

DISTRICT OF COLUMBIA
OFFICE OF ADMINISTRATIVE HEARINGS
941 North Capitol Street, NE, Suite 9100
Washington, D.C. 20002
TEL: (202) 442-8167
FAX: (202)442-9451

DISTRICT OF COLUMBIA
OFFICE OF
ADMINISTRATIVE HEARINGS

2009 JUL 29 P 3: 21

DAWN MINER,
Tenant/Petitioner,

v.

LENYA GREGORY-PERKINS,
Housing Provider/Respondent.

Case No.: RH-TP-08-29317

In re: 3320 Banneker Drive, NE

FINAL ORDER

I. Introduction

The Parties in this matter present four issues for decision: 1) Was the Property properly registered? 2) Is Housing Provider Lenya Gregory-Perkins exempt from the Rental Housing Act (Act) as a small landlord? 3) If Housing Provider is not exempt, did she violate the Act by reducing services and facilities in the unit Tenant Dawn Miner rented? 4) Did Housing Provider violate the Act by serving Tenant with an unlawful Notice to Vacate?

Tenant filed the petition at issue on May 30, 2008. The Parties presented their respective cases at an evidentiary hearing on September 30, 2008, when Ms. Miner, Ms. Gregory-Perkins, as well as Trella Gibbs, Property Manager, and Resna Wallace, assistant to Housing Provider, testified. Based on the record as a whole I conclude that Housing Provider had not properly registered the Property when she rented the unit, that she was not exempt from the Act as a small landlord, that services and facilities in Tenant's rental unit had not been substantially reduced, and that Housing Provider served Tenant with an unlawful Notice to Vacate that justified

imposition of a fine. Accordingly, I am imposing a fine of \$750 for Housing Provider's willful violation of the notice provisions of the Rental Housing Act.

II. Findings of Fact

A. Registration

1. In May 2007, Tenant Miner and Trella Gibbs, Property Manager for Housing Provider, agreed that Tenant would rent a house at 3320 Banneker Drive, NE (the Property) beginning on June 1, 2007, for a monthly rent of \$1,850. In their lease is the notation that the unit is exempt because the owner owns four or fewer units. However, no Claim of Exemption Form is attached as specified on the first page of the lease. Petitioner's Exhibit (PX) 100.

2. On January 28, 2008, Housing Provider filed with RAD, a Registration and Claim of Exemption Form for the Property, described as single family condominium with three bedrooms. PX 101. Exhibit 101 includes no reference to ownership of four or fewer units.

3. On May 22, 2008, Housing Provider sent Tenant a letter stating that Tenant's lease would expire on May 31, 2008. Further she stated that the rent, effective July 1, 2008, would increase by \$350, to \$2,200 monthly. Respondent's Exhibit (RX) 201.

4. After she received the May 22nd letter, Tenant telephoned the Department of Housing and Community Development, (DHCD), Rental Accommodations Division (RAD) to inquire about the legality of Housing Provider's actions.

5. Housing Provider did not have a business license for the Property as of June 5, 2008, as certified by the Program Manager, Business and Professional Licensing Administration, Department of Consumer and Regulatory Affairs. PX 102.

B. Services and Facilities

6. In November 2007, Tenant noticed that the sky light in her unit was leaking. As a result, water leaked from the third floor to the second floor. Tenant put towels down to absorb the water. She notified Housing Provider, who began repairs in December by covering the leaking area. But the problem was not resolved until February 2008, after a housing inspector inspected the Property.

C. Notice to Vacate

7. The check for Tenant's January 2008 rent was returned by the bank for insufficient funds. Afterwards, Housing Provider insisted that Tenant pay rent by money order or cashier's check. Tenant paid the January 2008 rent on January 29th.

8. On February 7, 2008, Housing Provider served Tenant with a Notice to Vacate for nonpayment of rent.

9. Tenant paid the March 2008 rent late. She paid the June 2008 rent in July.

10. On May 3, 2008, Housing Provider sent Tenant a letter informing her that the lease would terminate on May 31, 2008 and listing what needed to be done to ensure a full refund of security deposit — return property keys, return mailbox key, provide a forwarding address. RX 200.

