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DISTRICT OF COLUMBIA
OFFICE OF
ADMINISTRATIVE HEARINGS

2009 APR -8 A 9:24

ANGELA BARKSDALE,
Tenant/Petitioner,

v.

EDWARD TINSLEY, and
1204 PENN STREET TRUST
Housing Providers/Respondents.

Case No.: RH-TP-08-29366

In re: 1204 Penn Street, NE, Unit 5

FINAL ORDER

I. Introduction

At the hearing on September 25, 2008, Tenant/Petitioner Angela Barksdale presented evidence on claims alleged in the Tenant Petition filed on July 16, 2008, against Housing Provider/Respondent Edward Tinsley for violations of the Rental Housing Act. At the hearing, Petitioner was represented by Megan O'Byrne, Student Attorney, and Joanna Day, Supervising Attorney, D.C. Law Students in Court. Respondent was self-represented. The record closed on November 13, 2008, with written arguments and a Certification from Mr. Tinsley.

II. Findings of Fact

1. Tenant/Petitioner Angela Barksdale has rented Unit 5 at 1204 Penn Street, NE since June 1, 2004, from Respondent Housing Provider Edward Tinsley. Ms. Barksdale

c. A Registration/Claim of Exemption Form, dated December 29, 1997, is signed by Edward Tinsley. On page two of the form is hand written, "Property not exempt." PX 101

6. At the time Mr. Tinsley filed the form claiming the small landlord exemption, PX 103, he owned the property at issue in the matter with four units, and another 4-unit building at 1614 R Street, SE.

7. In 1997 the rent for Petitioner's Unit 5 was \$395. The rent ceiling for the unit at that time was \$458.82. PX 102.

8. Mr. Tinsley believed that as a landlord he could charge any rent he wanted to charge as long as it was under the rent ceiling. He did not understand that certain forms need to be filed before a rent increase was taken.

9. Housing Provider's last filing with the Rental Accommodations Division was on December 29, 1997.

10. Tenant/Petitioner filed her tenant petition on July 16, 2008.

11. On November 13, 2008, Housing Provider filed a Certificate certifying that Tenant's rent would remain at \$450 monthly.

III. Conclusions of Law

Tenant/Petitioner makes the following claims: 1) the 1204 Penn Street Trust should be added as a party; 2) her rent could not have been raised legally above the 1997 level of \$395 because Housing Provider never notified RAD of a rent increase;

3) the rent increase from \$450 to \$495 in December of 2007 was invalid; and 4) Housing Provider acted in bad faith, entitling her to treble damages. Housing Provider argues that the claims are frivolous and seeks an award of sanctions. The claims are considered in turn.

This matter is governed by the Rental Housing Act of 1985, D.C. Official Code §§ 42-3501.01-3509.07 (the 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. “Where a procedural issue coming before this administrative court is not specifically addressed in these Rules, this administrative court may rely upon the District of Columbia Superior Court Rules of Civil Procedure as persuasive authority.” 1 DCMR 2801.2.

A. 1204 Penn Street Trust

Although the Trust was not a named Party when the tenant petition was filed, Mr. Tinsley acknowledged at the hearing that the Trust now owns the Property, making the 1204 Penn Street Trust a Housing Provider under the Act. D.C. Official Code § 42- 3501.03 (15). The acknowledgement of the transfer of ownership and failure to object to amending the petition —at the hearing or in written post hearing arguments — constitutes implied consent to adding the Trust as a party. *See* D.C. Super. Ct. Civ. R. 15(b). Therefore, Tenant’s motion to amend the tenant petition to add the Trust as a party is granted. Because Mr. Tinsley receives the rent, he too is a Housing Provider under the Act. § 42-3501.03(15).

