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DISTRICT OF COLUMBIA
OFFICE OF ADMINISTRATIVE HEARINGS
941 North Capitol Street, NE, Suite 9100
Washington, DC 20002
TEL: (202) 442-8167
FAX: (202) 442-9451

RONALD GARDNER,
Tenant/Petitioner,

v.

JONATHAN WOODNER COMPANY/THE WOODNER APARTMENTS
and
JOE MILBY,
Housing Providers/Respondents.

Case No.: RH-TP-08-29456

In re: 3636 16th Street, NW, Unit B540

FINAL ORDER

I. Introduction

On October 10, 2008, Tenant/Petitioner Ronald Gardner ("Tenant") filed Tenant Petition 29,456 against Housing Providers/Respondents, Jonathan Woodner Company and Joe Milby ("Housing Providers"). The petition alleges: (1) Housing Provider failed to properly register the property with the Rental Accommodations Division ("RAD") of the Department of Housing and Community Development ("DHCD"); (2) Housing Provider did not file the proper rent increase forms with the RAD; (3) Housing Provider increased Tenant's rent when his apartment was not in substantial compliance with the housing regulations; (4) Tenant's rent exceeded the legally calculated rent ceiling for the unit; (5) the rent ceiling filed with the RAD was improper; and (6) services and facilities were substantially reduced and not provided in accordance with a voluntary agreement.

II. Procedural History

A hearing was held in this matter on February 24, 2009. Tenant appeared at the hearing and testified on his own behalf. Housing Provider was represented by Phillip Felts, Esquire. Livia Hall, Accounting Manager, and Brian Francois, maintenance supervisor, also attended the hearing on behalf of Housing Provider. During the hearing I admitted into evidence Tenant/Petitioner's Exhibits (PX) 100, 101, and 105-109.

Prior to the hearing Tenant stated that on December 30, 2008, he had made a request to DCRA under the Freedom of Information Act ("FOIA"), for documents relating to the entire building but he had not yet received the documents requested because they were so voluminous. Tenant was given the option to continue the hearing to another date so that he may obtain the documents, but chose to proceed to an evidentiary hearing.

At the close of Tenant's case in chief, Housing Provider moved for a directed verdict, which I granted for the reasons stated below.

III. Findings of Fact

Ronald Gardner has resided in apartment B540 at 3636 16th Street, NW ("The Woodner Apartments," since August 1998. The building is owned by Rock Creek Plaza LTD Partnership, which does business under the trade name, "The Woodner Apartments." On November 25, 2003, Housing Provider registered the trade name "The Woodner Apartments" with DCRA and was issued a certificate of registration pursuant to the Omnibus Regulatory Reform Act of 1998. PX 105.

The DCRA records further show an Apartment Basic Business License issued for "3636 16TH ST NW," "T/N [trade name] THE WOODNER APARTMENTS," and Applicant's name: "ROCK CREEK PLAZA LTD PARTNERSHIP." PX 107. The license period was "11//01/2003 – 10/31/2005." *Id.*

On December 31, 2008, DCRA certified that a "Basic Business License" has not been issued "for the premise 3636 16th Street, N.W., Washington, DC 20010 for the period January 1, 1998 to present." PX 109.

The certified records of the RAD reflect that on May 31, 2005, Housing Provider filed a "Certificate of Election of Adjustment of General Applicability" increasing the rent charged and ceiling for certain apartments, including Tenant's apartment. PX 101. The rent ceiling increase derived from the 2005 CPI-W[1] increase of 2.7%. *Id.* The certificate of election was accompanied by a list of affected units, an affidavit of service of notice of rent adjustment, and a sample notice of increase in rent charged. *Id.* The certificate of election reflects that Tenant's rent was increased from $633 to $650, effective June 1, 2005. *Id.* Tenant's rent was also increased in 2006 and 2007 but Tenant does not know by how much and he did not know the amount of his current rent.

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[1] The Rental Housing Act allows housing providers to increase the rent charged once a year based on the Washington, D.C. Standard Metropolitan Statistical Area Consumer Price Index for Urban Wage Earners and Clerical Workers ("CPI-W"). This is also referred to in the Act as an annual adjustment of general applicability. D.C. Official Code § 42-3502.02(a)(3). The adjustment of general applicability allows housing providers the option to increase rents annually in order to keep up with inflation. *See Sawyer Prop. Mgmt. Inc. v. D.C. Rental Hous. Comm'n, 877 A.2d 96, 104 (D.C. 2005).* It is the Rental Housing Commission's ("RHC") duty to determine the amount of the adjustment of general applicability annually and publish it by March 1 of each year. *See id;* D.C. Official Code § 42-3502.02(a)(3);

Tenant did not have any problems within his apartment, but was dissatisfied with the conditions of the common areas of the building which he described as being in "disarray" and recurrent problems with the elevators, which he referred to as "terrible."

