DISTRICT OF COLUMBIA
OFFICE OF
ADMINISTRATIVE HEARINGS

2009 JUL -9 A 10: 50

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

JUANITA JONES
Tenant/Petitioner,

v.

YOHANNES ASSEFA
Housing Provider/Respondent.

Case No.: RH-TP-07-28975
In re 1624 E Street, NE
Unit 3

FINAL ORDER

I. Introduction

On June 5, 2007, Tenant/Petitioner Juanita Jones filed Tenant Petition (TP) 28,975 against Housing Provider/Respondent Yohannes Assefa alleging that Housing Provider violated the Rental Housing Act of 1985.[1] An evidentiary hearing was held on September 27, 2007. Tenant appeared with counsel, Mikhia Hawkins, Esquire. Housing Provider appeared with counsel, Johnnie D. Bond, Jr., Esquire. During the evidentiary hearing and in a motion to dismiss filed after the hearing, Housing Provider argued that litigation of the complaints at issue is barred by the doctrine of *res judicata* because the same complaints were the subject of a prior possession case in the District of Columbia Superior Court, Landlord and Tenant Branch (Landlord Tenant court). Tenant has argued that *res judicata* does not apply.

[1] Rental Housing Act of 1985 (D.C. Official Code §§ 42-3501.01 *et seq.*) ("Rental Housing Act" or "Act").

Based on the record in this matter, including testimony and arguments, I find that litigation of Tenant's complaints is barred by *res judicata.* This case is dismissed with prejudice.

I. Findings of Fact

1. The housing accommodation at issue is located at 1624 E Street, NE, Unit 3. Tenant entered into a lease for the premises on June 4, 2001. Petitioner's Exhibit (PX) 105. Housing Provider purchased the rental unit in 2005.

2. In either January or February 2007, Housing Provider informed Tenant that he would increase the monthly rent for the unit from $445 to $495, effective March 1, 2007. Tenant did not pay rent at the increased level in March 2007 and withheld payment of all rent beginning April 1, 2007.

3. On February 2, 2007, the Department of Consumer and Regulatory Affairs (DCRA) issued a Notice of Violation for loose or peeling paint on the rental unit's bathroom walls and ceiling. PX 106.

4. Housing Provider did not obtain a housing business license for the housing accommodation from November 22, 2004, through May 16, 2007. PX 107.[2]

---

[2] The DCRA licensing records search was conducted using the name Yohannes "Assefit." Housing Provider did not argue that the search yielded an incorrect result because it was conducted using a name that is not Housing Provider's.

5. No registration was on file with the Rental Accommodations and Conversion Division (RACD), DCRA[3] for the rental unit on June 4, 2007. PX 108.

6. On June 5, 2007, Tenant filed TP 28,975 against Housing Provider alleging that Housing Provider increased her rent while her rental unit was not in substantial compliance with the housing regulations; substantially reduced services and/or facilities provided in connection with her rental unit; and failed to register her rental unit with the RACD, DCRA.

7. On June 20, 2007, Housing Provider filed a complaint against Tenant in Landlord Tenant court for possession of the rental unit for Tenant's failure to pay $495 rent beginning April 2007, and a money judgment for rent in arrears, plus late fees.[4] The trial was held August 8, 2007.[5] The parties were represented in the landlord tenant matter by the same counsel who represented the parties in this action.

8. Tenant informed the Landlord Tenant court that she had filed TP 28,975, but did not request a stay of the landlord tenant hearing until this matter was resolved.

9. Tenant proffered 16 photographs of conditions in the rental unit and yard taken by Tenant on April 22, 2007. The photographs showed water damage to the living room wall and ceiling; peeling paint on the bathroom window sill; the front door, which Tenant complained was not

---

[3] Effective October 1, 2006, the functions of RACD were transferred to the Rental Accommodations Division, Department of Housing and Community Development. The transfer has no effect on the disposition of this case.

[4] *Yohannes Assefa v. Juanita Jones*, LTB 020192; Petitioner's Opposition to Respondent's Motion to Dismiss (Petitioner's Opposition), Exhibit 1.

