

DISTRICT OF COLUMBIA
OFFICE OF ADMINISTRATIVE HEARINGS
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DISTRICT OF COLUMBIA
OFFICE OF
ADMINISTRATIVE HEARINGS

2009 AUG -6 P 3: 49

ANN-MARIE ADAMS
Tenant/Petitioner,

v.

ENDAYEN ZEWDU
Housing Provider/Respondent

Case No.: RH-TP-08-29141
In re: 734 Gresham Place, NW
Unit 2

FINAL ORDER

I. Introduction

On December 21, 2007, Tenant/Petitioner Ann-Marie Adams filed Tenant Petition (TP) 29,141 against Housing Provider/Respondent Endayen Zewdu alleging that Housing Provider violated the Rental Housing Act of 1985¹ by taking retaliatory action against Tenant; and serving Tenant a notice to vacate that violates section 501 of the Act.² An evidentiary hearing was held in this matter on March 6, 2008. Both Tenant and Housing Provider appeared and represented themselves.

Based on the record in this matter, I find that Tenant has not demonstrated by a preponderance of evidence that Housing Provider retaliated against her in violation of the Rental Housing Act. This complaint is dismissed with prejudice. I find that Tenant has demonstrated

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

² D.C. Official Code § 42-3505.01.

that Housing Provider served Tenant a notice to vacate that violates the Act, but has not demonstrated that Housing Provider did so willfully. Therefore, no penalty is imposed and this complaint is dismissed with prejudice.

II. Findings of Fact

1. The housing accommodation at issue is a single-family house located at 734 Gresham Place, NW. Six rooms in the housing accommodation were rented separately, primarily to college students. Tenants shared housekeeping responsibilities and common areas, including the kitchen and bathrooms. Prior to renting to Tenant, Housing Provider explained the sharing arrangement.
2. Tenant leased a room in the housing accommodation. Her initial leased term began December 15, 2006, and ended June 30, 2007. Petitioner's Exhibit (PX) 100.
3. Tenant's monthly rent was \$430, except that the rent for December 2006 was prorated to \$222.93 to reflect that the lease term began in the middle of the month. The lease required the rent to be paid by money order. PX 100 at paragraphs 5, 7. Housing Provider accepted cash in lieu of a money order and provided written receipts for cash.
4. The lease between Tenant and Housing Provider provides that "tenant shall refrain from interfering with the rights of other tenants to peacefully enjoy the use and occupancy of the premises and apartment facilities. Tenant shall not make or permit to be made any disturbing noises or do or permit any act which will interfere with the rights, comforts and convenience

of other tenants Landlord has the right to terminate this lease with proper notice if tenant participates in any of the above described acts.” PX 201 at paragraph 14.

5. Beginning in the spring of 2007, Tenant began to complain to Housing Provider that the tenant who rented a room adjacent to Tenant’s was too noisy. Housing Provider attempted to mediate disagreements between the two. Because of on-going discord, Housing Provider changed both tenants’ tenancy to month-to-month so the tenants or Housing Provider could terminate the tenancy. Tenant was notified of the proposed change prior to the expiration of her initial six-month lease term, but the effective date of the change was June 30, 2007, the end of the lease term. Housing Provider also accommodated the other tenant’s request to move to the basement.
6. A tenant disposed of a pineapple Tenant left on top of the refrigerator in the common kitchen while tenant was away for an extended week-end because the fruit was rotten and attracted insects. Tenant demanded that the tenant reimburse her for the fruit and complained to Housing Provider that the fruit was destroyed and she was not reimbursed.
7. Tenant complained to Housing Provider and other tenants that another tenant put ants in her contact lens solution and used her bowl without permission.
8. Other tenants in the housing accommodation complained to Housing Provider that Tenant did not assume her share of housekeeping responsibilities and disrespected other tenants. Some disagreements between tenants ended with Tenant calling the police on other tenants. RXs 200, 200(a) – 200(c). Tenant charged at least one other tenant with assault. The assault charges were dropped.

