DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION

TP 24,841

In re: 1702 West Virginia Avenue, N.E., Unit 2

Ward Five (5)

HERBERT G. LANE
Tenant/Appellant

v.

REGINA DAVIS/J.E.S. ENTERPRISE
Housing Provider/Appellee

DECISION AND ORDER

September 30, 2002

YOUNG, COMMISSIONER. This case is on appeal from the District of Columbia Department of Consumer and Regulatory Affairs (DCRA), Office of Adjudication (OAD), to the Rental Housing Commission (Commission). The applicable provisions of the Rental Housing Act of 1985 (Act), D.C. Law 6-10, D.C. OFFICIAL CODE §§ 42-3501.01-3509.07 (2001), the District of Columbia Administrative Procedure Act (DCAPA), D.C. OFFICIAL CODE §§ 2-501-510 (2001), and the District of Columbia Municipal Regulations, 14 DCMR §§ 3800-4399 (1991) govern the proceedings.

I. PROCEDURAL HISTORY

On November 4, 1999, Herbert G. Lane, the tenant/appellant, filed Tenant Petition (TP) 24,841, with the Rental Accommodations and Conversion Division (RACD). Mr. Lane was the tenant/occupant of unit 2 of the four (4) unit housing accommodation located at 1702 West Virginia Avenue, N.E. In his petition, the tenant alleged that the housing provider of the housing accommodation, Regina Davis/J.E.S.

Enterprise: 1) imposed a rent increase which was larger than the amount of increase allowed by any applicable provision of the Act; 2) failed to give him a proper thirty (30) day notice of rent increase before the rent increase became effective; 3) failed to file the proper rent increase forms with the RACD; 4) took a rent increase while the tenant's unit was not in substantial compliance with the housing regulations; 5) failed to properly register the building in which the tenant's rental unit was located the with RACD; 6) substantially reduced the services and/or facilities provided in connection with the tenant's rental unit; and 7) directed retaliatory action against him for exercising his rights in violation of section 502 of the Act.

On May 18, 2001, an OAD hearing was held with Administrative Law Judge (ALJ) Henry McCoy presiding. The housing provider did not appear for the hearing. However, the tenant was present and the ALJ received evidence. The ALJ issued his decision and order on November 5, 2001. In his decision and order the ALJ made the following findings of fact:

4. The Respondent informed the tenants of the building on October 1, 1999 of a rent increase effective October 1, 1999.

5. The proposed rent raised the Petitioner's rent from $345.00 to $400.00 or an increase of 16%.

6. The approved CPI-W automatic increase for 1999 was 1.0%.

7. The Petitioner did not pay the rent increase.

8. The Respondent did not file any rent increase forms with the Rental Accommodations and Conversion Division (RACD).

9. Based on documents in the official file for 1702 West Virginia Avenue, NE, [sic] official notice is taken that the Petitioner's rent ceiling was $461.00 at all relevant times.

10. On December 12, 1998, the Washington Gas Company found a heavy odor of gas fumes throughout the building, turned of gas equipment, and red tagged it dangerous.

11. The toilet in the Petitioner's apartment did not operate properly from September 1999 to November 1999 when he moved out.

12. On October 21, 1999, the bathroom plumbing facilities in the Petitioner's apartment were cited for violating the housing regulations for not being in good working condition.

13. The Respondent did not register the building with RACD as required.

14. The Respondent raised the Petitioner's rent after he made an oral request for repairs in his apartment.

Lane v. Davis/ J.E.S. Enterprise, TP 24,841 (OAD Nov. 5, 2001) at 3-4. The ALJ concluded as a matter of law:

1. The Respondent's proposed October 1, 1999 rent was larger than the amount of increase allowed by any applicable provision of the Act.

2. The Respondent failed to give a proper 30-day notice of the rent increase in violation of 14 DCMR § 4205.

3. The Respondent failed to file the proper rent increase forms with RACD.

4. The Respondent implemented a rent increase while the unit was not in substantial compliance with the D.C. Housing Regulations in violation of D.C. [OFFICIAL CODE § 42-3502.08 (a)(1)(A) (2001)].

5. The Respondent failed to register the property as required by D.C. [OFFICIAL CODE § 42-3502.05 (2001)].

6. The Respondent has substantially reduced the services and/or facilities provided in connection with the rental unit occupied by the Petitioner but no refund in rent is due.