[5] Petitioner's Opposition, at 2. The parties and their counsel first appeared for a hearing in Landlord Tenant court on July 11, 2007, but agreed to continue the matter until August 8, 2007.

properly installed; overgrown grass in the yard of the rental unit; a damaged kitchen counter, threshold, and floor tile; the furnace for the rental unit, which was intended to show that the furnace was old and caused Tenant to have high heating bills; and unclean conditions in the rear of the property, including human waste. PXs 100A -100C, 101A- 101D, 102A-102C, 103A-103C, 104A-104C.

10. Tenant also proffered the Notice of Violation issued on February 2, 2007, documenting violations of housing regulations in Tenant's bathroom; DCRA certification that the rental unit was not registered with RACD as of June 4, 2007; and DCRA certification that there was no housing business license for the rental unit from November 22, 2004, through May 16, 2007. PXs 106 -108.

11. Based on the evidence submitted, the Landlord Tenant court reduced Tenant's monthly rent from $495 to $355, from April 2007 through August 2007, and thereafter until Housing Provider filed a Notice of Abatement of housing violations. The court ordered Tenant to surrender possession for nonpayment of rent, but stayed the order until August 31, 2007, to afford Tenant time to pay Housing Provider the back rent.[6] Tenant paid the reduced rent through the date of the hearing.

12. Housing Provider obtained a housing business license for the housing accommodation for the period September 1, 2007, through August 31, 2009. Respondent's Exhibit (RX) 202.

---

[6] Petitioner's Opposition at 2.

13. On September 27, 2007, the parties and their counsel appeared for the evidentiary hearing in this matter.[7]

14. At the hearing in this case, Tenant proffered 16 photographs of conditions in the rental unit and yard, certification of no business license, and certification that the property was not registered with RACD as evidence - the same photographs and certifications proffered in the landlord tenant case. PXs 100A -100C, 101A- 101D, 102A-102C, 103A-103C, 104A-104C. 106 - 108.

II. Discussion and Conclusions of Law

This matter is governed by the District of Columbia Administrative Procedure Act (D.C. Official Code §§ 2-501 *et seq.*) (DCAPA); the Rental Housing Act of 1985 (D.C. Official Code §§ 42-3501.01 *et seq.*); substantive rules implementing the Rental Housing Act at 14 District of Columbia Municipal Regulations (DCMR) 4100 - 4399; the Office of Administrative Hearings Establishment Act at D.C. Official Code § 2-1831.03(b-1)(1), which authorizes OAH to adjudicate rental housing cases; and OAH procedural rules at 1 DCMR 2800 *et seq.* and 1 DCMR 2920 *et seq.*

The parties in this matter were parties in a prior landlord tenant case heard in August 2007, wherein Housing Provider sought possession of the rental unit at issue for nonpayment of rent, a money judgment for back rent at the monthly rate of $495 beginning April 1, 2007, and

---

[7] On July 13, 2007, the Office of Administrative Hearings (OAH) served the parties a Case Management Order (CMO) scheduling a hearing in this matter for August 27, 2007, at the addresses Tenant provided in TP 28,975. The U.S Postal Service returned the CMO served on Housing Provider to OAH and Housing Provider did not appear on August 27th. OAH served a second CMO scheduling a hearing for September 27, 2007, using a different address provided by Tenant for Housing Provider. Both parties appeared with counsel.

late fees. The $495 rent amount reflected a rent increase from $445 to $495, effective March 1, 2007. In the landlord tenant matter, Tenant argued that the rent arrearage claimed was not due because the rental unit was not properly registered; and substantial housing code violations in the rental unit rendered the lease between the parties void and were evidence that Housing Provider had breached the implied warranty of habitability.[8]

In presenting her defense, Tenant proffered 16 photographs of conditions in the rental unit and yard, a Notice of Violation issued in February 2007, certification that Housing Provider had not obtained a business license for the rental unit from November 22, 2004, through May 16, 2007, and certification that the rental unit was not registered with RACD as of June 4, 2007. Based on the evidence submitted, the Landlord Tenant court reduced Tenant's rent from $495 to $355, beginning April 1, 2007, through August 1, 2007, and thereafter until Housing Provider filed a Notice of Abatement of housing regulation violations. Tenant has proffered, in this case, the same evidence proffered in the prior landlord tenant case.