11. On May 22, 2008, Housing Provider sent Tenant a Notice to Vacate for Personal Use and Occupancy. By terms of that Notice, Tenant was to vacate by August 22, 2008. On the Notice, Housing Provider stated that the Property was exempt. PX 103.

12. Tenant did not pay rent in July 2008. Tenant moved from the Property on July 31, 2008.

13. On September 11, 2008, an attorney for Housing Provider sent tenant a letter claiming July rent of \$2,200, balance due on March rent, charges to repair the mailbox, and attorney fees, for total charges of \$3,995.90. PX 105.

14. Housing Provider has not taken occupancy of the Property as of September 30, 2008. In fact, there is a lock box on the Property. At the hearing, Housing Provider conceded that the Property was an investment Property.

III. Conclusions of Law

The pending issues of exemption, registration, rent increase, and notice to vacate are governed by the Rental Housing Act of 1985, D.C. Official Code §§ 42-3501.01-3509.07 (Act), the District of Columbia Administrative Procedure Act (DCAPA), D.C. Official Code §§ 2-501-511, and the District of Columbia Municipal Regulations (DCMR), 1 DCMR 2801-2899, 1 DCMR 2920-2941, and 14 DCMR 4100-4399. The proponent of each claim asserted has the burden of proving that claim. D.C. Official Code § 2-509(b); Office of Administrative Hearings (OAH) Rule 2932.1, 1 DCMR 2932.1.

Here, Housing Provider has the burden to prove an exemption from the Act. *Goodman v. D.C. Rental Hous. Comm'n*, 573 A.2d 1293, 1297 (D.C. 1990). The standard for satisfying a housing provider's burden of proving an exemption is "credible, reliable evidence." *See*

Revithes v. D.C. Rental Hous. Comm'n, 536 A.2d 1007, 1017 (D.C. 1987). Tenant has the burden to prove that Housing Provider reduced services and facilities and served an unlawful Notice to Vacate.

1. Registration

The rent control provisions of the Rental Housing Act apply to “each rental unit in the District,” subject to exemptions that are specified in the Act itself. D.C. Official Code § 42-3502.05(a). All housing providers must have a business license and proper registration. D.C. Official Code §§ 42-3502.05(f), § 47-2828; 14 DCMR 200.3. The registration requirements are found in the regulations at 14 DCMR 4101 and 4102.

It is undisputed that Housing Provider did not have a business license when she rented the unit to Tenant, in violation of the Act. And, the Property was not properly registered. Housing Providers are required to file with the Rent Administrator a Registration/Claim of Exemption Form. 14 DCMR 4101.3. A true copy of the registration form must be posted “in a conspicuous place at the rental unit or housing accommodation to which it applies, or shall mail a true copy to each tenant of the rental unit or housing accommodation.” DCMR 4101.6. Although a reference was made to a registration form in the lease, no registration had been filed with the Rent Administrator at the time Housing Provider rented the unit to Ms. Miner, in violation of the Act. A registration form was filed, however, by January 28, 2008.

2. Exemption

Most rental housing units in the District of Columbia are subject to the rent stabilization provisions of the Rental Housing Act with requirements that include registration and regulation

of rents that housing providers may charge. The Act, however, contains a “small landlord exemption” for housing providers who are not professional landlords and who own four or fewer rental units. D.C. Official Code § 42-3505.02(a). Specifically, the Act provides that the Rent Stabilization Program, D.C. Official Code §§ 42-3502.05(f) through 42-3502.19 (except § 42-3502.17 [security deposits]), shall apply to each rental unit in the District except:

(3) Any rental unit in any housing accommodation of 4 or fewer rental units, including any aggregate of 4 rental units whether within the same structure or not, provided:

(A) The housing accommodation is owned by not more than 4 natural persons;

(B) None of the housing providers has an interest, either directly or indirectly, in any other rental unit in the District of Columbia;

(C) The housing provider of the housing accommodation files with the Rent Administrator a claim of exemption statement which consists of an oath or affirmation by the housing provider of the valid claim to the exemption. The claim of exemption statement shall also contain the signatures of each person having an interest, direct or indirect, in the housing accommodation”

D.C. Official Code § 42-3502.05(a)(3) (emphasis added).