7. The Respondent retaliated against the Petitioner in violation of D.C. [OFFICIAL CODE § 42-3505.02 (2001)] by raising the rent after the Petitioner contacted the D.C. government officials about problems in his apartment.

Id. at 9-10.

II. ISSUES ON APPEAL

In his timely filed notice of appeal, the tenant raised the following issues:

1. The Respondents have shown a lack of response and respect for these proceedings.

2. The Petitioner alleges that due to the Respondents [sic] actions he was forced to vacate this dwelling under duress. And forcing the petitioner to live in squalor, and the 'indignity of having to remove his own solid waste,' thus exacerbating an already existing serious medical problem, and causing a great financial burden.

3. With respect to Page 8, Par 1 [sic] [of the OAD decision and Order] 'As stated above…' Petitioner responds that the evidence from the documents from the Gas Co. [sic] should show that the beginning of the problem with the heater (and that said heater, and boiler was [sic] in the apartment), this should also show that the Respondent was in violation at the same period of time as the plumbing problem existed. And that the problem was never corrected so there was never a date which could be concluded as an ending until petitioner was forced to vacate. This should be the same time as the plumbing and toilet problem. Petitioner did notify Respondent of the problem as documented in his letter of Feb. 2, 2000[1], [sic] which is an exhibit in this case. It is stated that in the presence of Inspector Latson an attempt was made to notify and that there were other attempts to notify that were attested to at the hearing.

4. Petitioner claims that the Respondents [sic] actions resulted in a forced removal under duress incurring petitioner with relocation and moving costs in excess of $500.00. Petitioner also prays for relief for 'Indignity of manually removing his solid waste' (see page 8, Par. 2). Could this be punitive?

5. As to page 7, Para [sic] 4: Petitioner should not be penalized for mistakes made by the Housing Inspector, and should be given the benefit of the doubt considering the circumstances, since the Respondent has not had the decency to respond.

Notice of Appeal at 2-3.

III. DISCUSSION OF THE CASE

A. Preliminary Issues

[1] The tenant petition was filed on November 4, 1999, therefore, this letter was sent after the petition was filed.

As a preliminary matter the Commission must decide whether it has jurisdiction over the atters raised in issues one (1), two (2), and four (4) of the tenant's notice of appeal.

1. In his first argument on appeal the tenant states: "The Respondents have shown a ack of response and respect for these proceedings." In this issue the tenant has failed to allege n error committed by the ALJ, as required by 14 DCMR 3802.5(b) (1991).[2] However, the Commission notes that the tenant suffered no prejudice as a result of the housing provider's failure to appear. The ALJ's decision[3] reflects that he confirmed that the housing provider was served with the notice of the OAD hearing by priority mail with delivery confirmation on April 24, 2001, as is required by D.C. OFFICIAL CODE § 42-3502.16(c)[4] and Joyce v. District of Columbia Rental Hous. Comm'n, 741 A.2d 24 (D.C. 1999). Thereafter, the ALJ conducted the OAD hearing and allowed the tenant to offer testimony, present a witness, and introduce exhibits. Therefore, the ALJ permitted the tenant, as the proponent of the petition, to meet his obligation under the DCAPA.[5] Accordingly, this appeal issue is dismissed.

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[2] The applicable regulation, 14 DCMR 3802.5 (1991), provides in part:

> The notice of appeal shall contain the following:
>
> (b) The Rental Accommodations and Conversion Division (RACD) case number, the date of the Rent Administrator's decision appealed from, and a clear and concise statement of the alleged error(s) in the decision of the Rent Administrator.

[3] See Lane v. Davis/ J.E.S. Enterprise, TP 24,841 (OAD Nov. 5, 2001) at 1.

[4] The Act at D.C. OFFICIAL CODE § 42-3502.16(c) states:

> If a hearing is requested timely by either party, notice of the time and place of the hearing shall be furnished the parties by certified mail or other form of service which assures delivery at least 15 days before commencement of the hearing. The notice shall inform each of the parties of the party's right to retain legal counsel to represent the party at the hearing. (emphasis added).