Housing Provider has moved this administrative court to preclude Tenant's complaints based on the doctrine of *res judicata*. If *res judicata* applies, the same parties are precluded from litigating matters that actually were or could have been litigated in a prior case.[9] A valid final judgment on the merits absolutely bars the same parties from re-litigating the same claim in a subsequent proceeding.[10]

---

[8] Petitioner's Opposition, at 4.

[9] *Tutt v. Doby*, 459 F.2d 1195, 1197 (D.C. Cir. 1972).

[10] *Parker v. Martin*, 905 A.2d 756, 762 (D.C. 2006).

The parties in this matter and the prior landlord tenant case are the same. A valid final judgment based on evidence of the housing violations, the condition of the rental unit, and Housing Provider's failure to register the unit was issued in the landlord tenant matter. The housing violations, conditions, and registration at issue in the landlord tenant case are the same violations, conditions, and registration at issue here. Nonetheless, Tenant argues that *res judicata* does not apply because Tenant did not specifically, by way of a counterclaim, challenge the validity of the rent increase in the landlord tenant case; whereas here, Tenant specifically complains that the rent increase is invalid because it was demanded while the rental unit was not in substantial compliance with the housing regulations. Tenant's argument in this regard fails.

For purposes of *res judicata*, "[i]t is the factual nucleus, not the theory upon which a plaintiff relies, which operates to constitute the cause of action for claim preclusion purposes [citations omitted]. It is irrelevant that the nature of the two proceedings is different; as long as the parties are the same, and the essence of the claim and evidence necessary to establish it are the same, *res judicata* applies."[11] The factual nucleus and essence of Tenant's defense in the landlord tenant case and Tenant's complaints here are the same. Tenant has offered the same evidence.

And, the primary purpose of the complaints here and Tenant's defense in the Landlord Tenant court is the same,[12] to demonstrate that Housing Provider's claim for rent is invalid. In the landlord tenant matter Tenant sought to demonstrate that the rent claim was invalid because the unit was not registered; and housing violations and Housing Provider's breach of the

---

[11] *Id.* at 763 (D.C. 2006) (citations omitted).

[12] *See*, *Id.* at 762.

warranty of habitability rendered the lease void. In this matter, Tenant proffers the same evidence to demonstrate that Housing Provider's rent demand is invalid because Housing Provider increased the rent when there were housing code violations and the unit was not registered; and the condition of the rental unit is evidence of reductions in services and/or facilities that warrant a rent abatement.[13]

The condition of the rental unit and its registration were actually litigated in the landlord tenant case. Application of the doctrine of *res judicata* bars re-litigation here.

In addition to arguing that *res judicata* does not apply because Tenant did not file a counterclaim, Tenant argues that the rules of the Landlord Tenant court did not allow Tenant to counterclaim for the relief requested here. The District of Columbia Court of Appeals has reached a different conclusion when interpreting the rule Tenant relies upon. Rule 5(b) of the Landlord Tenant court provides that:

> In actions for recovery of possession of property in which the basis for recovery is nonpayment of rent or in which there is joined a claim for rent in arrears, the defendant may assert an equitable defense of recoupment or set off or counterclaim for a money judgment based on the payment of rent . . . or for equitable relief related to the premises.[14]

The Court of Appeals has held that a counterclaim for equitable relief includes a request for rent abatement commensurate with the value of services a housing provider failed to provide in its breach of the implied warranty of habitability, as codified in the housing regulations.[15] A judgment entered in a possession action in Landlord Tenant court constitutes an adjudication of

[13] D.C. Official Code §§ 42-3502.08, 42-3502.11, 42-3509.01(a).

