimony had to be translated by an interpreter. Although Tenant did not prevail on all of her claims, the claims on which she did not prevail did not diminish the award that she received.⁴ *See Hensley v. Eckerhart*, 461 U.S. 424, 440 (1983) (where a lawsuit consists of related claims, a plaintiff who has won substantial relief should not have his attorney's fees award reduced simply because the court did not adopt each contention raised). Moreover, although Tenant did not prevail on her assertion that she was entitled to treble damages on account of bad faith, the court specifically requested briefing on that issue because it was an obscure area of the law with little precedent. The time that Tenant's counsel spent in briefing the issue was helpful to the court.

Once the lodestar is established, the regulations permit the Administrative Law Judge to increase or reduce the award based on the 13 factors listed in 14 DCMR 3825.8(b). The Administrative Law Judge is not required to make a "precise analysis" of each of these factors. *Ungar v. D.C. Rental Hous. Comm'n*, 535 A.2d 887, 890 (D.C. 1987). Several of the factors are implicit in the initial determination of the number of hours "reasonably expended" and the "reasonable hourly rate." 14 DCMR 3825.8(a). This determination requires me to evaluate factors (1) (time and labor required), (2) (difficulty of legal issues), (3) (skill), (5) (customary fee for attorneys with similar experience), (8) (amount involved and results obtained), and (9) (ability of attorney). Others are not applicable here or are not reflected in the record, e.g., factors (4), (6), (7), (10), (11). *See* 14 DCMR 3825.8(b). Tenant has not requested any enhancement of the lodestar nor proffered any reason why the lodestar should be enhanced. Conversely, on review of Tenant's motion and supporting papers and reflection on each of the factors to be considered in the regulations, I see no reason to decrease the lodestar award.

⁴ Tenant did not prevail on her claims that: (1) services had been reduced on account of Housing Provider's alleged harassment of Tenant; and (2) the rent ceiling filed with the Rental Accommodations and Conversion Division was improper. The remedy for these claims was redundant of claims that Tenant prevailed on.

In my decision to award Tenant the full amount she requested, I have considered that the award of attorney's fees exceeds the amount of Tenant's award. The structure of the Rental Housing Act demands sophisticated expertise to navigate the bewildering maze of rules required to obtain small recoveries on behalf of low-income clients. Accordingly, the regulations establish "a presumption of entitlement to an award of attorney's fees" to a prevailing tenant. The Rental Housing Commission has held that "[t]he enforcement of the tenants' rights depends on the willingness of attorneys to represent them." Consequently, "[t]he amount of attorney fees should not be connected to the amount of the monetary recovery." *Town Ctr. Mgmt. Corp. v. Pettaway*, TP 23,538 (RHC Feb. 29, 1996) at 11. These principles are especially applicable to the case here, which was the first of a number of tenant petitions brought by tenants in the Housing Accommodation and, therefore, may serve as a precedent for resolution of the other petitions.

In conclusion, I find that Tenant's application for an award of \$21,689.00 in legal fees is reasonable in light of the complexities of this case, the time expended by counsel, and the quality of representation that Tenant received. Therefore I will grant Tenant's request in full.


III. Order

Accordingly, it is this 29th day of **June, 2009**,

ORDERED that Tenant's Motion To Set Reasonable Attorney's Fees is **GRANTED**;
and it is further

ORDERED that Housing Providers pay counsel for Tenant Pastora Benitez, attorney's fees in the amount **TWENTY-ONE THOUSAND, SIX HUNDRED AND EIGHTY-NINE DOLLARS (\$21,689.00)** within thirty (30) days of the issuance of this order; and it is further

ORDERED that the appeal rights of any party aggrieved by this Final Order are stated 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 / Delivery Confirmation

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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 6-29,
2009, this document was caused to be served
upon the above-named parties at the
addresses and by the means stated.


Clerk / Deputy Clerk