[5] The DCAPA, D.C. OFFICIAL CODE § 2-509(b) (2001), provides, "... the proponent of a rule or order shall have the burden of proof."

2. In issues two (2), and four (4) the tenant argues that "he was forced to vacate this dwelling under duress," and that the housing provider's actions "resulted in a forced removal under duress incurring [sic] petitioner with relocation and moving costs in excess of $500.00."

The tenant asserts that he was forced to vacate his unit due to "duress." However, the tenant does not assert that the housing provider, through physical force or threat, removed him from his unit. Rather, he asserts that the housing provider "forc[ed] the petitioner to live in squalor," and, as a result of an inoperative toilet in his unit, made him suffer the "indignity of having to remove his own solid waste." The tenant also argues that his removal under "duress" required relocation costs of $500.00.

The jurisdiction of the Rent Administrator is limited by D.C. OFFICIAL CODE § 42-3502.04 (2001), which provides:

> (c) The Rent Administrator shall have jurisdiction over those complaints and petitions arising under subchapters II, IV, V, VI, and IX of this chapter and title V of the Rental Housing Act of 1980 which may be disposed of through administrative proceedings.

In the instant case, where the tenant contends that he was forced to relocate as a result of the condition of his unit, the Rent Administrator and the Commission are bound by the provisions of the Act, D.C. OFFICIAL CODE § 42-3502.11 (2001), which provides if the Rent Administrator determines that related services or facilities are substantially increased or decreased, "the Rent Administrator may increase or decrease the rent ceiling, as applicable to reflect the value in the change of services or facilities." Moreover, D.C. OFFICIAL CODE § 42-3509.01(a) (2001), relating to penalties and damages provides that a housing provider who reduces services and facilities shall be liable for the amount by which the rent charged exceeds the applicable rent ceiling. The tenant's assertion that he was forced to relocate under "duress" as a result of the

condition of his unit is not a claim recognized by the Act. Accordingly, this appeal issue is dismissed.

Finally, the tenant claims that, as a result of his relocation, he incurred $500.00 in moving expenses. The authority to award relocation assistance is found in D.C. OFFICIAL CODE § 42-3507.03 (2001), which is in Chapter VII of the Act. Chapter VII of the Act is not within the authority of the Rent Administrator or the Commission. Neither the Commission nor the Rent Administrator have the jurisdiction or power to award relocation assistance. See FLC Design Build, Ltd. v. Proctor, TP 24,593 (RHC May 26, 1999). Accordingly, this appeal issue is dismissed.

B. Issues on Appeal

1. Whether the ALJ erred when he determined that the tenant failed to provide evidence of the duration of the loss of the gas heater and lack of a trash dumpster at the housing accommodation.

In his decision and order the ALJ stated:

> The Petitioner testified that his gas heater became such a hazard as to warrant a service call by Washington Gas whose service technician found a heavy odor of gas fumes throughout the building, tagged the equipment as dangerous, and turned it off at the gas valve and stopcock. In response, Petitioner testified that the building maintenance people merely turned it back on and said it was fixed. The Petitioner was unable to say when the maintenance people took this action.
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> The March 10, 2000 letter from the gas company references a December 12, 1998 service call where the gas equipment was turned off. The equipment referred to was a "hot water boiler." The Petitioner did not distinguish whether this was the boiler that provided heat solely to his unit or to the building as a whole. The confusion arises insofar as he testified specifically to a problem with the gas heater for his own unit that was inspected by the gas company, turned off and tagged. The letter from the gas company speaks more to a main boiler that was leaking gas and thus turned off.
>
> Whether the gas leak was particular to the main boiler or the individual apartment unit, it was a serious hazard that presented a serious threat to the health, safety, and welfare of the Petitioner. However, the Petitioner has not provided sufficient information upon which to grant relief. There was no testimony or evidence as to when the problem began and when it ended. The only date certain was the date of inspection by the gas

> company, December 12, 1998. In addition, there was no clear statement from the Petitioner as to when he notified the landlord of the problem. The duration of the violation and giving the landlord notice of the violation are critical elements necessary to grant relief. The Petitioner has failed to provide those critical elements, thus there is no basis upon which to calculate a potential refund.