B. Rent Increase above \$395

Housing Provider charged Tenant \$450 per month when she first rented the apartment on June 1, 2004. Tenant now seeks a rent refund of the difference between \$450 and \$395 (\$55) for each month of her tenancy because Housing Provider had not filed the proper forms to perfect a rent ceiling increase from what it had been in 1997. Housing Provider counters that the challenge is too late. Because the tenant petition was filed on July 16, 2008, Housing Provider argues that a challenge to the initial rent is barred by the three year statute of limitation. D.C. Official Code § 42-3502.06(e). Case law supports Housing Provider's position. Although the Rental Housing Commission (RHC) held that a tenant may challenge the date of *perfection* of a rent ceiling increase, if that date was more than three years before the filing of a tenant petition, *Grant v. Gelman Mgmt. Co.*, TP-27,995 (RHC Feb. 24, 2006) at 26-27, a challenge to the *implementation* of a rent increase is limited to the three years before a petition was filed. *Id.*; *see also Kennedy v. D.C. Rental Hous. Comm'n*, 709 A.2d 94, 97 (D.C. 1998). In this case the rent increase challenged is Tenant's initial rent. Since that was demanded (June 1, 2004) more than three years before the tenant petition was filed (July 16, 2008), it is barred by the statute of limitations. Therefore, the rent of \$450 may not be challenged.

C. December 2007 Rent Increase

Tenant contends that the rent increase from \$450 to \$495, a 10% increase, in December of 2007 was invalid. I agree for two reasons. First, Housing Provider failed to comply with applicable regulations.

A housing provider shall implement a rent adjustment by taking the following actions, and no rent adjustment shall be deemed properly implemented unless the following actions were taken:

(a) The housing provider shall provide the tenant of the rental unit, not less than thirty (30) days written notice pursuant to §904 of the Act, the following:

(1) *The amount of the rent adjustment;*

(2) The amount of the adjusted rent;

(3) The date upon which the adjusted rent shall become due; and

(4) *The date and authorization for the rent ceiling adjustment taken and perfected pursuant to 4202.9;*

(b) *The housing provider shall certify to the tenant, with the notice of rent adjustment, that the rental unit and the common elements of the housing accommodations are in substantial compliance with the housing regulations or if not in substantial compliance, that any noncompliance is the result of tenant neglect or misconduct;*

(c) *The housing provider shall advise the tenant, with the notice of rent adjustment by petition filed with the Rent Administrator; and*

(d) *The housing provider shall simultaneously file with the Rent Administrator a sample copy of the notice of rent adjustment along with an affidavit containing the names, unit numbers, date and type of service provided, certifying that the notice was served on all affected tenants in the housing accommodation.*

14 DCMR 4205 (emphases added).

The notice of rent increase in this case included only the effective date of the increase and the total amount due. PX 107. All other regulatory requirements were missing. Second, the increase allowable under the CPI-W in 2007 was 3.5%, less than half of what Housing Provider demanded. 54 D.C. Reg. 2737 (Mar. 23, 2007) (eff. May 1, 2007).

Housing Provider argues that Tenant is not entitled to a refund because she never paid the increase and has not been harmed. However, whether a rent increase demanded was ever paid is irrelevant. “Rent means the entire amount of money, money’s worth, benefit, bonus, or gratuity demanded, received, or charged by a housing provider as a condition of occupancy or use of a rental unit, its related services, and its related facilities.” D.C. Official Code § 42-3501.03 (28) (emphasis added). When a tenant is entitled to a refund based on an invalid rent increase, the increase need not have been paid if it was demanded or charged. *Kapusta v. D.C. Rental Hous. Comm’n*, 704 A.2d 286, 287 (D.C. 1997). Therefore, Tenant is entitled to a refund of \$45 for each month from December 2007 to the date of the hearing, plus interest to the date of the decision. Mr. Tinsley’s November 2008 Certification that rent would not be increased above \$450, does not effect this determination because the award goes only to the date of the hearing.

The Rental Housing Commission Rules implementing the Rental Housing Act provide for the award of interest on rent refunds at the interest rate used by the Superior Court of the District of Columbia from the date of the violation to the date of issuance of the decision. 14 DCMR 3826.1 – 3826.3; *Marshall v. D.C. Rental Hous. Comm’n*, 533 A.2d 1271, 1278 (D.C. 1987).

The table below computes the amount of Tenant's rent refund including interest at the 3% per annum rate in effect on April 1, 2009¹.