Even if I were to accept the reference in the lease, PX 100, that Housing Provider owned four or fewer units, she had not filed the necessary claim of exemption when she rented the unit to Tenant. Notwithstanding the registration requirements of the Act, a housing provider can claim the benefits of the small landlord exemption and will not be penalized for failing to file a claim of exemption if the housing provider can prove that special circumstances exist. *Hanson v. D.C. Rental Hous. Comm’n*, 584 A.2d 592, 597 (D.C. 1991). Those special circumstances are: (1) the housing provider was reasonably unaware of the requirement of filing a claim of

exemption; (2) the rent charged was reasonable; and (3) the housing provider is not a real estate professional. *Id.* at 597; *Beamon v. Smith*, TP 27,863 (RHC July 1, 2005) at 7 (*citing Gibbons v. Hanes*, TP 11,076 (RHC July 11, 1984) at 3); *Boer v. D.C. Rental Hous. Comm'n*, 564 A.2d 54, 57 (D.C. 1989). If a housing provider meets the special circumstances test, she is excused from the requirements of registering the property for the period of time she was reasonably unaware of the requirements for registration. Because a real estate professional managed the Property that Housing Provider described as an “investment property” the special circumstances test under *Hanson* does not apply in this case. *Shapiro v. Comer*, TP 21,742 (RHC Aug. 19, 1993). Further, Housing Provider has not shown that she claimed a small landlord exemption when she filed a Registration form in January 2008. Hence, Housing Provider has not proven an exemption.

3. Services and Facilities

Tenant alleges that there was a leak into her unit from December 2007 until February 2008, one that was repaired when housing inspectors arrived. She concedes that Housing Provider sent a worker in response to her call in December, and that the worker covered the area in her unit.

The Rental Housing Act provides that if “related services or related facilities supplied by a housing provider for a housing accommodation or for any rental unit in the housing accommodation are substantially increased or decreased, the Rent Administrator [now the Administrative Law] may increase or decrease the rent charged, as applicable, to reflect proportionally the value of the change in services or facilities.” D.C. Official Code § 42-3502.11 (emphasis added). Tenant’s burden of proof on this issue includes proof that the housing

provider was put on notice of the existence of conditions that constitute a substantial reduction. *Calomiris Inv. Corp. v. Milam*, TP 20,144 and TP 20,160 and 20,248 (RHC Apr. 26, 1989) at 10. As with housing code violations, 14 DCMR 10502(c), after housing providers are notified of a reduction in services and facilities, they must be given a reasonable time to abate a problem. *See Parreco v. D.C.. Rental Hous. Comm'n*, 885 A.2d 327, 337 (D.C. 2005).

Two factors undermine Tenant's claim for relief based on the leak —Housing Provider responded promptly, even though the problem was not finally resolved for two months and because Tenant has not shown that the leak was "substantial" as required by the Act. The claim for reduction of services and facilities, therefore, is denied.

4. Notice to Vacate

Tenant alleges that Housing Provider served her with an unlawful Notice to Vacate. I agree. The Act provides that "no tenant shall be evicted from a rental unit, notwithstanding the expiration of the tenant's lease, so long as the tenant continues to pay rent." D.C. Official Code § 42-3505.01(a); *see also Adm'r of Veterans Affairs v. Valentine*, 490 A.2d 1165, 1168 -1169 (D.C.1985). Although Tenant was not always current with her rent, the Notice to Vacate at issue is one sent to Tenant on May 22, 2008, in which Housing Provider asserted, not that Tenant had failed to pay rent, but that as owner, she was reclaiming the Property as her residence. PX 103. A tenant's right to remain in a rental unit is subject to housing provider's right to make the rental unit her home. The Act provides:

A natural person with a freehold interest in the rental unit may recover possession of the rental unit where the person seeks in **good faith** to recover possession of the rental unit for the **person's immediate and personal use and occupancy** as a dwelling. The **housing provider shall serve on the tenant a 90-day notice to vacate** in advance of action to recover possession of the rental unit in instances

arising under this subsection. No housing provider shall demand or receive rent for any rental unit which the housing provider has repossessed under this subsection during the 12-month period beginning on the date the housing provider recovered possession of the rental unit.

