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DISTRICT OF COLUMBIA
OFFICE OF
ADMINISTRATIVE HEARINGS

2009 JUN 23 P 2:13

FATIMA ZEIN,
Tenant/Petitioner,

v.

DUDLEY PRO REALTY,
Housing Provider/Respondent.

Case No.: RH-TP-08-29264
In re: 2325 15th Street NW
Unit 214

**ORDER ON PETITIONER'S MOTION TO SET
REASONABLE ATTORNEY'S FEES**

At issue is Tenant Fatima Zein's Motion to Set Reasonable Attorney's Fees, which followed a March 11, 2009, Final Order awarding her \$1,714.01 because Housing Provider Dudley Pro Realty served Tenant an improper 30-day notice of rent increase and failed to file correct rent increase forms with the Rental Accommodations Division, and ordered Housing Provider to roll back Tenant's rent to \$600 per month. Tenant seeks an award of \$5,688.75 for attorney's fees in her motion filed on March 26, 2009. The attorney of record for Tenant, Jennifer Berger, Esquire, of AARP Legal Counsel for the Elderly, submitted a Memorandum of Points and Authorities and a timesheet of work completed on behalf of Tenant. For reasons set forth below, I grant Tenant's Motion to Set Reasonable Attorney's Fees and award \$3,811.46 in attorney's fees.

I. Tenant as a Prevailing Party

The Rental Housing Act of 1985 (“the Act”) provides for the award of attorney’s fees to the prevailing party in any action under the Act, except actions for eviction. D.C. Official Code § 42-3509.02. The D.C. Housing Regulations state that “[a] presumption of entitlement to an award of attorney’s fees is created by a prevailing tenant, who is represented by an attorney.” 14 DCMR 3825.2. A prevailing party is a party who has “succeed[ed] on any significant issue in litigation which achieves some of the benefit the parties sought in bringing suit.” *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983). When a party does not prevail on all of the issues presented to the court, the court must scrutinize the hours and the rate of attorney’s fees requested to avoid compensation for legal work on issues where the party did not prevail. *Dey v. L.J. Dev.*, TP 26,119 (RHC Nov. 17, 2003).

Therefore, the first issue is whether Tenant was a prevailing party on the issues in the instant case.

In her motion, Tenant states that she “sustained her burden of proof for violations alleged in the tenant petition, that Dudley Pro Realty reduced services and facilities at the rental unit and failed to register the property in bad faith and in willful disregard of his legal obligations.” These were not the claims in Tenant’s tenant petition and they were not proven in the instant case. In her tenant petition, Tenant alleged that (1) the rent increase was larger than the increase allowed by any applicable provision of the Act, (2) there was no proper 30-day notice of rent increase before the increase was charged, and (3) the landlord (housing provider) did not file correct rent increase forms with the Rental

Accommodations Division (RAD). Tenant sustained her burden of proof for two of the three claims listed above – that Housing Provider did not serve her a proper 30-day notice of rent increase before the increase was charged and did not file correct rent increase forms with the RAD. As a result, Tenant is the prevailing party in this case, and the award of attorney's fees reflects that she prevailed on two of three claims alleged in her tenant petition.

II. Award of Attorney's Fees

To evaluate the attorney's fee that should be awarded, I reviewed the documents supporting the motion for attorney's fees. An award of attorney's fees must be based on an affidavit executed by the attorney of record itemizing the attorney's time for the legal services and providing the information listed in section 3825.8. 14 DCMR 3825.7. Attorneys may be awarded fees for services performed after the filing of the petition and after the party notified this administrative court that the party was represented by an attorney. 14 DCMR 3825.6. In addition, attorney's fees are allowable for a reasonable period of time prior to notification of representation for any services performed in reaching a determination to represent the party. *Id.* The award of attorney's fees must be calculated in accordance with the existing case law using the following standards:

- (a) The starting point shall be the lodestar, which is the number of hours reasonably expended on a task multiplied by a reasonable hourly rate.
- (b) The lodestar amount may be reduced or increased after considering the following factors:
 - (1) the time and labor required;

- (2) the novelty, complexity, and difficulty of the legal issues or questions;
- (3) the skill requisite to perform the legal service properly;
- (4) the preclusion of other employment by the attorney, due to acceptance of the case;
- (5) the customary fee or prevailing rate in the community for attorneys with similar experience;
- (6) whether the fee is fixed or contingent;
- (7) time limitations imposed by the client or the circumstances;
- (8) the amount involved and the results obtained;
- (9) the experience, reputation, and ability of the attorney;
- (10) the undesirability of the case;
- (11) the nature and length of the professional relationship with the client;
- (12) the award in similar cases; and
- (13) the results obtained, when the moving party did not prevail on all the issues.