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. Housing Provider's Motion For a Directed Verdict or Judgment As A Matter of Law

At the conclusion of Tenant's case in chief, Housing Provider moved for dismissal of the case, which I have construed as a motion for a directed verdict. The rules of this administrative court do not specifically address such relief. The rules provide that where a procedural issue is not specifically addressed in the OAH Rules of Procedure, this administrative court may apply the District of Columbia Superior Court Rules of Procedure by analogy. OAH Rule 2801.2. Housing Provider's motion is akin to a "motion for judgment at the close of plaintiff's case" in a non-jury civil trial. *See, e.g.,* D.C. Superior Court Civil Rule 50(a); *Bauman v. Sragow,* 308 A.2d 243 (D.C. 1973).

The standard for a motion for directed verdict is well-settled in this jurisdiction:

> A trial court may grant judgment as a matter of law only where a party has been fully heard on an issue and there is no legally sufficient basis for a reasonable jury to find for that party on that issue.

Schecter v. Merchants Home Delivery, Inc., 892 A.2d 415, 422 (2005). A judgment as a matter of law is appropriate only where, viewing the evidence in the light most favorable to the non-moving party, "the probative facts are undisputed and where reasonable minds can draw but one inference from them." *Hechninger Co. v. Johnson,* 761 A.2d 15, 24 (D.C. 2000). Applying that standard, it is "only when the evidence is so clear that reasonable men could reach but one conclusion" that the motion should be granted. *Id.*

In this case, not only did Tenant fail to meet his burden of proof on any of the allegations, Mr. Robinson did not put forth any evidence to which Housing Provider could reasonably be expected to respond. Requiring Housing Provider to put on evidence refuting allegations that failed to contain even the most basic of facts would be futile and a waste of both judicial and housing provider's resources. Therefore, Housing Provider's motion for a directed verdict is granted. Each of Tenant's allegations is dismissed and addressed in turn below.

C. Tenant's Allegation that the Property Was not Properly Registered with the RAD.

Mr. Gardner did not understand what it meant for a property to be properly registered. In addressing this issue, Mr. Gardner referred to Exhibits regarding rent increases. The Rental Housing Act requires that all rental properties in the District of Columbia, except those properties excluded from the Act, must be registered. D.C. Official Code § 42-3502.05(e). Housing Providers are required to file a "Registration/Claim of Exemption" form with the RAD. All housing providers must have a business license and a certificate of occupancy. D.C. Official Code § 42-3502.05(f)(1). For multi-unit apartment buildings, a housing provider is requires to

maintain an Apartment Basis Business License issued by DCRA. D.C. Official Code § 47-2828. 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. D.C. Official Code § 42-3502.08; *Temple v. D.C. Rental Housing Comm'n,* 536 A.2d 1024, 1029 (D.C.1987).

Mr. Gardner submitted certifications from DCRA stating that "a search of the official licensing records in the Business License Division for *Jose Milby* revealed that: A Basic Business has not been issued for the premise 3636 16th Street, N.W., Washington, DC 20010 for the period January 1, 1998 to present." PX 108 (emphasis added). The certification is problematic for several reasons. The petition in this matter names *"Joe Milby"* as a Housing Provider, but the certification refers to *"Jose Milby."* Mr. Gardner identified "Joe Milby" as the resident manager. Housing Provider indicated that Mr. Milby is not the resident manager, but holds a higher position in company. Moreover, the certification states that a basic business license had not been issued for 3636 16th St., NW from January 1, 1998, to present, but to the contrary, Tenant also submitted a copy of an Apartment Basic Business License for "3636 16th St., NW" issued on November 1, 2003, and expiring on October 31, 2005. PX 107. Therefore, Housing Provider had an appropriate business license at least between November 1, 2003, and October 31, 2005. Tenant did not present any evidence to establish that Housing Provider failed to obtain a new business license after October 31, 2005.

Tenant also submitted a certification from DCRA that "The search of the official licensing records in the Business License Division for *Johnathan* Woodner revealed that: A Basic Business License has not been issued for the premise 3636 16th Street, N.W., Washington,

DC 20010 for the period January 1, 1998 to present." PX 109. The certification regarding "Johnathan Woodner" is also not helpful. Johnathan Woodner is the name of the building and not the name of a person who owns or manages the building. In addition, the correct spelling is *Jonathan* and not *Johnathan* as reflected on the certification. What Mr. Gardener did not and should have obtained, were certifications regarding licenses issued (or not issued) to "The Woodner Apartments" and "Rock Creek Plaza Ltd Partnership." Mr. Gardner submitted the certificate of registration reflecting that "Rock Creek Plaza Ltd Partnership" conducted business under the trade name "The Woodner Apartments." PX 105.

