

District of Columbia
Office of Administrative Hearings
941 North Capitol Street NE, Suite 9100
Washington, DC 20002
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DISTRICT OF COLUMBIA
OFFICE OF
ADMINISTRATIVE HEARINGS

2009 JUL 10 P 3: 21

EARLINE BAKER
AND MICHAEL COX,
Tenants/Petitioners,

v.

EARL WHEELER
AND BOBBY JOHNSON,
Housing Providers/Respondents.

Case No.: RH-TP-08-29315

In re: 1624 28th Street SE
Unit 4

FINAL ORDER

I. Introduction

On May 28, 2008, Earline Baker and Michael Cox filed Tenant Petition (“TP”) 29,315 with the Rent Administrator¹ against Housing Providers/Respondents Earl Wheeler and Bobby Johnson alleging: (1) the rent increase was larger than the increase allowed by any applicable provision of the Rental Housing Act; (2) the rent exceeds the legally calculated rent for Tenants’ unit; (3) the services and/or facilities provided in connection with Tenants’ unit have been substantially reduced.

¹ The Rent Administrator heads the Rental Accommodations Division (“RAD”) within the Department of Housing and Community Development. The Council of the District of Columbia authorized the Office of Administrative Hearings (“OAH”) to hold hearings and issue decisions in cases previously heard and decided by the Rent Administrator, beginning October 1, 2006. D.C. Official Code § 2-1831.03(b-1)(1). Accordingly, the Rent Administrator transmitted this petition to this administrative court for all proceedings.

On June 28, 2008, this administrative court issued a Case Management Order (“CMO”) scheduling an evidentiary hearing in this matter for August 6, 2008, at 9:30 a.m. Tenants Earline Baker and Michael Cox, as well as counsel for Tenants William Hansen, Esquire appeared at the hearing. Housing Provider Earl Wheeler appeared for the Housing Provider. Tenant Earline Baker testified at the hearing. Housing Provider Earl Wheeler also testified at the hearing. Tenants introduced Exhibits PX101-104 and Housing Providers introduced Exhibits RX200-207 into evidence all of which were admitted into evidence. The appendix attached to this Order lists the exhibits.

Based on the following findings of fact and conclusions of law, I find that Tenants have not met their burden of proof that 1) the rent increase was larger than the increase allowed by any applicable provision of the Rental Housing Act; (2) the rent exceeds the legally calculated rent for Tenants’ unit; and (3) the services and/or facilities provided in connection with Tenants’ unit have been substantially reduced.

II. Findings of Fact

1. The housing accommodation at issue in this petition is located at 1624 28th Street SE Unit A.
2. Tenants moved into the housing accommodation in October 1, 2002. Their rent was \$415.00 monthly.
3. Petitioner Michael Cox was added to the lease agreement on October 1, 2002. The lease to which Petitioner Michael Cox was added indicates that the monthly rent for the housing accommodation is \$415.00. PX 104, RX 200.

4. The lease indicates that tenants must further furnish their own refrigerator. PX 104, RX 200.

5. In April 2005, Tenants' rent was increased by \$15.00 to \$430.00. Housing Providers did not give Tenants a notice of rent increase. The rent ceiling for Tenants' unit in April 2005 was \$424.00. PX 100.

6. On May 28, 2008, Earline Baker and Michael Cox filed Tenant Petition ("TP") 29,315 with the Rent Administrator alleging that (1) the rent increase was larger than the increase allowed by any applicable provision of the Rental Housing Act; (2) the rent exceeds the legally calculated rent for Tenant's unit; (3) the services and/or facilities provided in connection with Tenant's unit have been substantially reduced.

7. On June 28, 2008, this administrative court issued a Case Management Order ("CMO") scheduling an evidentiary hearing in this matter for August 6, 2008, at 9:30 a.m. Tenants introduced Exhibits PX101-104 and Housing Providers introduced Exhibits RX200-207 into evidence all of which were admitted into evidence.²

III. Conclusions of Law

This matter is governed by the Rental Housing Act of 1985 ("Rental Housing Act"), D.C. Official Code §§ 42-3501.01 *et seq.*, the District of Columbia Administrative Procedure Act ("DCAPA"), D.C. Official Code §§ 2-501 *et seq.*, and the OAH rules in the District of Columbia Municipal Regulations ("DCMR"), 1 DCMR 2800 *et seq.*, and 1

² See the Appendix attached to this Order which lists the exhibits.

DCMR 2920 *et seq.* The Office of Administrative Hearings (“OAH”) has jurisdiction pursuant to D.C. Official Code § 2-1631.03(b-1)(1).

A. Tenant’s Claims

1. The rent increase was larger than the increase allowed by any applicable provision of the Rental Housing Act

When Tenants moved into the housing accommodation on October 1, 2002, Tenants’ rent was \$415.00. Tenants’ rent was increased by \$15.00 to \$430.00 in April 2005. Tenants argue that the rent increase of \$15.00 which increased their rent to \$430.00 was larger than the increase allowed by any applicable provision of the Rental Housing Act.

Tenants may challenge a rent adjustment by filing a tenant petition within three years of the effective date of the adjustment. D.C. Official Code §42-3502.06 (e). *Kennedy v. DCRHC*, 709 A2d 94 (DC 1998). Here, Tenants Earline Baker and Michael Cox’s rent was increased in April 2005. Tenants filed the tenant petition on May 28, 2008. In order to challenge the rent adjustment Tenants would have had to file the tenant petition on or before April 30, 2008. Therefore, Tenants challenged the rent adjustment more than three years after the effective date of the adjustment and are barred under the statute of limitations from bringing this claim.

