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MICHAEL STOKVIS & BENJAMIN RYAN, Tenants/Petitioners, v. JOHN BONADEO & BETTY MCDONALD, Housing Providers/Respondents.	Case No.: RH-TP-08-29292 *In re:* 3614 T Street, NW

FINAL ORDER

I. Introduction

On May 8, 2008, Tenants/Petitioners Michaek Stovkis and Benjamin Ryan filed Tenant Petition 29,292 alleging: (1) the housing accommodation was not properly registered with the Rental Accommodations Division ("RAD") of the Department of Housing and Community Development ("DHCD"); and (2) that services and facilities in connection with Tenants' unit were substantially reduced

II. Procedural History

An evidentiary hearing was held in this matter on December 18, 2008. Tenant Michael Stovkis appeared at the hearing and testified on his own behalf. Tenant Benjamin Ryan did not appear at the hearing. Betty McDonald, Property Manager, appeared at the hearing on behalf of Housing Provider and testified. During the hearing, I admitted into evidence Petitioner/Tenant

Exhibits (PX) 200-208 and Housing Provider/Respondent Exhibits (RX) 101, 105A, 105B, 106, 108A, 108B, 109, and 120.

III. Findings of Fact

Tenants Michael Stovkis and Benjamin Ryan resided in the basement apartment of 3614 T Street, NW, in the District of Columbia from August 20, 2007, through December 9, 2007. The property is a two story house with a basement. The house has two bedrooms in the basement and five bedrooms on the upper levels. The bedrooms are rented separately with all occupants sharing the living room, dining room, and kitchen as a common areas. Tenants rented the basement of the house. The house is owned by John Bonadeo. Betty McDonald, who is married to Mr. Bonadeo, manages the property and is the registered agent.

Tenants were both students at Georgetown University and roommates occupying the two basement bedrooms. Mr. Stovkis signed a lease to rent the basement of the house on July 28, 2007. RX 120. The term of the lease was from August 1, 2007, to July 31, 2008. *Id.* Tenants agreed to pay a monthly rent of $2000 and utilities were to be shared equally among all tenants. At the time of the lease signing, Tenants paid a $2000 security deposit and $2000 for August rent. Mr. Stovkis informed Housing Provider that Tenants would move into the apartment on or about August 20, 2007, and that school started on August 27, 2007.

Housing Providers also owned the house next door to the rental accommodation. During the week that Tenants were scheduled to move in, the house next door experienced water seepage from heavy rain causing damage in the basement. Housing Provider had only owned both properties for two months and decided to make the repairs to both houses to avoid any future problems. Housing Provider hired a contractor to install a sump pump and draining

system in the basement. In order to make the repairs, workers dug trenches in the basement and the rooms were not habitable while the work was being completed. PX 201, 203, 204-207. The rooms were habitable from August 1, 2007, until the repair work began or about August 22, 2007. Prior to signing the lease, Housing Provider had applied fresh paint and new bathroom fixtures, carpet on stairs, doors, and area rugs. RX 100.

Tenant Benjamin Ryan arrived at the house on August 21, 2007, and Mr. Stovkis arrived on August 23, 2007. When Mr. Ryan arrived at the house, there was a note on the door which stated that workers would arrive the following day to work in the basement and that work would be completed that weekend. PX 200, 208. The door leading to the basement was sealed so that Tenants could not enter. Because the rooms were not ready, Housing Provider told Tenants that they could stay in any of the bedrooms upstairs until the repairs were completed. The upstairs bedrooms were in good condition and are rented at a higher rate than the basement bedrooms. RX 105A and 105B.

The repairs were not completed until eight days later on August 28, 2007. Tenants were permitted to move into their basement rooms on August 29, 2007. As a concession for the inconvenience, Housing Provider paid the August utility bill, approximately $250, and provided Tenants with a refrigerator for the basement.

On December 7, 2007, the carbon monoxide detector went off in the house and emergency services were dispatched. The carbon monoxide levels exceeded safe levels and Tenants were instructed to evacuate the house. Washington Gas came to the house and shut off the heat. Mr. Stovkis called Housing Provider and told her that the portable heater provided by Housing Provider was leaking carbon monoxide. Because the portable heater did not contain

gas. Housing Provider did not believe it was the cause of a leak and Housing Provider contacted the fire department. The fire department informed Housing Provider that the carbon monoxide was not coming from the portable heater. The leak was from the furnace and the following day, Housing Provider had the furnace serviced and resealed, and subsequently replaced the entire furnace. Housing Provider provided Tenants with portable heaters while the furnace was being repaired. On December 9, 2007, two days after the carbon monoxide incident, Tenants informed Housing Provider that they wanted to terminate their lease and move out of the apartments. Housing Providers permitted tenants to break their lease and refunded their December 2007 rent, pro-rated as well as their security deposit.