Although Housing Providers are required to obtain the appropriate business license as part of the RAD registration, it is not the sole registration requirement. The registration requirements are found at D.C. Official Code § 42-3502.05(f) and 14 DCMR 4100. The Act requires a registration form to be filed that contains, among other things, dates and numbers of the housing business licenses and certificates of occupancy. Mr. Gardner did not obtain a certification of records from the RAD which would have established whether the property was properly registered. Mr. Gardner was instructed at the hearing that he could call Housing Provider as a witness on the issue of whether the property was properly registered and Mr. Gardner declined to do so.

Moreover, Mr. Gardener testified that when he stated that the property was not properly registered, he was referring to Housing Provider's failure to file the proper rent increase forms, which is a different allegation. Even if Mr. Gardner had shown that the property was not properly registered, the remedy would have been fine and a refund and/or roll back of rent increases taken while the property was not properly registered. *See* D.C. Official Code § 42-3509.01(d) (the penalty for failing to properly register14 DCMR 4109.9 (a housing provider who

fails to satisfy the registration requirements of the Act shall not be eligible for and shall not take or implement any upward adjustment in rent ceiling or any increase in rent charged). Mr. Gardner failed to present any evidence of his current rent level or the amounts of any rent increases after June 1, 2005, on which this administrative court could rely to calculate any rent overcharges. Therefore, Mr. Gardner did not meet his burden of showing that the property was not properly registered with the RAD.

D. Tenant's Allegation that Housing Provider Failed to File the Proper Rent Increase Forms.

Tenant testified that his rent was increased in July 2006 and July 2007. Mr. Gardner did not know the exact amount of the rent increases in question. If this administrative court found that an improper rent increase had been made, there was no evidence of the amount of the increases and therefore no information on which to calculate a rent refund.

Mr. Gardner testified that Housing Provider did not file any rent increase forms for the 2006 or 2007 rent increases. However, Mr. Gardner did not obtain a certification of records from the RAD indicating that no rent increase forms were filed. Mr. Gardner testified that exhibits 100 and 101[2] supported his position that no rent increase forms had been filed for 2006 or 2007.

Exhibit 101 is a certificate of election of adjustment of general applicability filed with the RAD on May 31, 2005, for a rent increase effective July 1, 2007. The certificate of election contains a list of apartments affected by the rent increase, including Tenant's apartment, an affidavit of service of notice of rent adjustment, and a sample notice of increase in rent charged.

[2] Exhibit 101, a four page exhibit, was initially marked for identification as four exhibits, 101, 102, 103, 104. However, during the hearing, it was changed to a single exhibit, 101.

Exhibit 100 is a certification of records from the RAD certifying that Exhibit 101 is a true and accurate copy of the official record filed with the RAD. Mr. Gardner erroneously asserts that Exhibit 100 certifies that Housing Provider did not file any rent increase forms after May 31, 2005. Exhibit 100 only certified that Mr. Gardner was given a true copy of a document from the RAD file.

Tenant presented no evidence to prove that Housing Provider failed to make the proper filings. Tenant could have introduced a certificate from the Rent Administrator that the filings were absent, or testimony from someone who had searched the Rent Administrator's files. Alternatively, Tenant could have subpoenaed the documents from Housing Provider and sought an adverse inference if Housing Provider did not produce them. As it stands, there is no evidence in the record from which it can be inferred that Housing Provider failed to make appropriate filings with the RAD to document rent increases after 2005.

As the proponent who alleged that Housing Provider failed to file the proper forms with the RAD, Tenant has the burden of proof. OAH Rule 2932.1, 1 DCMR 2932.1 ("the proponent of an order shall have the burden of establishing each fact essential to the order by a preponderance of the evidence"); DCAPA, D.C. Official Code § 2-509(b) ("in contested cases . . . the proponent of a rule or order shall have the burden of proof"); *Allen v. D.C. Rental Hous. Comm'n*, 538 A.2d 752, 754 (D.C. 1988) (burden of proof "cannot be sustained simply by showing a lack of substantial evidence to support a contrary finding"). Accordingly, Tenant failed to prove that Housing Provider failed to file the correct rent increase forms for rent increases in 2006 and/or 2007.

E. Tenant's Allegation that Housing Provider increased his rent when his apartment was not in substantial compliance with the housing regulations.

