

DISTRICT OF COLUMBIA
OFFICE OF ADMINISTRATIVE HEARINGS
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OFFICE OF
ADMINISTRATIVE HEARINGS

2009 MAR 19 A 11: 11

CAROLYN HOPKINS
Tenant/Petitioner,

v.

GLORIA HARRIS
Housing Provider/Respondent.

Case No.: RH-TP-08-29217
In re 4219 Grant Street, NE, Unit A

FINAL ORDER

I. Introduction

This matter was called for hearing as scheduled on May 12, 2008, when John Hopkins and Carolyn Hopkins appeared and testified. No appearance was made for Housing Provider. The Tenant Petition at issue, filed on March 17, 2008, had one box checked in Part 3 — Tenant Complaint: “A Notice to Vacate has been served on me/us, which violates Section 501 of the Act.” In an area identified as “complaint details” is written: “The building where my rental unit is located is not properly registered with the RAD. The landlord and building where my rental unit is located is not in substantial compliance with DC Housing Regulations and DC Law.”

At the end of the hearing, I suggested that Tenant had submitted evidence on a claim not alleged in her petition: substantial reduction in services and facilities. I told her she could amend her petition, file a new petition or request mediation with Housing Provider. She agreed to consider the options and respond within two weeks, but has not done so.

II. Findings of Fact

1. Carolyn Anita Hopkins first rented Apartment A at 4219 Grant Street, NE (the Property) from a Ms. Froe in June 1997 for \$650. Gloria Harris, named Respondent/Housing Provider in this action, purchased the Property in 2000. In October 2000, rent remained at \$650. In November 2000, Ms. Harris increased the rent to \$700. At that time, Tenant had to pay for gas for the first time.

2. In August 2007, Ms. Hopkins told Ms. Harris, Housing Provider, about a problem with a toilet that was leaking. Ms. Harris sent a plumber who said the floor was corroded. The floor was not repaired. The plumber installed a new toilet, but it also leaked.

3. In the months September, October, November, and December of 2007, Tenant had to use an electric heater for adequate warmth in her unit. She telephoned Ms. Harris who sent workers to work on the problem. The record is not clear on the timing of the call or the success of the work.

4. On January 17, 2008, a Housing Inspector issued a Notice of Violation for seven housing code violations: 1) a leak in the bathroom. 2) obstruction in bathroom, 3) defective cooking facility, 4) defector radiator in kitchen, 5) defective smoke detector in kitchen, 6) defective radiator in bedroom, and 7) defective smoke detector in hallway. PX 101.

5. On March 14, 2008, Tenant received a notice that reads in entirety: "from gloria harris to carolyn hopkins to whom it may concern, miss carolyn hopkins wii [sic] have to vacate the property known as 4219 grant st ne as of march 26th 2008, due to foreclosure, gloria harris [signed] Gloria Harris." Later, Ms. Harris told Ms. Hopkins that she could stay through April.

6. On March 17, 2008, Grayce Wiggins, as Acting Rent Administrator, certified that there was not current registration filed with the Rental Accommodations Division of the Department of Housing and Community Development for 4219 Grant Street, NE. PX 106.

III. Conclusions of Law

A. Jurisdiction

This matter is governed by the Rental Housing Act of 1985, D.C. Official Code §§ 42-3501.01-3509.07 (Act), the District of Columbia Administrative Procedure Act, D.C. Official Code §§ 2-501-511, and the District of Columbia Municipal Regulations (DCMR), 1 DCMR 2801-2899, 1 DCMR 2920-2941, and 14 DCMR 4100-4399. Since October 1, 2006, the Office of Administrative Hearings (OAH) has had jurisdiction of rental housing cases pursuant to the OAH Establishment Act, D.C. Official Code § 2-1831.03(b-1)(1).

B. Notice to Housing Provider

Housing Provider/Respondent was properly served by mail with the Case Management Order (CMO) of April 10, 2008, which gave notice of the hearing on May 12, 2008, at 11:30 a.m. U.S. Postal Service delivery Confirmation Receipt number 0307 0020 0004 1794 7985 confirms that the CMO was delivered to Gloria Harris on April 11, 2008. Because the CMO setting the hearing date was mailed to Housing Provider's last known address, by a form of service that assures delivery at least 15 days before the hearing, Housing Provider/Respondent received proper notice of the hearing date. D.C. Official Code § 42-3502.16(c); *Kidd Int'l Home Care, Inc. v. Prince*, 917 A.2d 1083, 1086 (D.C. 2007) (notice is proper if properly mailed and not returned to sender).

OAH Rule 2818.3, 1 DCMR 2818.3, provides, in part:

Unless otherwise required by statute, these Rules or an order of this administrative court, where counsel, an authorized representative, or an unrepresented party fails, without good cause, to appear at a hearing, or a pretrial, settlement, or status conference, the presiding Administrative Law Judge may dismiss the case or enter an order of default in accordance with D.C. Superior Court Civil Rule 39-I.

D.C. Superior Court Civil Rule 39-I provides that:

When an action is called for trial and a party against whom affirmative relief is sought fails to respond, in person or through counsel, an adversary may where appropriate proceed directly to trial. When an adversary is entitled to a finding in the adversary's favor on the merits, without trial, the adversary may proceed directly to proof of damages.