IV. Discussion and Conclusions of Law

A. Jurisdiction

This matter is governed by the Rental Housing Act of 1985 (D.C. Official Code §§ 42-3501.01 *et. seq.*), 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.*).

B. Tenant's allegation that the property was not properly registered.

Mr. Stovkis testified that the property was not properly registered because there was no business license or certificate of occupancy posted in the house. Whether or not a certificate of occupancy or a business license is posted in the housing accommodation is a separate issue from

whether or not the property was properly registered with the RAD and whether Housing Provider has violated the Rental Housing Act.

All rental accommodations in the District of Columbia are required to be registered, unless they are specifically excluded from the Rental Housing Act. D.C. Official Code § 42-3502.05(f). The Rental Housing Commission ("RHC" or "Commission") has held that where a housing provider fails to obtain a business license or a certificate of occupancy, and he is required to do so as part of the registration requirements of the Act, that registration is defective because the housing provider failed to meet the registration requirements. *1736 18th Street, N.W. Partnership v. 1736 18th Street Tenants Ass'n,* TP 11,537 (RHC Dec. 26, 1996) at 19. A housing provider who fails to properly register a housing accommodation is prohibited from increasing the rent. 14 DCMR 4109.9.

The registration requirements are those found in the Rental Housing Act at D.C. Official Code § 42-3502.05(f) and the implementing regulations at 14 DCMR 4100. The RHA requires a registration form be filed with the RAD that contains, among other things, dates and numbers of the housing business licenses and certificates of occupancy, if required. D.C. Official Code § 42-3502.05(f)(1) and (2). Although Housing Provider did not address this specific allegation in her testimony, Tenant failed to meet its burden of establishing that Housing Provider does not have a business license or certificate of occupancy or that Housing Provider failed to complete a registration form with the RAD. Tenant's mere assertion that Housing Provider was not properly registered does not amount to substantial evidence. D.C. Official Code § 2-509(e) ("Findings of fact and conclusions of law shall be supported by and in accordance with . . . reliable, probative, and substantial evidence."). Mr. Stovkis did not check the records of the RAD or the District of Columbia Department of Consumer and Regulatory Affairs ("DCRA") for the existence of a

registration form, a business license, or a certificate of occupancy. These documents are public records. As such, Tenant did not submit as evidence, a certification by either the RAD or DCRA that no such records existed.[1]

Mr. Stovkis testified only that there was no business license or certificate of occupancy posted on the premises. I cannot infer from the failure to post on the premises, a business license or a certificate of occupancy, that the property was improperly registered with the RAD. There is a requirement, outside the Rental Housing Act, for housing providers to maintain a business license and a certificate of occupancy and to post both conspicuously on the premises. *See* 14 DCMR 200 (business licenses) and 12A DCMR 110A (certificates of occupancy). The penalty for a housing provider's failure to maintain such licenses is a fine which would be issued by DCRA and not by this administrative court. *See* 16 DCMR 3200.1(d) (failure to post a required license is a class four civil infraction); 16 DCMR 3312.3(o) (failure to conspicuously post a certificate of occupancy is a class three civil infraction).

Tenant has failed to meet his burden of proving, by a preponderance of the evidence, that the property was not properly registered with the RAD and therefore the allegation is dismissed.

C. Tenants' Allegation that Services and Facilities were Substantially Reduced

Mr. Stovkis testified that services and facilities were substantially reduced when Tenants were not able to move into their apartment on August 21, 2007. To establish that services and facilities were substantially reduced, a tenant must present competent evidence of the existence,

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[1] The Case Management Order issued in this case on June 2, 2008, specifically stated that this administrative court would not review the RAD or DCRA files for documents that support either party's case and that it was the parties' responsibility to bring to the hearing a stamped original or a properly certified copy of any RAD documents.

duration, and severity of the reduced services. *Jonathan Woodner Company*, TP-27,730 (RHC Feb. 3, 2005) at 11. Tenant and Housing Provider testified that Tenants were not able to occupy the basement apartment for eight days while repairs were made. The Rental Housing Act provides that where services or facilities in a rental unit are substantially decreased, the rent for the unit shall be decreased "to reflect proportionally the value of the change in services and facilities." D.C. Official Code § 42-3502.11.

In determining the value of the change in services, the housing regulations provide that I may consider "the cost to the tenant of obtaining alternate related services or facilities comparable to those reduced by the housing provider." 14 DCMR 4211.9. In this case, Tenants' rent was $2,000/month and therefore a value of $64.52/day. Eight days of uninhabitability totals $516.16. Tenants did not expend any money for the eight days, because Housing Provider gave Tenants alternate accommodations in the same house, with rooms that had a higher market value than those rented by Tenants. In addition, Housing Provider paid $250 in utilities on behalf of Tenants and provided a refrigerator, as a concession for the inconvenience. Therefore, Tenants received enumeration for their loss and adequate alternative arrangement at no cost to them. I find that Tenants are not entitled to any additional rent refund.