2. The rent exceeds the legally calculated rent for Tenants' unit

When Tenants moved into the housing accommodation on October 1, 2002, Tenants' rent was \$415.00. Tenants' rent was increased by \$15.00 to \$430.00 in April 2005. Tenants argue that the rent exceeds the legally calculated rent for Tenants' unit.

Tenants may challenge a rent adjustment by filing a tenant petition within three years of the effective date of the adjustment. D.C. Official Code §42-3502.06 (e). Here, Tenants Earline Baker and Michael Cox's rent was increased in April 2005. Tenants filed the tenant petition on May 28, 2008 alleging that the rent charged exceeds the legally calculated rent for Tenants' unit. In order to challenge Housing Providers' rent adjustment made in April 2005, Tenants would have had to file the tenant petition on or before April 30, 2008. Therefore, because Tenants filed the tenant petition more than three years after the effective date of the adjustment they are also barred under the statute of limitations from bringing this claim.

3. The services and/or facilities provided in connection with Tenants' unit have been substantially reduced

The tenant petition alleges that services and facilities in the housing accommodation were substantially reduced because Housing Provider did not furnish a refrigerator. Pursuant to D.C. Official Code § 42-3502.11, tenants can receive a decrease in rent charged if related facilities or services are reduced. To prevail on this claim Tenants must prove that Housing Providers reduced a service or facility previously provided. *See Lustine Realty v. Pinson*, TP 20,117 (RHC Jan. 13, 1989) at 4.

Tenant Earline Baker testified that when she moved in there was no refrigerator and that she purchased a refrigerator shortly after moving in. Both Tenants Earline Baker and Michael Cox are signatories to the rental agreement which clearly states that Tenants would be responsible for supplying their own refrigerator. PX 104. Housing Providers did not reduce facilities or services once Tenants moved in but rather they explicitly and by mutual agreement never provided Tenants a refrigerator.

The term “related facilities” is defined by D.C. Official Code 42-3501.03(26) as “any facility, furnishing, or equipment made available to a tenant by a housing provider, the use of which is authorized by the payment of the rent charged for a rental unit, including any use of a kitchen, bath, laundry facility, parking facility, or the common use of any common room, yard or other common area.” In this instance, the rental agreement between Housing Providers and Tenants state, “Tenant must further furnish their own refrigerator (sic).” By written rental agreement, Housing Provider did not make the refrigerator available to Tenant nor is the refrigerator’s use authorized by Tenants’ rental payment. Therefore, the refrigerator is not a related facility.

Related services is defined by the Rental Housing Act in D.C. Official Code 42-3501.03(27) as “any services provided by a housing provider, 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 law does not require Housing Providers to furnish a refrigerator and the rental agreement between Housing Providers

and Tenants included a provision that Tenants would provide their own refrigerator. Therefore, the refrigerator in this case is not a related service.

Tenants have the burden of proving the allegations in their petition by preponderance of the evidence. OAH Rule 2932.1, 1 DCMR 2932.1; *Cf.* D.C. Official Code §2-509(b). (in contested cases the proponent of a rule or order shall have the burden of proof.) Here, Tenants did not prove that Housing Providers reduced a service or facility provided in connection with the housing accommodation.


IV. ORDER

Therefore, it is, this 10th day of July 2009:

ORDERED that Tenants do not prevail on the claims in RH-TP-08-29315 that (1) the rent increase was larger than the increase allowed by any applicable provision of the Rental Housing Act; (2) the rent exceeds the legally calculated rent for Tenants' unit; and (3) the services and/or facilities provided in connection with Tenants' unit have been substantially reduced and therefore they are **DISMISSED WITH PREJUDICE**; and it is further

ORDERED, that either party may request reconsideration of this Final Order within 10 days pursuant to 1 DCMR 2937; and it is further

ORDERED, that the appeal rights of any party aggrieved by this Order are set forth 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, NE
Suite 9200
Washington, D.C. 20002
(202) 442-8949

**Certificate of Service:
By Priority Mail with Delivery Confirmation (Postage Paid) to:**

William Hansen, Esquire
600 13th Street NW
Washington, DC 20005


Earl Wheeler and Bobby Johnson
2806 Birkle Lane
Forestville, MD 20747

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 7-10, 2009,
this document was caused to be served upon the
above-named parties at the addresses and by the means stated.


Clerk / Deputy Clerk

APPENDIX**Exhibits in Evidence**

Exhibit No.	Pages	Description
Petitioner		
100	1	Certificate of Election of Adjustment of General Applicability form with file date stamped March 24, 2004
101	1	Certification of Records dated 6-5-08
102	1	Money order for May 2005 Rent (dated April 30, 2005)
103	1	Receipt dated May 27, 2005
104	3	Lease dated October 1, 2002
Respondent		
200	3	Lease dated August 31, 2002
201	1	Picture (undated) of housing accommodation depicting 2 refrigerators
202	1	Note from Earline Baker dated 12-26-06
203	1	Note from Michael Cox dated 6-15-07
204	1	Note from Michael Cox dated 1-24-08
205	1	Note from Earline Baker undated
206	1	Note from Michael Cox dated 7-27-07
207	1	Note from Michael Cox dated 10-19-07