9. Housing Provider scheduled a meeting of all the tenants to mediate disputes involving Tenant. Tenant was invited but did not attend. After the meeting, Housing Provider notified Tenant that effective December 31, 2007, her tenancy was terminated and, if she failed to vacate the rental unit by December 31st, Housing Provider “may commence eviction proceedings against you and/or exercise other available rights and remedies under the law.”

RX 205. Housing Provider explained that:

[T]he “tenants living at 734 Gresham Place have different schedules The reason why these tenants choose to leave [sic] off campus, is to be able to have the freedom to come and go as they please, study at odd hours, watch TV, listen to the radio, have visitors. They do not mind sharing common areas including kitchen items.

It seems like the set up at 734 Gresham Place is not suitable to your needs. I do understand that like everybody else, you have a busy schedule and that you want your quiet moment and your own space when you get home but given the fact that you are sharing a house with other tenants, there are some concessions to be made. On several occasions I had to interfere to restore agreement in the house. But incidents keep on occurring and things are not getting any better.

For this reason, you are hereby given notice that the undersigned is terminating your tenancy of the premises located at 734 Gresham place [sic].” RX 205.

The letter was dated November 4, 2007.

10. There is no evidence that Housing Provider filed a notice to vacate with the Rent Administrator, Rental Accommodations Division, Department of Housing and Community Development.
11. By letter dated December 19, 2007, Joanna Day, Supervising Attorney, DC Law Students in Court Program, Inc., notified Housing Provider that Tenant ‘was concerned that you [Housing Provider] may attempt to evict her illegally by the use of self-help.” Ms. Day

further notified Housing Provider that “the laws of the District of Columbia require that a landlord use legal process, through the courts to have a tenant evicted.” RX 208.

12. On December 21, 2007, Tenant filed TP 29,141, initiating this case. Tenant was residing in the housing accommodation on the date of the hearing.

III. 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.* Tenant has the burden of proving the claims asserted.³

A. Notice to Vacate

Tenant has complained that Housing Provider served her an improper notice to vacate her rental unit. The Rental Housing Act provides that:

No tenant shall be evicted from a rental unit for any reason other than for nonpayment of rent unless the tenant has been served a written notice to vacate which meets the requirements of this section. Notices to vacate for all reasons other than for nonpayment of rent shall be served upon both the tenant and the Rent Administrator.⁴

³ D.C. Official Code § 2-509(b); 1 DCMR 2932.1.

⁴ D.C. Official Code § 42-3505.01(a).

A housing provider may recover possession of a rental unit where the tenant is violating an obligation of the tenancy and fails to correct the violation within 30 days after receiving from the housing provider a notice to correct the violation or vacate.⁵

By letter dated November 4, 2007, Housing Provider served Tenant a notice to vacate by December 31, 2007, for violation of her lease. RX 205. There is no evidence that Housing Provider filed a copy of the notice to vacate with the Rent Administrator; neither did Housing Provider afford Tenant an opportunity to correct the violation within 30 days after receipt of the notice. Therefore, the notice to quit violated the Rental Housing Act.

No specific penalty is prescribed for serving an improper notice to vacate. Thus, the general penalty provision for violations of the Rental Housing Act applies, which is payment of a fine to the government of the District of Columbia, but only if the violation is willful.⁶ Willfulness goes to the intention to violate the Rental Housing Act, as opposed to simply knowing that you have acted or failed to act in a certain way.⁷

The evidence does not show that Housing Provider knew she was required to file a copy of the notice to vacate with the Rent Administrator or afford Tenant an opportunity to correct *after* receipt of the notice. And the notice makes clear Housing Provider's intention to evict Tenant through legal means, if Tenant chose not to leave. Thus, there is no evidence that Housing Provider intended to violate the Rental Housing Act by failing to file or serving the notice. Instead, the evidence indicates that Housing Provider intended to resolve on-going conflict in a manner that was consistent with a lease that authorized Housing Provider to

⁵ D.C. Official Code § 42-3505.01(b).

⁶ D.C. Official Code § 42-3509.01(b)(3).