Because Housing Provider/Respondent failed to appear at the hearing after receiving proper notice, it was appropriate to proceed to take evidence in Housing Provider's absence and to render a decision based on the evidence that Tenant presented. D.C. Superior Court Civil Rule 39-I.

C. Failure To Serve Proper Notice To Vacate

The tenant petition alleges that Tenant was served with a notice to vacate that violated the requirements of Section 501 of the Rental Housing Act (D.C. Official Code § 42-3505.01). The Rental Housing Act provides:

(a) Except as provided in this section, no tenant shall be evicted from a rental unit, notwithstanding the expiration of the tenant's lease or rental agreement, so long as the tenant continues to pay the rent to which the housing provider is entitled for the rental unit. No tenant shall be evicted from a rental unit for any reason other

than for nonpayment of rent unless the tenant has been served with a written notice to vacate which meets the requirements of this section. Notices to vacate for all reasons other than for nonpayment of rent shall be served upon both the tenant and the Rent Administrator. All notices to vacate shall contain a statement detailing the reasons for the eviction, and if the housing accommodation is required to be registered by this chapter, a statement that the housing accommodation is registered with the Rent Administrator.

D.C. Official Code § 42 -3505.01(a).

Housing Provider violated this provision in three respects: First, Ms. Harris sought to evict Ms. Hopkins while Ms. Hopkins continued to pay rent. Second, Ms. Harris did not serve a copy of the notice to vacate on the Rent Administrator. Third, Ms. Harris made no statement regarding registration. Hence, Tenant has proven that Housing Provider failed to comply with the requirements of § 42-3505.01 of the Rental Housing Act.

Ms. Hopkins also proved with PX 106 that the Property at issue was not properly registered.

The Act does not impose a specific penalty for a Housing Provider's failure to serve a Tenant with a proper notice to vacate. Nor does it provide a specific penalty for failure to register properly unless there was a rent increase. *See* D.C. Official Code § 42-3502.08(a)(1)(B). But the Act permits the imposition of a fine against housing providers who violate the Act intentionally. The Act provides that: "Any person who wilfully [sic] . . . (3) commits any other act in violation of any provision of this chapter or of any final administrative order issued under this chapter, or (4) fails to meet obligations required under this chapter shall be subject to a civil fine of not more than \$5,000 for each violation." D.C. Official Code § 42-3509.01(b). A fine may be imposed where the Housing Provider "intended to violate or was aware that it was

violating a provision of the Rental Housing Act.” *Miller v. D.C. Rental Hous. Comm’n*, 870 A.2d 556, 558 (D.C. 2005). In this case, with no evidence to support a finding that Housing Provider intended to violate or was aware she was violating the Act, no fine will be imposed.

No evidence was produced to prove that rent increases were taken when Tenant’s unit was not in substantial compliance with housing regulations, a claim specified in the narrative portion of the tenant petition. As such, there was no rent increase to invalidate pursuant to D.C. Official Code § 42-3502.08(a)(1)(A). Finally, because Housing Provider was not on notice of any claims for substantial reduction in services and facilities, evidence on such claims cannot be considered. *See Parreco v. District of Columbia Rental Hous. Comm’n*, 885 A.2d 327, 334 (D.C. 2005).

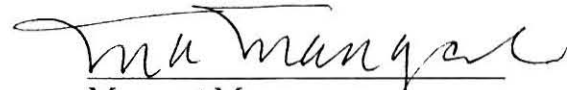
In sum, Tenant proved that Housing Provider violated the Act by sending an unlawful Notice to Vacate and by failing to register the Property. However, without a finding of willfulness, no fine is imposed.

D. Order

Therefore, it is this 18th day of March 2009:

ORDERED, that Case No. RH-TP-08-29217 is **DISMISSED WITH PREJUDICE**; and
it is further

ORDERED, that the appeal and reconsideration rights of any party aggrieved by this decision appear below.


Margaret Mangan
Administrative Law Judge

Tenant/Petitioner's Exhibits (PX)

- 100 Letter dated July 27, 2000 regarding change in ownership
- 101 Notice of Violation dated January 17, 2008
- 102 Letter with Notice to Vacate and envelope with March 14, 2008 postmark.
- 103 Personal Money order payable to Gloria Harris dated April 2, 2008
- 104 Tenant Petition filed on October 21, 2004 (not admitted)
- 105 Tenant Petition (TP 27,981) filed on November 12, 2003 (not offered)
- 106 Certification regarding lack of registration.

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):

Carolyn Hopkins
4219 Grant Street, NE
Washington, DC 20019

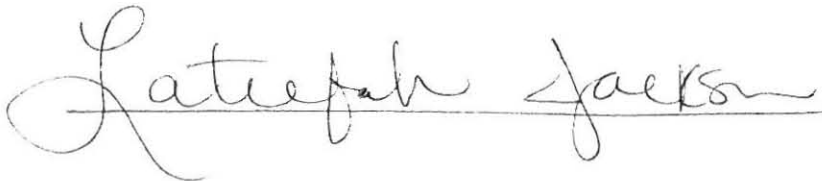
Gloria Harris
1507 Freedom Way, SE
Washington, DC 20003

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. Ave., SE
Washington, DC 20020

I hereby certify that on 3-19, 2009, this document was caused to be served upon the above-named parties at the addresses and by the means stated.

A handwritten signature in cursive script that reads "Latifah Jackson". The signature is written in black ink and is positioned above a horizontal line.