[14] D.C. Sup. Ct. L&T R. 5(b).

[15] *Javins v. First Nat'l Realty Corp.*, 428 F.2d 1071 (D.C. Cir. 1970).

the condition of the premises, rendering such issues *res judicata* and precluding litigation of the same housing violations in another action.[16]

Earlier decisions limited counterclaims to housing violations that existed within the time frame at issue in the landlord tenant action.[17] The court has since determined that a tenant may counterclaim for a rent abatement based on housing code violations for a prior period of the tenancy when the alleged housing code violation is based on one nucleus of facts concerning one continuing dispute.[18]

Thus, Tenant is precluded from re-litigating here the housing conditions that *could have been litigated* as a counterclaim in the landlord tenant case. The doctrine is intended to require parties to fully litigate matters arising out of a cause of action and properly belonging to the subject of the controversy in the prior case.[19]

Tenant asserts that *res judicata* does not apply because the doctrine of primary jurisdiction precluded the Landlord Tenant court from considering Tenant's complaints in this case. Again, Tenant's argument fails. In *Drayton v. Porestsky Mgmt., Inc.*[20] the District of

---

[16] *Davis v. Bruner*, 441 A.2d 992 (D.C. 1982); *Gordon v. Davis*, 270 A.2d 138 (D.C. 1970).

[17] *Javins, supra*, 428 F.2d at 1083; *Davis, supra*, 441 A.2d at 998.

[18] *Hines v. Sharkey Co.*, 449 A.2d 1092, 1093 (D.C. 1982).

[19] *Davis, supra,* at 998 (citations omitted) ("*Res judicata* applies not only to points on which the court was actually required to pronounce judgment, but, as well, to every point which properly belong to the subject of the controversy"). *Parker v. Martin*, 905 A. 2d 756, 762 (D.C. 2006) ("A final judgment on the merits 'embodies all of a party's rights arising out of the transaction involved, and a party will be foreclosed from later seeking relief on the basis of issues which might have been raised in the prior action'").

[20] *Drayton v. Poretsky Mgmt., Inc.*, 462 A.2d 1115 (D.C. 1983).

Columbia Court of Appeals considered the relationship between the jurisdiction of the Rent Administrator (now OAH)[21] and the Superior Court. The court concluded that the Rent Administrator (now OAH) has primary jurisdiction with respect to complaints challenging rent increases that bear upon the *amount* of rent owed.

> Primary jurisdiction . . . applies where a claim is originally cognizable in the courts, and came into play whenever enforcement of the claim requires the resolution of issues [that] . . . have been placed within the special competence of an administrative body; in such a case the judicial process is suspended pending the referral of such issues to the administrative body for its views.[22]
>
> . . . .
>
> Application of the doctrine of primary jurisdiction requires that when there is pending before the Administrator [now OAH] . . . a challenge to a rent increase that bears upon the amount of rent owed by a tenant defending a possessory action brought for nonpayment of rent, the L&T Judge should stay the action to await the ruling of the Administrator [OAH]. . . .[23]

But the court made clear that the doctrine of primary jurisdiction does not apply "in considering and determining the amount of abatements due to housing code violations, even though the Rent Administrator [now OAH] may inquire into the existence of housing code violations in passing upon applications for rent increases . . . . Such issues routinely have been litigated in Superior Court for many years in both jury and nonjury trials. We are of the view that the doctrine of primary jurisdiction has no application to these issues."[24]

---

[21] When the court issued its decision in *Drayton,* the Rent Administrator adjudicated cases arising under the Rental Housing Act. Effective October 1, 2006, OAH assumed jurisdiction of cases formerly adjudicated by the Rent Administrator. (D.C. Official Code § 2-1831.03(b-1).

[22] *Drayton, supra*, 462 A.2d at 1118.

[23] *Id.* at 1120.

[24] *Id.* at 1122.