	Rent charged	Adjusted rent	Amt overcharge	Months held	Monthly interest	Interest due		
Dec-07	\$495	\$450	\$45	16.2	0.0025	1.82		
Jan-08	\$495	\$450	\$45	15.2	0.0025	1.71		
Feb-08	\$495	\$450	\$45	14.2	0.0025	1.59		
Mar-08	\$495	\$450	\$45	13.2	0.0025	1.48		
Apr-08	\$495	\$450	\$45	12.2	0.0025	1.37		
May-08	\$495	\$450	\$45	11.2	0.0025	1.26		
Jun-08	\$495	\$450	\$45	10.2	0.0025	1.14		
Jul-08	\$495	\$450	\$45	9.2	0.0025	1.04		
Aug-08	\$495	\$450	\$45	8.2	0.0025	0.92		
Sep-08	\$495	\$450	\$45	7.2	0.0025	0.81		
Total			\$450			13.14	\$463.14	

D. Allegation of Bad Faith

Ms. Bardsdale seeks a finding of bad faith and award of treble damages against Mr. Tinsley. D.C. Official Code § 42-3509.01(a). When a housing provider intends to deceive or defraud when imposing an illegal increase, bad faith may be found. See *Bernstein Mgmt. Corp. v. D.C. Rental Hous. Comm'n*, 952 A.2d 190, 198 (D.C. 2008). Tenant accurately describes Housing Provider as a sophisticated self-represented party, who has owned property in the District of Columbia at least since 1984. He filed a form with the Rent Administrator claiming a small landlord exemption when he owned eight rental units in 1986. In 2004, he failed to file an Amendment to the Registration form to reflect change in ownership as required by 14 DCMR 4103.1(c).

¹ http://www.dccourts.gov/dccourts/superior/civil/civil_actions.jsp

On the other hand, Mr. Tinsley did not raise Ms. Bardsdale's rent for three years, from 2004 to 2007. If he was aware of his right to charge an increase in rent annually to reflect the cost of living, he did not act on that knowledge. D.C. Official Code § 42-3502.06(b). He believed that he could charge any rent as long as it was below the rent ceiling, giving no indication that he knew of concomitant tenant notification and filing requirements as specified in 14 DCMR 4205. Mr. Tinsdale was under the mistaken impression that a tenant is entitled to an award only if the tenant paid the rent demanded, event though the statutory definition of rent includes a demand or charge, D.C. Official Code § 42-3501.03(24), and the D.C. Court of Appeals held that a tenant need not have paid the unlawfully demanded rent to receive a refund. *Kapusta*, 704 A.2d 286. This record of misunderstandings prevents me from finding intent to deceive or defraud necessary for a finding of bad faith.

E. Claim for Sanctions Against Tenant/Petitioner

Finally is Mr. Tinsdale's claim against Ms. Bardsdale for filing what he considered to be a frivolous claim. Mr. Tinsdale provides no legal basis for the relief sought for time and effort expended defending this action. Even if such authority existed, however, the relief awarded in this case belies his suggestion that the claim was frivolous.

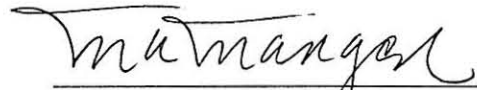
IV. Order

Therefore, it is this 8th day of April, 2009:

ORDERED, that Housing Provider pay Tenant \$463.14 (**four hundred sixty-three dollars and fourteen cents**) in rent refunds and interest; and it is further

ORDERED, that all other claims are **DISMISSED** with prejudice; and it is further

ORDERED, that the appeal rights of any party aggrieved by this Final Order are set out 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

Certificate of Service:

By Priority Mail with Delivery Confirmation (Postage Paid):

Megan O'Byrne, Student Attorney
Joanna Day, Esquire
DC Law Students in Court
616 H Street, NW, Suite 500
Washington, DC 20001
FAX: 202-638-0304


Edward Tinsley
7400 Buchanan Street #2519
Landover Hill, MD 20784

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 4-8, 2009, this document was caused to be served upon the above-named parties at the addresses and by the means stated.


Clerk / Deputy Clerk