Mr. Stovkis argued that Tenants should receive a rent refund because of the inconvenience caused by not being able to move into their rooms and unpack their belongings prior to school starting on August 28, 2007. I do not find that the inconvenience of residing in a different room in the same house for eight days was so great that Tenant's received no value from their accommodations. A Housing Provider is entitled to the reasonable value of the use and enjoyment of the premises. *Curry v. Dunbar House,* 362 A.2d 686, 689 (D.C. 1974).

Mr. Stovkis argued that he was entitled to a rent refund of $1,806.45. Mr. Stovkis arrived at this figure by dividing the number of days he believed the apartment was habitable (3) by the number of days in the month (31) multiplied by the monthly rent ($2,000) (3/31 x 2,000 = $1,806.45). Mr. Stovkis argued that because the lease began on August 1, 2007, he was entitled to a rent refund for August 1 – 28, 2007, because although Tenants did not move in until August 21, 2007, they were entitled to possession on August 1, 2007, and the apartment was not habitable.

Mr. Stovkis is correct that if the apartment was not habitable on August 1, 2007, the date Tenants were entitled to possession per the lease, they might be entitled to an additional rent refund. *See Dias v. Perry,* TP 24,379 (RHC Apr. 20, 2001) (where the tenant paid rent for three months while the rental unit was inhabitable and the housing provider placed tenant in another unit with a lower rent ceiling, tenant was entitled to a rent refund of the difference between rent charged for the two units). However, the evidence of record was the between August 1, 2007, and August 20, 2007, the basement was habitable. Housing Provider testified credibly that she made the decision to install a sump pump the week Tenants moved in as a result of damage to the house next door. There had been no damage to Tenant's apartment and the repairs were precautionary. Housing Provider submitted photographs of the basement taken on July 31, 2007, the day before Tenants were entitled to possession under the lease. RX 101. The pictures reveal rooms in excellent, livable conditions, with fresh paint, new fixtures, and new rugs. Therefore, I find that the rooms were only uninhabitable from August 20, 2007, until August 29, 2007, and for those dates, Tenants received adequate compensation.

Mr. Stovkis further testified that services and facilities were substantially reduced on December 7, 2007, when the carbon monoxide detector in the house was activated and Tenants

were required to evacuate the house. Mr. Stovkis testified that Washington Gas came to the house and shut off the heat and the fire department advised Tenants to stay somewhere else for the night. A housing provider is required to maintain the habitability of a rental unit by making necessary repairs in a reasonable, prompt, and complete manner, once the need for such repairs has been brought to their attention. *Newton v. Hope,* TP 27,034 (RHC May 29, 2002) at 7. The housing regulations provide that "if a related service of facility at a rental unit or housing accommodation decrease by accident . . . and are not promptly restored to the previous level, the housing provider shall promptly reduce the rent for the rental unit by an amount which reflects proportionately the monthly valued of the decrease in related services or facilities." 14 DCMR 4211.6. Where services are reduced by accident, a tenant is only entitled to a rent refund if the service is not promptly restored. *See Parreco v. D.C. Rental Hous. Comm'n,* 885 A.2d 327, 337 (D.C. 2005).

The credible evidence in the record shows that Housing Provider came to the house the following day and had a repairman inspect the furnace. Housing Provider learned for the first time that the furnace was leaking and immediately had the furnace resealed. Two days later, on December 9, 2007, Tenants were allowed out of their lease prematurely and vacated the premises. Tenants were given a pro-rated refund of their December rents and refunded their security deposits; refunds which Housing Provider was not required to give since Tenants broke their lease. Because the heat was promptly restored after the carbon monoxide leak and tenants vacated the apartment two days later, tenants are not entitled to a rent refund.

Tenant has failed to meet his burden of proving that services and facilities were substantially reduced and the petition in this matter is dismissed.

V. Order

Therefore, it is this **31st** day of **March 2009:**

ORDERED, that Tenant Petition 29,292 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 reconsideration and appeal rights of any party aggrieved by this Order are set forth below.

Erika L. Pierson
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):

Michael Stokvis
1200 Light Street, Apt A
Baltimore, MD 21230

Benjamin Ryan
25 Pine Street
Haworth, New Jersey 07641

John Bonadeo and Betty McDonald
6651 Byrns Place
McLean, VA 22101

I hereby certify that on 3-31, 2009, this document was caused to be served upon the above-named parties and upon DOES at the addresses listed and by the means stated.

Clerk / Deputy Clerk

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
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