D.C. Official Code § 42-3505.01(d) (emphases added).

Housing Provider provided Tenant with the requisite 90 day notice required by § 42-3505.01 to recover possession of the rental unit for personal use. But Housing Provider did not exercise that right in good faith, as shown by her statement that the Property is an investment property and by the presence of a lock box on the unit. At the time of the hearing, more than a month after Tenant vacated, Housing Provider had not moved into that unit. On this record, Tenant has proven that Housing Provider served her with an unlawful Notice to Vacate.

4. Penalty

A housing provider is not permitted to increase rent unless the Property is registered properly. D.C. Official Code § 42-3502.08(a)(1)(B). 14 DCMR 4101.9. In this case, the Property was registered at the time Housing Provider increased Tenant's rent.

The Act does not impose a specific penalty for a Housing Provider's failure to serve a Tenant with a proper notice to vacate. Nor does it provide a specific penalty for failure to register properly, except in cases involving an improper rent increase. But the Act permits the imposition of a fine against housing providers who violate the Act intentionally. The Act provides that: "Any person who wilfully [sic] . . . (3) commits any other act in violation of any provision of this chapter or of any final administrative order issued under this chapter, or (4) fails to meet obligations required under this chapter shall be subject to a civil fine of not more than \$5,000 for each violation." D.C. Official Code § 42-3509.01(b). A fine may be imposed where

the Housing Provider “intended to violate or was aware that it was violating a provision of the Rental Housing Act.” *Miller v. D.C. Rental Hous. Comm’n*, 870 A.2d 556, 558 (D.C. 2005). In this case, Housing Provider misrepresented that she would use the Property as her personal residence when she served Tenant with the Notice to Vacate, a willful act, justifying a fine of \$750

IV. Order

Therefore, it is this 29th day of July, 2009:

ORDERED, that Housing Provider shall pay a total fine of **SEVEN HUNDRED AND FIFTY DOLLARS (\$750)** in accordance with the attached instructions within 30 days of service of this Final Order; and it is further

ORDERED, that all other claims are **DISMISSED WITH PREJUDICE**; and it is further

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


Margaret A. Mangan
Administrative Law Judge

EXHIBITS

Tenant/Petitioner's Exhibits (PX):

PX100: Lease
PX 101: Exemption Form
PX 102: Certificate
PX 103: 90 Day Notice to Vacate
PX 104: Letter to Gibbs
PX 105: Letter from Attorney
PX 106: Copy of check
PX 107: Copy of Money Order
PX 108: Superior Court Praecipe
RX 200: Letter dated May 3, 2008
RX 201: Letter dated May 22, 2008

PAYMENTS

If a payment is required by this Order, to be properly credited to your case(s) the payment must be sent to the attention of the Clerk of the Office of Administrative Hearings. Payments are only accepted by personal check, cashier's check, or money order and must be made payable to "D.C. TREASURER." **Be sure to write the case number, RH-TP-08-29317 on the front of the check or money order.** Make a photocopy of the check for your records.

Enclose full payment and mail the check in an envelope with required postage to:

Office of Administrative Hearings
P.O. Box 77880
Washington, DC 20013-8880

If you have questions, please call the Clerk's Office at the Office of Administrative Hearings on 202-442-9094

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, DC 20002
(202) 442-8949

Certificate of Service:

**By Priority Mail/ Delivery Confirmation
(Postage Paid):**

Dawn Miner
3320 Banneker Drive, N.E.
Washington, D.C. 20018

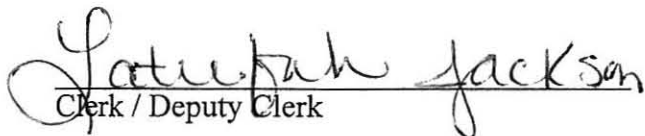
Lenya Gregory-Perkins
Trella Gibbs
12138 Central Avenue, Suite 344
Mitchellville, MD 20721

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
Rental Accommodations Division
Department of Housing and Community
Development
1800 Martin Luther King Jr. Ave., SE
Washington, DC 20020

I hereby certify that on 7-29,
2008 this document was caused to be served
upon the parties listed on this page at the
addresses listed and by the means stated.


Clerk / Deputy Clerk