Mr. Gardner testified that he did not have any problems in his apartment, but that the conditions of the common areas of the building were a "problem." Mr. Gardner testified that the building was in "disarray," and that the elevators were "terrible." Mr. Gardner stated that because he did not receive the documents requested in his FOIA request, he was unable to present evidence of housing code violations. Mr. Gardner did not provide any specific examples of what was in "disarray" or dates when the elevator was inoperable. Mr. Gardner further suggested that I should speak with a "Ms. Tillman" about the violations. The Case Management Order in this case informed the parties of their right to request a subpoena for the hearing. Mr. Gardner could have requested a subpoena for "Ms. Tillman," if her testimony was needed to prove the allegations in his petition.

As Mr. Robinson testified that there were no problems with his apartment, it follows that his apartment was in substantial compliance with the housing regulations when his rent was increased and Mr. Robinson has failed to meet his burden.

F. Tenant's allegations that his rent exceeded the legally calculated rent ceiling for the unit and that the rent ceiling filed with the RAD was improper.

The only evidence Mr. Robinson presented regarding rent and rent ceiling levels was the May 2005 certificate of election. PX 101. The certificate of election reflects that as of June 1, 2005, the rent ceiling for Tenant's apartment (#540) was $1,055 and the rent charged was $655. *Id.* Therefore, Mr. Robinson's rent did not exceed the rent ceiling.

Mr. Robinson did not present any evidence that the rent ceiling of $1,055 in June 2005 was improperly calculated or that any of his rent increases between 2005 and 2008 exceeded the permissible increase amount. Rent ceilings were abolished as of August 6, 2006, by the Rent

Control Reform and Amendment Act of 2006, which amended the Rental Housing Act of 1985 to provide that permissible rent ceilings would be based on present rent charged for a housing unit rather than the rent ceiling. D.C. Official Code § 42-3502.06 (2006). Mr. Gardner offered no evidence regarding his current rent level, the amount of any rent increases, or any rent levels on file with the RAD after May 2005. As such, Tenant has failed to meet his burden.

G. Tenant's Allegations that Services and Facilities were Substantially Reduced and not Provided in Accordance with a Voluntary Agreement.

Tenant voluntarily withdrew the allegation that services were not provided in accordance with a voluntary agreement.

The Rental Housing Act provides that if it is determined that related services or facilities supplied by a housing provider are substantially decreased, the Administrative Law Judge may decrease the rent to reflect proportionately the value of the change in services. D.C. Official Code § 42-3502.11 (2006). The Rental Housing Commission ("RHC") has held that to prove a claim for reduction in services, the tenant must present competent evidence of the existence, duration, and severity of the reduced services. *Jonathan Woodner Co. v. Enobakhare,* TP 27,730 (RHC Feb. 3, 2005) at 11. Further, the tenant must show that he notified the housing provider that service was required. *Id*

Regarding his allegation that services and facilities had been substantially reduced, Tenant testified that there was mold inside of the air conditioning which posed a health hazard. Mr. Gardner did not specify how he knew there was mold in the air conditioning, what affect, if any, it had on his health, whether he informed Housing Provider or this problem or how long it has existed. The relevant dates and times and length of time services were reduced are essential

elements to a claim of reduction in services and facilities. *See Davis v. Madden,* TP 24,983 (RHC March 28, 2002).

Mr. Gardner further testified that services and facilities were reduced because during 2005 and 2006, the Immigration and Naturalization Services ("INS") were repeatedly in the building. Mr. Gardner did not make any connection between the presence of INS and a reduction in services and/or facilities. Tenant has failed to meet his burden.

V. Order

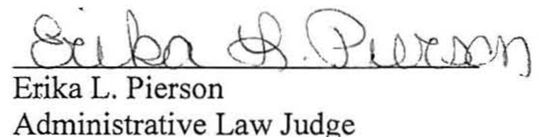
Therefore, it is this **29th** day of **May 2008:**

ORDERED, that Housing Provider's motion for a directed verdict is **GRANTED;** and it is further

ORDERED, that Tenant Petition RH-TP-08-29456 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 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):

Ronald Gardner
3636 16th Street, NW
Unit B540
Washington, DC 20010

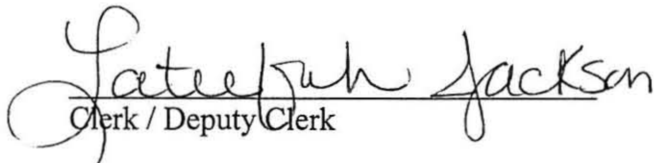
Phillip Felts, Esquire
Schuman & Felts, Chtd.
4808 Mooreland Lane
Bethesda, MD 29814

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 Consumer and Regulatory Affairs
Rental Housing Administration
941 North Capitol Street, NE, Suite 7100
Washington, DC 20002

I hereby certify that on 5-29, 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