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DISTRICT OF COLUMBIA
OFFICE OF
ADMINISTRATIVE HEARINGS

2009 JUN 30 A 8:22

TANJI GILLIAM,
Tenant/Petitioner,

v.

LATOYA CHATMON,
Housing Provider/Respondent.

Case No.: RH-TP-08-29353

In re: 71 Florida Ave., NW

FINAL ORDER

I. Introduction

At an evidentiary hearing on September 11, 2009, Tenant/Petitioner Tanji Gilliam presented evidence in support of her claims that the building in which her rental unit was located was not properly registered, and that services and facilities in her rental unit had been substantially reduced and others permanently eliminated. She filed the tenant petition at issue on July 7, 2008, against Latoya Chatmon, Housing Provider/Respondent. Ms. Gilliam represented herself at the hearing. J. Michael Springman represented Ms. Chatmon. Ms. Gilliam and Ms. Chatmon both testified. Based on the record as whole, I conclude that that the Property was not properly registered. And I conclude that Tenant's lack of credibility undermined all other claims, which are denied, and justify an attorney fee award to Housing Provider.

II. Findings of Fact

1. Tenant/Petitioner rented the top two levels of a house at 71 Florida Avenue, NW (the Property) from Housing Provider on December 1, 2006. The written lease, signed by Tenant, her husband Jaron Randall, and Housing Provider, specified a monthly rent of \$1,550 for a twelve month term until November 30, 2007. Petitioner's Exhibit (PX) 103. Tenant lived at the Property with her husband and children until early November 2007. The lower level of the Property was an office for Housing Provider, which she or one on her behalf visited weekly.
2. Housing Provider had not registered the Property and did not have a business license when she rented the property, but filed a registration form, Respondent's Exhibit (RX) 215, and applied for a license, RX 212, when she learned they were required.
3. The Property had two mailboxes: one for Housing Provider (Chatmon), downstairs; and the other for Tenant (Gilliam), upstairs.
4. The drain in the kitchen sink at the Property was plugged in May 2007. Tenant immediately contacted Housing Provider who sent a worker to repair the problem. The worker found a leak in the dishwasher where there was food in the drain line. RX 203.
5. In June, 2007, Tenant told Housing Provider that the kitchen sink drain was not working and that garbage disposal was not working after she had a party. Housing Provider agreed to fix the drain, but not the garbage disposal, believing that the problem was due to tenant action. On June 27, 2007, a worker for Housing Provider went to the

Property to fix the kitchen drain. RX 204. Tenant said no more about the garbage disposal to Housing Provider.

6. Tenant did not pay rent in June 2007.

7. In August 2007, Tenant paid her July rent, part by money order and part by check. The check bounced.

8. In August 2007, the water bill for the Property increased. Housing Provider paid the bill. She did not receive any WASA water bills after August.

9. On September 27, 2007, Housing Provider sent Tenant a notice that Tenant owed \$2,100 in rent and late charges. RX 206.

10. On October 11, 2007, a DCRA Housing Inspector issued a Notice of Violation to Housing Provider for a defective cooking facility and obstructed kitchen drain. PX 102. Housing Provider repaired the problems the next day. An abatement notice for those violations was issued on November 20, 2007. RX 211.

11. On October 25, 2007, DC WASA sent Housing Provider at the Property address a notice of a past due account that would result in the disconnection of water service to the Property by November 8, 2007, if payment was not made, PX 104. A week earlier, WASA had sent a "friendly reminder notice." PX 105.

12. WASA notices were addressed to Latoya Chatmon at the Property. Yet, Housing Provider Chatmon did not receive those notices. At the hearing, Tenant produced the

original WASA notices, strong evidence that Tenant took them from the mailbox addressed to Housing Provider.

13. On October 26, 2007, Housing Provider's hired worker replaced a nut at the heat element and fixed screws at the side brackets of the dishwasher at the Property. RX 214.

