

PARRECO v. D.C. RENTAL HOUSING COMMISSION, 885 A.2nd 327 (2005)

Court: D.C. Court of Appeals, opinion by Washington, C.J.

Judicial History: Landlord sought review of decision of the Rental Housing Commission, affirming a determination by an examiner of the Office of Adjudication of the Department of Consumer and Regulatory Affairs that invalidated petitioner's rent increase for failure to give tenant the statutorily-required notice and imposed a fine for unlawful rent increase.

Facts: Tenant filed a petition with the Rental Accommodations and Conversion Division ("RACD") of the Department of Consumer and Regulatory Affairs, alleging that the landlord had imposed a discriminatory and retaliatory rent increase. Tenant's stated reasons for objecting to the rent increase were that it was (1) in retaliation for complaining about the poor condition of the apartment; (2) motivated by racial and ethnic discrimination; and (3) unjustifiable, given the poor condition of the apartment. Tenant did not state that the rent increase was larger than the amount allowed by statute, nor did he claim that he had not received adequate notice of the increase and the reasons for it. After a hearing, the RACD examiner found no factual basis for the tenant's retaliation claim, and held that the RACD Rent Administrator had no jurisdiction to hear his discrimination claim. He also found no evidence that the rent ceiling had been unduly increased. The examiner did find, however, that there had been no heat in the apartment building for two days and concluded that this "reduction was substantial" and that the tenant was entitled to a two-day rebate of rent and imposed a \$1000 fine. The examiner also found that the rent increase was illegal because the notice given to the tenant was defective. The examiner stated that even though the tenant had not claimed that the rent increase was illegal, the landlord was "on notice" from the petition that the validity of the notice of the rent increase was an issue, and it therefore would not be a violation of the landlord's due process rights to reach the issue of the legality of the rent increase. The landlord filed a motion for reconsideration with the Rental Housing Commission ("RHC") challenging the examiner's determination that the rent increase was illegal, as well as the sufficiency of the evidence of willfulness necessary to sustain imposition of a fine for not having abated the rent when the heat was off for two days. The RHC affirmed the examiner on all issues. The landlord then filed a petition for review with the D.C. Court of Appeals.

Holdings: The Court of Appeals held that:

- 1.) tenant's petition that rent was too high did not alert landlord to a challenge to the adequacy of the rent increase notice;
- 2.) landlord did not impliedly consent to litigate unpleaded claim;
- 3.) landlord's motivation for increasing tenant's rent was not impermissible under Rent Stabilization Act; and
- 4.) fact that tenant was without heat did not automatically entitle him to rent abatement.

Reasoning:

- 1.) A petition with the Rental Accommodations and Conversion Division regarding allegedly unlawful rent increases must give a defending party fair notice of the grounds upon which a claim is based, so that the defending party has the opportunity to adequately prepare its defense and thus ensure that the claim is fully and fairly litigated.

2.) The test for implied consent to try an unpleaded issue is whether the evidence that introduces the new issue is recognized by the opposing party as aimed at the unpleaded issue alone; only if that evidence is clearly apposite to the new issue but not to other matters specified in the pleadings can the opposing party be found to have had adequate notice and an opportunity to litigate it.