In this matter, there is no challenge to the *amount* of any rent increase, the calculation of which may benefit from OAH's special expertise. Instead, Tenant has challenged Housing Provider's authority to implement a rent increase *of any amount* given the Rental Housing Act's prohibition against rent increases for rental units that are not in compliance with the housing regulations and that are not registered properly. As noted above, the court has ruled that the "special competence" of OAH is not required to determine the existence of housing violations. The issues of fact pertaining to housing violations are within the conventional experience of Superior Court judges who may apply the legal consequences of the facts ascertained.[25] The court did not rule that registration issues are within the primary jurisdiction of OAH. Thus, the Landlord Tenant court may consider complaints based upon housing code violations and registration issues and apply an appropriate legal remedy without implicating the primary jurisdiction of this administrative court.[26]

Finally, Tenant argues that *res judicata* does not apply because the legislative policy and regulatory remedies attendant to the Rental Housing Act would be contravened by applying *res judicata* here.[27] This argument lacks merit in the context of this case. If a housing provider increases the rent for a rental unit while there are housing code violations or without registering the unit as Tenant claims, OAH may suspend implementation of the rent increase until the

---

[25] *See*, *Id.* at 1119.

[26] The court did not decide a *res judicata* issue in *Drayton* because none was either briefed or argued there. But the court noted that later administrative review may be foreclosed by *res judicata* where a tenant fails to bring an administrative challenge to a rent increase before a trial in Landlord Tenant court goes forward. *Drayton, supra*, 462 A.2d. at 1120, n.10. In this instance, Tenant opted not to request a stay of the landlord tenant case.

[27] Tenant also maintained in her post hearing brief that adjudication of her complaints here is not barred by collateral estoppel. Since I find that adjudication is barred by *res judicata* and collateral estoppel was not argued during the hearing, I will not address it here.

offending conditions are abated or the unit is registered.[28] If a housing provider substantially reduces services and/or facilities provided in connection with a rental unit, OAH may reduce the rent by an amount commensurate with the reduced services and facilities.[29] Both sanctions are available in and were applied by the Landlord Tenant court. No legislative policy or regulatory remedy is frustrated by applying the doctrine in this case.

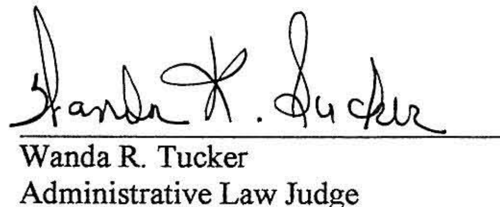
IV. Order

As shown above, the parties to the prior landlord tenant case and this case are the same. No other party is involved in the cases. The same housing accommodation was at issue in both cases. And the issues here were either litigated or could have been litigated in the prior landlord tenant case. The doctrine of *res judicata* bars re-litigation of Tenant's complaints.

Therefore, it is, this **9th** day of **July, 2009**:

ORDERED, that Case No. RH-TP-07-28975 is **DISMISSED WITH PREJUDICE**; and it is further

ORDERED, that the parties' reconsideration and appeal rights are attached to this order.



Wanda R. Tucker
Administrative Law Judge

---

[28] D.C. Official Code §§ 42-3502.05, 42-3502.08.

[29] D.C. Official Code §§ 42-3502.11, 42-3509.01(a).

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:
Priority Mail
with Delivery Confirmation (Postage Paid):

Mikhia Hawkins, Esquire
Kelly Drye & Warren LLP
3050 K Street, NW
Washington Harbour
Washington, DC 20007

Johnnie D. Bond, Jr., Esquire
Bond Law Firm, PLLC
1424 K Street. NW
Suite 660
Washington, DC 20005

By Interagency Mail

District of Columbia Rental Housing Commission
941 North Capitol Street, N.E.
Suite 9200
Washington, DC 20002

Keith Anderson
Acting Rent Administrator
Rental Accommodations Division
Department of Housing and Community Development
1800 Martin Luther King Avenue, SE
Washington, DC 20020

I hereby certify that on 7-9, 2009 this document was caused to be served upon the above-named parties at the addresses and by the means stated.

Clerk/Deputy Clerk