14. Tenant paid a fraction of the rent due in August, 2007 and no rent in October and November 2007.

15. On November 13, 2007, Housing Provider sent Tenant a Notice to Quit or Vacate for non payment of rent. RX 208.

16. In November 2007, before the expiration of the lease, Tenant and her family moved. Tenant did not tell Housing Provider that the water had been turned off. Tenant did not tell Housing Provider that she was moving or how she could be reached for the rent due.

17. In the first week of December 2007, Housing Provider learned there was no water at the Property.

18. WASA records show that water usage at the Property was 4.6 to 13.7 CCF [hundred cubic feet] from January 2007 to July 2007. In August usage was up to 65.6 CCF; in September 93.8 and in October 107.5 CCF. RX 209.

19. In June 2008, Housing Provider filed a claim in the Small Claims Branch of Superior Court against Latoya Chatmon and Jaron Randall for failure to pay rent and

causing excessive water bills to be incurred. RX 200. The parties were ordered to appear in court on June 8, 2008, one day after the tenant petition in this matter was filed.

III. Discussion

Uncorroborated assertions, inconsistencies, and dishonesty undermine Tenant's credibility in this case. In an October 2007 letter to Housing Provider, PX 107, Tenant represented that she had carbon copies of the missing cashier's check, yet never produced those copies. Instead she produced an unauthenticated email from an unknown person at yesbank.com, PX 107, and an undated letter from Commerce Bank "To Whom It May Concern" stating that an affidavit must be produced for a check to be reissued. PX 108. Nothing in those documents proves that this Tenant ever obtained a cashier's check to pay rent. Tenant alleged that Housing Provider stopped paying for water after Housing Provider had agreed to make those payments, forcing her to move out when the water was cut off. Yet Housing Provider had paid all water bills before September 2007, without incident, even though bills were mailed to her at the Property address. Mysteriously, at the point when water use increased astronomically, Housing Provider did not receive the bills. Tenant had access to both mailboxes at the Property. She could not explain convincingly how she came in possession of the original WASA notices, mailed to Housing Provider at the Property address.

Tenant moved from the Property without telling Housing Provider that the water would be or was shut off and without providing a forwarding address, even though she owed rent for several months. The day before she was to appear in Superior Court to defend a small claims action, Tenant filed the instant tenant petition. On this record, I

cannot accept as true contested statements from Tenant without objective corroborative evidence.

IV. Conclusions of Law

Tenant alleges that the building in which her rental unit was located 1) was not properly registered, 2) that services and facilities in her rental unit had been substantially reduced; and 3) services had been permanently eliminated. Housing Provider seeks attorney fees in defending this claim.

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 (DCAPA), 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.

A. License and registration

All housing providers must have a business license and proper registration. D.C. Official Code §§ 42-3502.05(f), § 47-2828; 14 DCMR 200.3. The registration requirements are found in the regulations at 14 DCMR 4101 and 4102. Although Housing Provider ultimately obtained a residential housing business license, she did not have a license when she rented the room to Tenant. Nor had she registered the Property before renting it, although she has applied for registration. Thus, Tenant has proven that Housing Provider violated the Act by not obtaining a license and registering when she rented the Property.

B. Reduction and Permanent Elimination of Services and Facilities

Tenant alleges that a persistent problem with the dish washer and garbage disposal were reductions in services and facilities and that termination of water supply was an elimination of a related service.