⁷ *Quality Mgmt., Inc. v. D.C. Rental Hous. Comm'n*, 505 A.2d 73, 75-76 (D.C. 1986).

terminate the lease if Tenant interfered with the rights of other tenants to enjoy peaceably the use of the housing accommodation or interfered with the rights, comfort, and convenience of other tenants. PX 100 at paragraph 14. Since no intent to violate the law is evident, willfulness has not been demonstrated. Thus, no fine is imposed and the complaint is dismissed with prejudice.

B. Retaliation

Tenant has complained that Housing Provider and other tenants in the housing accommodation retaliated against her in violation of the Rental Housing Act. In support of her complaint, Tenant asserts that, after she complained about other tenants, Housing Provider converted her six-month lease to a month-to-month tenancy and “created a condition” in the housing accommodation where other tenants felt it was permissible to retaliate against her by putting ants in her contact lens case, using her kitchen utensils without permission, and disposing of her food.

For purposes of the Rental Housing Act, prohibited retaliatory action includes any action, not otherwise permitted by law, which serves to inconvenience a tenant unduly or unavoidably, violate a tenant’s privacy, or harass a tenant. Retaliatory actions also include termination of a tenancy without cause and refusal to renew a rental agreement.⁸ Retaliation is presumed if, within six months after a Housing Provider has committed a prohibited action, a tenant has

⁸ Other retaliatory actions set forth in the Act are implicated by the facts in this case. *See* D.C. Official Code § 42-3505.02(a) for a comprehensive list.

attempted to secure rights under a lease.⁹ The presumption may be rebutted by clear and convincing evidence.¹⁰

Tenant has not demonstrated by a preponderance of evidence that the actions complained of occurred or were retaliatory. Tenant has not demonstrated that other tenants put ants in her contact lens case or used her kitchen utensils. Housing Provider testified credibly that a tenant, who had kitchen duty, disposed of an item of Tenant's food, not as an act of retaliation, but because the food was rotten and attracted insects. Tenant has not demonstrated that Housing Provider or any tenant acting on behalf of Housing Provider harassed, inconvenienced, or violated Tenant's privacy in any manner that was tantamount to retaliation.

Housing Provider has admitted that she chose not to renew Tenant's six-month lease. Housing Provider also served Tenant a notice to vacate. Tenant has argued that these actions constituted retaliation against her for attempting to secure her right to peaceful enjoyment under the terms of her lease. But the evidence shows that Housing Provider, through her mediation efforts, sought to protect the rights of all tenants to peaceful enjoyment of the housing accommodation, including Tenant's. Contrary to Tenant's argument, the evidence indicates that Housing Provider served Tenant a notice to vacate and refused to renew her lease based on Housing Provider's good faith belief that Tenant had interfered unduly with the peaceful enjoyment, comfort, and convenience of other tenants. Housing Provider's belief was informed by discussions with other tenants and failed mediation attempts. Housing Provider has rebutted the presumption of retaliation with clear and convincing evidence.

⁹ Other activities that trigger the presumption of retaliation set forth in the Act are not implicated by the facts in this case. *See* D.C. Official Code § 42-3505.2(b) for a comprehensive list.

¹⁰ D.C. Official Code § 42-3505.2(b).

Tenant has not demonstrated by a preponderance of evidence that Housing Provider retaliated against her in violation of the Rental Housing Act. This complaint is dismissed with prejudice.

IV. Order

Therefore, it is, this 6th day of August, 2009:

ORDERED, that Case No. RH-TP-07-29141 is **DISMISSED WITH PREJUDICE**; and its is further

ORDERED, that the reconsideration and appeal rights of any party aggrieved by this order are attached.



Wanda R. Tucker
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/ Delivery Confirmation
(Postage Paid)**

Ann-Marie Adams
734 Gresham Place, NW
Unit 2
Washington, DC 20001

Endayen Zewdu
6404 Adak Street
Capitol Heights, MD 20743

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 8-6, 2009 this document was caused to be served upon the above-named parties at the address(es) and by the means stated.


Clerk / Deputy Clerk