14 DCMR 3825.8

The documentation submitted in support of an attorney's fees application "must be sufficiently detailed to permit the District Court [or agency] to make an independent determination whether or not hours claimed are justified." *Hampton Courts Tenants Ass'n v. D.C. Rental Hous. Comm'n*, 599 A.2d 1113, 1117 (D.C. 1991) (citing *Nat'l Ass'n of Concerned Veterans v. Sec'y of Defense*, 219 U.S. App. D.C. 94, 102 (D.C. Cir. 1982)). Once a party has provided an affidavit in support of a request for attorney's fees, "the determination of the reasonableness of attorney's fee amounts is clearly 'a matter within the trial judge's discretion.'" *Id.* at 1115 (citing *District of Columbia v. Jerry M.*,

580 A.2d 1270, 1280 (D.C. 1990)). The same discretionary standard applies to attorney's fees determinations by an administrative agency. *Id.* (citing *Alexander v. District of Columbia Rental Hous. Comm'n*, 542 A.2d 359, 361 (D.C. 1988)).

Tenant submitted a memorandum and a timesheet for Ms. Berger's services in support of Tenant's request for attorney's fees. Tenant states that the time recorded in the chart was "devoted to client interviewing and hearing preparation, research, actual time in the hearing, and preparing post-trial pleadings." Tenant also indicates that a volunteer attorney and a law clerk assisted Ms. Berger in preparing the case. Tenant states that the following factors contributed to the complexity of this matter: (1) Housing Provider failed to provide written notices of rent increases from 2005 through 2008; (2) Housing Provider failed to appear at the scheduled hearing; and (3) Tenant is elderly and has a disability that confines her to a wheelchair. The timesheet shows that Ms. Berger spent 5.25 hours of work on Tenant's case before the tenant petition was filed on April 21, 2008. The activities in the timesheet before the petition was filed included an initial meeting with Tenant, communication with the Department of Housing and Community Development about Tenant's elderly status, client correspondence, a case conference with the volunteer attorney, and finalizing the petition. Ms. Berger spent 12.25 hours on the date of and the days after tenant petition was filed. These activities included conferring with a legal assistant regarding petition filing, client correspondence, hearing preparation, attendance of the hearing, preparation of the post hearing brief, a conference call regarding attorney's fees, and preparation of the attorney's fees motion.

Although Tenant did not file an affidavit executed by Ms. Berger, I find that the memorandum and timesheet submitted by Tenant meet the standard for documentation

needed to support a request for attorney's fees as required by 14 DCMR 3825.7. The memorandum provides details about the activities that Ms. Berger conducted on Tenant's behalf. Moreover, Ms. Berger affirmed the truth of the time recorded in the timesheet and it provides a list of the tasks performed, the dates on which they were performed, and the time spent on each task in quarter hour increments.

I find that these hours were reasonably expended on Tenant's behalf. The time accounted for in performing the various tasks listed in Ms. Berger's timesheet are reasonable because these activities are essential to the preparation and litigation of Tenant's case. The time spent in determining whether to represent Tenant, which occurred before the filing of the tenant petition, is also reasonably expended because the activities listed were necessary to make a decision about representation.