The Rental Housing Act provides that if “related services or related facilities supplied by a housing provider for a housing accommodation or for any rental unit in the housing accommodation are substantially increased or decreased, the Rent Administrator [now the Administrative Law] may increase or decrease the rent charged, as applicable, to reflect proportionally the value of the change in services or facilities.” D.C. Official Code § 42-3502.11. As the party seeking relief, Tenant has the burden of proving a reduction in services and facilities by a preponderance of the evidence. D.C. Official Code § 2-509(b); OAH Rule, 2932.1, 1 DCMR 2932.1. The burden includes proof that the housing provider was put on notice of the existence of conditions that constitute a substantial reduction. *Calomiris Inv. Corp. v. Milam*, TP 20,144 and TP 20,160 and 20,248 (RHC Apr. 26, 1989) at 10. As with housing code violations, 14 DCMR 10502(c), after housing providers are notified of a reduction in services and facilities, they must be given a reasonable time to abate a problem. *See Parreco v. D.C. Rental Hous. Comm'n*, 885 A.2d 327, 337 (D.C. 2005).

Tenant alleges that a problems with the dishwasher and garbage disposal persisted from the spring of 2007 until after the housing inspector’s report in October of that year. However, the dishwasher and other repairs were made on May 21, 2007. RX 207.

Housing Provider understood that Tenant would repair the garbage disposal and heard nothing to the contrary until October 2007. In October, the housing inspector identified two problems:” defective cooking facility” and obstructed drain. Tenant testified that by “cooking facility” the inspector meant dishwasher, an illogical, uncorroborated assertion. Tenant asserted that the garbage disposal was nonfunctioning from the spring until October 2007, a statement not supported by the inspector’s report. In the spring of 2007, Tenant gave Housing Provider the requisite notice of an obstructed a drain, a problem that was resolved. RX 204. Not until the October 11, 2007, Notice of Violation did Housing Provider learn that there was a recurring problem with the drain and new problem with the cooking facility. Both of those problems were abated the next day, with an abatement inspection performed on November 20, 2007. RX 211.

Housing Provider did not know that water had been discontinued at the Property until after Tenant moved out. The record convinces me that Tenant took the WASA notices sent before water was discontinued. She then moved from the Property after not paying rent for several months, later offering the reason that she moved because the water had been turned off, yet never told Housing Provider she was moving. Housing Provider cannot be expected to remedy a problem about which she knows nothing.

Tenant failed to present any credible evidence that services and facilities in the rental unit were either substantially reduced or eliminated. Accordingly, I conclude that Tenant failed to prove these claims.

C. Penalty

The Act does not impose a specific penalty for a housing provider's failure register properly, except in cases involving an improper 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, there is nothing to suggest that Housing Provider's failure to obtain a business license and register properly was willful. On the contrary, Housing Provider applied for the necessary documents when she learned she needed them. No fine, therefore, is imposed.

D. Housing Provider's Claim for Attorney Fees

Characterizing the claim she defended as frivolous, unreasonable and without foundation, Housing Provider seeks attorney fees. The Act provides that reasonable attorney fees may be awarded a prevailing party. D.C. Official Code § 42-3509.02. Although housing providers do not benefit from a presumption of fees, as is the case for a prevailing tenant under 14 DCMR 3825.2, "attorney's fees may be assessed in favor of a prevailing housing provider when the litigation of tenants is 'frivolous, unreasonable, or

without foundation, even though not brought in subjective bad faith.”” *Tenants of 500 23rd Street N.W. v. D.C. Rental Housing Comm’n*, 617 A.2d 486, 489 (D.C.1992). A request for fees may be premised on individual claims if they were frivolous, unreasonable or without foundation. *Id.* at 491. Tenant’s claim against Housing Provider for the water shut off was just such a claim. Had the claim been genuine, Tenant would have notified Housing Provider or a housing inspector as she had done for problems in her rental unit in the past. Instead, she took mail intended for housing provider, and moved from the Property without notice. After Housing Provider sued for back rent, Tenant filed this petition accusing Housing Provider of not paying water bills and forcing her to leave. Such a claim is unreasonable, justifying an award of fees.