Lane v. Davis/ J.E.S. Enterprise, TP 24,841 (OAD Nov. 5, 2001) at 6-7. In his notice of appeal the tenant argued that, "the evidence from the documents from the Gas Co. [sic] should show that the beginning of the problem with the heater (and that said heater, and boiler was [sic] in the apartment), this should also show that the Respondent was in violation at the same period of time as the plumbing problem existed." Notice of Appeal at 2.

The evidence of record reflects that Washington Gas Company responded to a complaint of a gas leak at the housing accommodation on December 12, 1998. The gas company technician found an odor of gas throughout the building and turned off or "red tagged" the heating equipment in the building. The tenant testified that the maintenance workers at the housing accommodation turned the gas service back on without following the gas company's repair recommendations. The tenant did not recall when that event occurred. Further, the tenant did not testify whether the gas was turned back on before or after the housing provider purchased the building in June 1999.

The ALJ found that the tenant failed to present evidence of notice to the housing provider of the lack of heat in his unit. After a review of the record (tape) of the OAD hearing the Commission agrees. The tenant, in order to prove a claim for reduction in services and/or facilities, was required to present evidence of the existence, duration and severity of the reduced services and/or facilities. Further, if the tenant, as is true in the instant case, claims a reduction of services in the interior of the housing accommodation, he must give the housing provider notice of the allegations that constitute violations of the housing code. Hamilton v.

Massachusetts Mutual Life Insurance Co., TP 24,805 (RHC July 31, 2000); Pierre-Smith v. Askin, TP 24,574 (RHC Feb. 29, 2000); Jerome v. Wilkerson, TP 24,517 (RHC Sept. 30, 1999). At the OAD hearing, the tenant presented no evidence that showed he provided notice to the housing provider of the lack of functioning heat in his unit. Further, the evidence and record of the hearing did not reflect that the tenant notified the housing provider regarding the absence of a trash dumpster for the housing accommodation. The Commission has held that the tenant must give the housing provider notice of conditions that constitute violations of the housing code. Hamilton v. Massachusetts Mutual Life Insurance Co., supra. In the instant case the record reflects that the tenant failed to provide notice to the housing provider. Accordingly, the decision of the ALJ is affirmed and the tenant's appeal of this issue is denied.

2. Whether the ALJ erred by penalizing the tenant for the housing inspector's failure to notify the housing provider/appellee of the housing accommodation of housing code violations found as a result of the October 21, 1999 housing inspection.

In his decision and order the ALJ stated:

> Housing Inspector Phil Latson conducted an inspection of the Petitioner's apartment on October 21, 1999. Inspector Latson issued Housing Violation Notice #209976, which cited the bathroom plumbing facilities in apartment #2 for not being in good working condition and gave the owner twenty-four (24) hours to abate the violation. However, Inspector Latson issued the violation notice to the prior owner, 17th & L Properties, Inc., and not to the new owner, Regina Davis. While the Respondent in this matter did not have proper notice from the government of the violation and the requirement to abate within twenty-four (24) hours, the Respondent was verbally notified by the Petitioner but failed to correct the problem.

Lane v. Davis/ J.E.S. Enterprise, TP 24,841 (OAD Nov. 5, 2001) at 7. The tenant argues in his notice of appeal, "[p]etitioner should not be penalized for mistakes made by the Housing Inspector, and should be given the benefit of the doubt considering the circumstances." Notice of Appeal at 3.

At the OAD hearing the tenant testified that his toilet was inoperable from approximately September 1999 until November 1999 when he moved out of the housing accommodation. In his decision the ALJ stated that the period of violation for the inoperable toilet was from September 1999 through November 1999. Id. at 8. Therefore, the decision reflects that the ALJ found the tenant's testimony to be credible and used the date testified to by the tenant. Accordingly, the decision of the ALJ is affirmed on this issue and the tenant's appeal of this issue is denied.

IV. CONCLUSION

Accordingly, the decision of the ALJ in TP 24,841 is affirmed and the tenant's appeal is denied.

SO ORDERED.

RUTH R. BANKS, CHAIRPERSON

RONALD A. YOUNG, COMMISSIONER

JENNIFER M. LONG, COMMISSIONER

CERTIFICATE OF SERVICE

I certify that a copy of the decision and order in TP 24,841 was mailed by priority mail with delivery confirmation, postage prepaid this **30th** day of **September, 2002** to the following parties:

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