DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION

TP 11,802

WASHINGTON REALTY COMPANY, Landlord-Appeallant

v.

PAUL ROWE, Tenant-Appellee

On Appeal From a Decision and Order of
The Rent Administrator of the District of Columbia

Decided May 14, 1986

DECISION AND ORDER

Creswell, Commissioner: The landlord has appealed the May 24, 1985, decision and order of the Rent Administrator which awarded the tenant-appellee monetary damages as compensation for a substantial reduction in services under §212 of the Rental Housing Act of 1980, D.C.Code, 1981 Ed. §45-1522. [1/] Finding error, we reverse and dismiss the ten-

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1. §212 of the 1980 Act provides: "If the Rent Administrator determines that the related services . . . supplied by a landlord . . . are substantially . . . decreased , the Rent Administrator may . . . decrease the rent ceiling, as applicable, so as to proportionally reflect the value of the change in services . . . ."

ant petition with prejudice.

I - Background

This case presents a novel claim of what constitutes a compensible reduction in services under the Act. In late 1982, appellee Paul Rowe first moved into the subject rental unit under a lease agreement which provided in part that "[t]he landlord covenants that . . . the tenant shall quietly enjoy the demised premises . . . ." [2/] In April 1984 the landlord rented the apartment directly above Mr. Rowe's to a tenant whom Mr. Rowe characterized in his petition as "heavy in size and weight," "noisy" and "boisterous."

Mr. Rowe complained to his landlord several times about the noise coming from the apartment above his caused, he asserted, by his new neighbor and, on occasion, by his new neighbor and her boyfriend. He first asked his landlord to stop the noise and restore his previous level of quiet. (It is not clear whether Mr. Rowe expected the landlord to evict the neighbor, or modify her weight, her behavior or her boyfriend.) In later correspondence, Mr. Rowe requested the landlord to install sound insulating material on his ceiling, and offered to provide the labor if the landlord would supply the materials. When the landlord refused to make the requested physical alterations in the ceiling (or physical or behavioral alterations to the upstairs tenant) Mr. Rowe filed his petition alleging a substantial reduction in services.

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2. Petitioner's Exhibit 1 -- Lease Agreement, para. 47.

Based on the uncontroverted evidence presented by Mr. Rowe, [3] the Rent Administrator concluded: (1) that the landlord had breached the covenant of quiet enjoyment contained in the lease agreement; and (2) that the failure to provide quiet enjoyment (the breach of lease) was or resulted in "a reduction in services pursuant to Section 212 of the Rental Housing Act of 1980, D.C. Law 3-131, as amended." [4] The landlord appealed citing numerous errors, only one of which we need address: that the ruling that there had been a substantial reduction in services was not supported by the evidence, was legally erroneous, and was arbitrary and capricious.

II - §212 and the Lease Covenant for Quiet Enjoyment

The thrust of §212 of the 1980 Act is clear: to protect tenants from or compensate them for some reductions in services, and to compensate landlords for some increases in services. The scope of the section does not encompass every change in services. Rather, the section is triggered only by a substantial change or, to use the words of the Act, when related services "are substantially increased or decreased."

The application of §212 to the facts before us requires a three-fold inquiry. First, does the situation com-

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3. Neither the landlord nor his attorney attended the hearing or offered any defense to the petition. The landlord argues absence of notice as an error on appeal.

4. This conclusion of law is set forth on page 5 of the Rent Administrator's decision as (inaccurately) the second enumerated finding of fact.

plained of constitute or result in a reduction or decrease in "related services" as that term is defined by the Act. If it does, we must then ask whether the decrease or reduction was substantial. For a landlord's action to be compensible under the Act, both questions must be answered in the affirmative. If these criteria are met, the final inquiry is to the value of the reduction to the tenant.

The definition of related services is set forth in §103 of the Act as follows:

> (27) "Related services" means services provided by a landlord, required by law or by the terms of a rental agreement, to a tenant in connection with the use and occupancy of a rental unit, including repairs, decorating and maintenance, the provision of light, heat, hot and cold water, air conditioning, telephone answering or elevator services, janitorial services, or the removal of trash and refuse.

Here the tenant asked the landlord to take some action to eliminate the noise made by an upstairs neighbor or to insulate him from that noise. Is action to eliminate noise or insulate a tenant from noise made by another tenant a "service . . . required by law or the terms of a rental agreement?" The Rent Administrator found that it was a service required by the rental agreement, citing specifically paragraph 47 of Mr. Rowe's lease in which the landlord promised that the tenant "shall quietly enjoy the demised premises." We disagree.