A prerequisite to an award is an affidavit itemizing the attorney’s time for legal services and other pertinent information. 14 DCMR 3825.7. Housing Provider submitted an affidavit claiming 3.25 hours total on this claim. An attorney fee calculation shall be calculated in accordance with the existing case law and specific regulatory standards, with lodestar as the starting point. 14 DCMR 3825.8. Lodestar means “the number of hours reasonably expended on a task multiplied by a reasonable hourly rate.” 14 DCMR 3825.8(a). The lodestar amount may be increased or decreased based on thirteen factors, none of which justify an increase or decrease in this case. The fee requested, \$225 per hour, is considerably less than the Laffey Matrix¹ that would permit an hourly fee of \$494 for an attorney with eight to ten years of experience. Therefore, I grant the request for a reasonable attorney fee award of \$225 per hour for

¹ www.laffeymatrix.com

3.25 hours for a total of \$731.25. Housing Provider also seeks an award of costs totaling \$100.10, but such an award is not authorized by statute. D.C. Official Code § 42-3509.02.

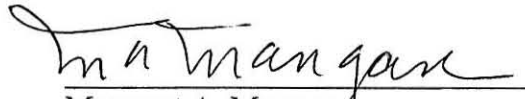
IV. Order

Therefore, it is this 29th day of June 2009:

ORDERED, that Tenant's claims for relief are **DENIED**; and it is further

ORDERED, that Tenant must pay Housing Provider **seven hundred thirty-one dollars and 25 cents** (\$731.25) in attorney fees defending an unreasonable claim; and it is further

ORDERED, that the reconsideration and appeal rights of any party aggrieved by this Order are stated below.


Margaret A. Mangan
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

Appendix

Petitioner's Exhibits (PX)

- 100 Certificate from DCRA re: Business License
- 101 Certificate from DHCD re: Current Registration
- 102 Notice of Housing Code Violation, October 11, 2007
- 103 Residential Lease Agreement
- 104 DC WASA Disconnection Notice , 10/25/07
- 105 DC WASA Friendly Reminder Notice , 10/17/07
- 106 Property Detail for 71 Florida Avenue, NW
- 107 Email of October 2007
- 108 Letter (not admitted)

Respondent's Exhibits (RX)

- 200 Small Claims and Conciliation Branch Statement of Claim
- 201 Blank Residential Lease Agreement (not admitted)
- 202 Notice of Lease Non-Renewal 9/27/07
- 203 Service Order/Invoice from M&M Appliance 6/27/07
- 204 Invoice from John Flood of DC, Inc. 6/27/07
- 205 Move-Out Reminder
- 206 Notice of Charges Due 9/27/07
- 207 Email from Latoya Chatmon demanding payment
- 208 Notice to Pay Rent or Quit
- 209 WAS Monthly usage
- 210 Fax from Law Office of J. Michael Springman, PLLC 5/6/08
 - A. Falling Investigative Services, Inc. Invoice (not admitted)
- 211 Notice of Abatement 7/3/08
- 212 Business and Professional License 8/28/08
- 213 Invoice from John C. Flood of DC, Inc.
- 214 Service Order/Invoice from M&M Appliance 10/26/07
- 215 RAD Registration and Claim of Exemption Form
 - A. RAD payment receipt
- 216 Washington City Paper Article 7/3/07 (not admitted)
- 217 Property Detail

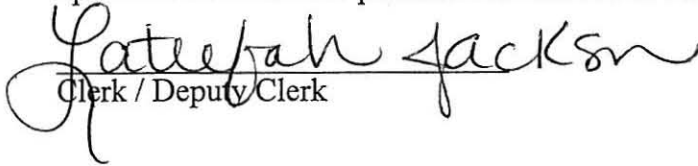
Certificate of Service:

By Priority Mail with Delivery Confirmation (Postage Paid):

Tanji Gilliam
5012 Eastern Ave., NE
Washington, DC 20017

J Michael Spingman, Esquire
Law Offices of J. Michael Springman, PLLC
4619 Yuma Street, NW
Washington, DC 20016

I hereby certify that on 6-30, 2009, this document was caused to be served upon the above-named parties at the addresses and by the means stated.


Clerk / Deputy Clerk