Tenant requests a reasonable hourly rate of attorney's fees for Ms. Berger based on the *Laffey* Matrix. The *Laffey* Matrix (Matrix) is a table of hourly rates for attorneys of varying experience levels prepared by the Civil Division of the United States Attorney's Office for the District of Columbia.¹ The District of Columbia Court of Appeals has approved the use of the *Laffey* Matrix for an award of attorney's fees where such fees are permitted by statute. *Lively v. Flexible Packaging Ass'n*, 930 A.2d 984, 988-89 (D.C. 2007). The Matrix is based on the number of years that an attorney has practiced and provides an hourly rate for June 1st of one year to May 31st of the following year. The memorandum states that Ms. Berger has ten years of legal experience. The rate for attorneys with eight to ten years of experience for the period of June 1, 2007 to

¹ The *Laffey* Matrix can be found at http://www.usdoj.gov/usao/dc/Divisions/Civil_Division/Laffey_Matrix_7.html.

May 31, 2008 is \$315 per hour. The rate for attorneys with the same level of experience for the period of June 1, 2008 to May 31, 2009 is \$330 per hour. Ms. Berger has completed legal work on behalf of Tenant within both years. Ms. Berger completed 5.75 hours of work between June 1, 2007 and May 31, 2008, and 11.75 hours of work between June 1, 2008 to May 31, 2009. Ms. Berger requests this rate for the hours in each year, which results in an award of \$5,688.75 for all of the time devoted to Tenant's case.

The lodestar amount is the starting point for an award of attorney's fees, but the lodestar can be reduced or increased based on thirteen factors. 14 DCMR 3825.8(b). I am not required to make a "precise analysis" of each factor, but I addressed factors (1) through (7) and factors (9) through (12) in the analysis of the hours reasonably expended. *Ungar v. D.C. Rental Hous. Comm'n*, 535 A.2d 887, 890 (D.C. 1987). Housing Provider's failure to provide written notices of increases and failure to appear at the scheduled hearing did not result in a more complicated or complex case for Ms. Berger to prepare or litigate. In addition, Tenant's elderly and disabled status did not make Ms. Berger's work on this case more difficult. These factors do not warrant an increase in the lodestar amount. However, based on my analysis of factor (8), "the amount involved and the results obtained," and factor (13), "the results obtained, when the moving party did not prevail on all the issues," I am reducing the loadstar amount. 14 DCMR 3825(b).

In *Hensley v. Eckerhart*, 461 U.S. 424 (1983), the U.S. Supreme Court determined that two questions must be answered when a party has succeeded on some but not all claims for relief. The court must determine: (1) if the plaintiff failed to prevail on claims that were unrelated to the claims on which he succeeded and (2) if the plaintiff achieved a level of success that makes the hours reasonably expended a satisfactory basis

for making a fee award. *Hensley*, 461 U.S. at 434. “In some cases, a plaintiff may present in one lawsuit distinctly different claims for relief that are based on different facts and legal theories.” *Id.* In these situations, an attorney’s “work on one claim will be unrelated to his work on another claim.” *Id.* at 435. “In other cases the plaintiff’s claims for relief will involve a common core of facts or will be based on related legal theories.” *Id.* The attorney’s time “will be devoted generally to the litigation as a whole, making it difficult to divide the hours expended on a claim by claim basis.” *Id.* The lawsuit as a whole “cannot be viewed as a series of discrete claims.” *Id.* In making a determination about the fee award and when adjusting the award, the court must “provide a concise but clear explanation of its reasons for the fee award” and make it clear that “it has considered the relationship between the amount of the fee awarded and the results obtained.” *Id.* at 437.

The three claims here are distinct because each is based on a different set of facts and legal theories. In her first claim, Tenant alleged that a rent increase was larger than the increase allowed by any applicable provision of the Act. In support of her claim, Tenant argued that she was exempt from rent increases because of her elderly status. To prove that she was exempt, Tenant needed to provide evidence that she applied for elderly status, that her application had been approved by the Rent Administrator, and that Housing Provider had notice of the exemption before the rent increase occurred. D.C. Official Code § 42-3402.08(b), (c); *Redman v. Potomac Place Assocs.*, Nos. 07-CV-335 & 07-CV-1255, 2009 D.C. App. LEXIS 166, at *6 (D.C. 2009) (stating that the tenant claiming elderly status pursuant to D.C. Official Code § 42-3402.08(c) has to produce evidence that she received an elderly status determination from the Mayor of the District

of Columbia); *Taylor v. Bain*, TP 28,071 (RHC Jun. 28, 2005) (determining the relationship between an elderly status exemption for a tenant and the small landlord exemption for a housing provider after tenant entered into evidence a letter verifying her status as an elderly tenant pursuant to D.C. Official Code § 42-3402.08). Tenant did not provide this evidence and did not prevail on this claim due to her failure to provide this evidence.