Our disagreement is founded in our view that "quiet enjoyment" and derivative phrases, when used in leases of real property, are terms of art which carry a meaning some-

what different than a plain language reading would imply. Thus a covenant of quiet enjoyment is not a promise by a landlord to protect or insulate a tenant from noise. Rather, it is a promise that the tenant shall have "legal quiet," i.e., use and occupancy of the demised premises free of unjustified entry on, expulsion from, or actual disturbance of possession by the landlord, someone acting for the landlord or someone with paramount title. 20 Am.Jur.2d, Covenants, Conditions, and Restrictions, §§ 97,98. The term does not focus on noise; its focus is uninterrupted possession. See Weisman v. Middleton, 390 A.2d 996, 1001 (D.C.App. 1978), quoting Hyde v. Brandley, 118 A.2d 398 (D.C.Mun.App. 1955) in which the predecessor appeal court stated:

> [T]he landlord's covenant for quiet enjoyment . . . goes only to . . . possession . . . . The covenant is not broken unless there is an eviction from, or some actual disturbance in, the possession by the landlord . . . .

Id., at 399, 400. Weisman involved a residential apartment lease, and the court held that the landlord's suit for possession (as opposed to an actual or constructive eviction) did not breach the covenant for quiet enjoyment.

An entry or disturbance of possession by a third party not acting for or with superior title to the landlord is not a breach of a covenant for quiet enjoyment. 21 C.J.S. Covenants § 108, p. 963; 3 Thompson on Real Property (1959 Replacement) § 1130, pp. 477-78. This would appear to include entries or disturbances to possession by cotenants, Kehl v. Davmar Corp., 195 A.2d 266 (D.C.App. 1963); and by

other tenants and their guests not acting for the landlord, Dietz v. Miles Holding Corp., 277 A.2d 108 (D.C.App. 1971).

Although Dietz involved a commercial property, it has analogies to the present case. In Deitz, the tenant complained that his landlord breached the covenant for quiet enjoyment by failing to control the actions of another tenant and that tenant's guests who created a security problem. The court held that the landlord could not be liable for a breach of covenant for quiet enjoyment where the actions complained of were committed by others not under the landlord's control. The court gave considerable weight to two factors: (1) that the complaining tenant did not allege or proffer that the landlord had reduced security or protective measures in force at the time he took possession; and (2) that the complaining tenant failed to allege that the disturbing tenant or guests were acting under the landlord's control or with the landlord's knowledge and permission. Id. at 110.

Following Deitz, we think it significant that Mr. Rowe does not argue and never proffered that his upstairs neighbor was under the landlord's control or was acting for him with knowledge and permission. Nor, more importantly, does he show or argue that the landlord decreased the sound insulating material in his ceiling or allowed the ceiling to deteriorate (as Deitz failed to proffer that his landlord had reduced security measures). We think the latter is important in view of the statutory definition of "related services." All of the examples in the statutory definition relate either

to services actually provided by the landlord through human agents (trash removal, secretarial services) or to services provided by working electrical, mechanical or other structural components of the housing accommodation (a working elevator, hot water heater, or air conditioner). Mr. Rowe makes no showing that a service previously provided by a human agent was reduced or eliminated, [5/] or that a physical or structural component servicing his unit was removed or allowed to deteriorate to the point that the "service" it previously provided was eliminated. It does not appear that Mr. Rowe's ceiling deteriorated after he moved in. Instead, after his new neighbor moved in, he wanted more ceiling (in the form of insulation) than he bargained for in his lease. In these circumstances, it does not appear that the landlord's refusal to erect additional sound barriers in the ceiling constitutes a breach of his covenant for quiet enjoyment, or a reduction of any service previously provided as we understand that term's use in the Act.

On the basis of our conclusion from the above analysis, we need not address the other issued raised by appellant. The Rent Administrator erred in concluding from the facts on record in this case that the landlord, as a matter of law, breached the lease covenant for quiet enjoyment; and

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5. It appears that the landlord required the neighbor to install carpeting on her floor to reduce noise as required by the standard lease agreement. To the extent that this was a personal service, it was extended for Mr. Rowe's benefit, if not to his satisfaction.

that this breach constituted a compensible reduction in a service required under the 1980 Act. The decision on review is reversed and the underlying petition is dismissed with prejudice. It is so ordered by the Commission this 14th day of May, 1986.

Belva D. Newsome, Chairperson

Daniel B. Jordan, Commissioner

Isaiah T. Creswell, Jr., Commissioner

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CERTIFICATE OF SERVICE

I hereby certify that a foregoing copy of this document was mailed to the parties above at the addresses given, on this 15th day of May, 1986.

N. Stephenson