In her second claim, Tenant alleged that Housing Provider did not provide a proper 30-day notice of rent increase before the increase was charged. To prove this claim, Tenant had to show that the notice was improper or that notice was not given to her at all. D.C. Official Code § 42-3502.16(i); *Sanders v. Keyes*, TP 12,127 (RHC Apr. 30, 1998) (finding that a housing provider's failure to provide a notice of rent increase was a violation of the Rental Housing Act and the failure to do so results in a rent rollback). Tenant proved that Housing Provider did not serve her with written notice and prevailed on this claim. In her final claim, Tenant alleged that Housing Provider did not file the correct rent increase forms with RAD. To prove this claim Tenant had to demonstrate that Housing Provider failed to file a copy of the rent increase notice with RAD. There was no evidence in the record to show that Housing Provider filed the proper forms with RAD. Therefore, Tenant prevailed on this claim.

Each claim required different types of proof in order for Tenant to prevail and each claim involved separate legal theories. Ms. Berger's work on each claim required her to prove different facts and use different legal theories to substantiate Tenant's claims. Therefore, I find that the claims were unrelated and that the legal services provided on each claim should be separated.

The second step of the analysis is determining if the plaintiff achieved a level of success that makes the hours reasonably expended a satisfactory basis for making a fee award. Ms. Berger has not designated how many hours she expended on each claim. Generally, counsel is “not required to record in great detail how each minute of his time is expended” but “at least counsel should identify the general subject matter of his time expenditures.” *Hensley*, 461 U.S. at 437 n.12. Ms. Berger’s lack of specificity makes it difficult to determine which hours were expended on which claims.

If the number of hours expended in each claim is not provided, the award must be based on the number of claims filed. In *Londrville v. Kader*, TP 21,748 (RHC Dec. 14, 1993), the housing providers filed a motion for attorney fees claiming that the tenants’ position was “frivolous, unreasonable and without any foundation in either law or fact.” The housing providers prevailed on three of four issues raised in the tenant petition and requested a full award amount. The Commission found that the tenants did present a “meaningful case” for the issue on which they prevailed and proportionately reduced the total attorney fees award by 25% to reflect the tenants’ success on one of the four issues they raised in the hearing.

Here, Tenant prevailed on two of three claims at issue and Tenant is the moving party for this motion. Therefore, I will reduce the attorney’s fees award by 33% to \$3,811.46, which is calculated as follows: ($\$5,688.75 \times 33\% = \$1,877.29$; $\$5,688.75 - \$1,877.29 = \$3,811.46$).

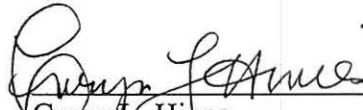
III. Order

Accordingly, it is this 23rd day of June, 2009:

ORDERED, that Tenant's Motion to Set Reasonable Attorney's Fees is **GRANTED**; and it is further

ORDERED, that Housing Provider Dudley Pro Realty pay counsel for Tenant, AARP Legal Counsel for Elderly, attorney's fees in the amount of **THREE THOUSAND EIGHT HUNDRED ELEVEN DOLLARS AND FORTY-SIX CENTS (\$3,811.46)** within thirty (30) days of the issuance of this order; and it is further

ORDERED, that the appeal rights of any party aggrieved by this Order are stated below.


Caryn L. Hines
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):

Jennifer Berger, Esq.
AARP Legal Counsel for the Elderly
601 E Street, NW
Washington, DC 20049

Dudley Pro Realty
2101 Rhode Island Ave., NE
Washington, DC 20018

By Inter-Agency Mail:

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

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

I hereby certify that on 6-23, 2009, this document was caused to be served upon the above-named parties at the addresses and by the means stated.


Clerk / Deputy Clerk