

District of Columbia
Office of Administrative Hearings
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DISTRICT OF COLUMBIA
OFFICE OF
ADMINISTRATIVE HEARINGS

2009 AUG 24 P 2: 14

E. KEN HENRY,
Tenant/Petitioner,

v.

BENSON MEDLEY,
Housing Provider/Respondent.

Case No.: RH-TP-08-29385
In re 1012 Harvard Street NW
Unit 3

FINAL ORDER

I. Introduction

On August 11, 2008, E. Ken Henry filed Tenant Petition (“TP”) 29,385 with the Rent Administrator¹ against Housing Provider/Respondent Benson Medley alleging violations of the Rental Housing Act of 1985 (“Act”) D.C. Official Code §42-3501.01 et seq. at the housing accommodation, 1012 Harvard Street NW, Unit 3: (1) services and/or facilities provided as part of rent and/or tenancy have been substantially reduced; (2) Housing Provider has taken retaliatory action against Tenant in violation of Section 502

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.

of the Act; and (3) Housing Provider served a Notice to Vacate on Tenant which violates Section 501 of the Act.

On September 5, 2008, this administrative court issued a Case Management Order (“CMO”) scheduling an evidentiary hearing in this matter for September 29, 2008, at 9:30 a.m. Tenant E. Ken Henry appeared at the hearing. Housing Provider did not appear nor did a representative for Housing Provider appear. Tenant introduced Petitioner’s Exhibits (PXs) 100-106 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 Tenant has not met his burden of proof that he is a tenant as defined by the Act of 1985. Because I find that E. Ken Henry is not a tenant of Benson Medley’s, this administrative court has no jurisdiction over this matter.

II. Findings of Fact

1. The housing accommodation at issue in this petition is located at 1012 Harvard Street NW Unit 3.
2. E. Ken Henry moved into the housing accommodation on July 15, 2006. In lieu of rent, E. Ken Henry worked as property manager for the building in which his unit is located. PX# 106. The purpose of Mr. Henry’s occupancy of the building was to be on site of the property while it was undergoing renovations.

3. E. Ken Henry and Benjamin Medley have an agreement entitled "lease agreement/property management agreement." Benjamin Medley is Benson Medley's father. Benson Medley took the responsibilities as Housing Provider from his father.

4. The lease agreement/property management agreement detailed the property manager's duties and that the property manager would be compensated by the owner upon the completion of the renovation project in the sum of \$7,500. PX106.

5. Mr. Benson Medley had the radiators removed from the housing accommodation in October 2006 and they have not been replaced. Mr. Henry has been without heat as of the date of the hearing. PX 101.

6. Due to the renovations taking place throughout the building, the water pressure has been affected. Mr. Henry was without water intermittently for at least two weeks a month beginning in September 2007 lasting until May 2008.

6. Mr. Medley had the pipes under the kitchen and bathroom disconnected and Mr. Henry had to place buckets beneath them to prevent water from spilling onto the floors.

7. Mr. Medley, as the son of Mr. Benjamin Medley, was not the signatory to the agreement with Mr. Henry, and expressed to Mr. Henry sometime in the fall of 2006 that he no longer desired to have Mr. Henry remain as property manager.

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

Before this administrative court can rule on Mr. Henry’s claims, I must first determine whether Mr. Henry is a tenant as defined by the Rental Housing Act of 1985.

A. Is Mr. Henry a tenant as defined by the Rental Housing Act of 1985?

Mr. Henry was hired by Benjamin Medley to “help protect his interest, minor property maintenance and keep trespassers off the property.” PX 106. Mr. Henry moved into the housing accommodation on July 15, 2006, with the understanding that there would be major inconveniences and few comforts as Benjamin Medley undertook renovations to the building in which Mr. Henry’s unit was located. Benjamin Medley was unable to manage the renovation project and transferred his interest to his son, Benson Medley, to manage. Benson Medley expressed to Mr. Henry that he no longer desired Mr. Henry to remain as property manager. The level of service and facilities provided to Mr. Henry for his unit dramatically changed when Benson Medley took over for his father.

A tenant “includes a tenant, subtenant, lessee, sublessee, or other person entitled to the possession, occupancy, or the benefits of any rental unit owned by another person.”² Mr. Henry occupies a unit in Mr. Medley’s building. The agreement between Mr. Henry and Mr. Benjamin Medley is entitled “lease agreement/property management

² District of Columbia Code §42-3502.01(36).

agreement” and details Mr. Henry’s employment by Mr. Benjamin Medley. The agreement between Mr. Henry and Mr. Benjamin Medley is that Mr. Henry would live in the unit free of rent and would be compensated for his services in the amount of \$7,500 “upon the completion of the renovation project”

The first question that this administrative court must consider is whether a tenancy existed. In order for a tenancy to exist, there must be the existence of a rental unit. A rental unit is defined as a housing accommodation rented or offered for rent.³ Although the agreement that Mr. Henry signed with Mr. Benjamin Medley refers to Mr. Henry as “Tenant/Lessee/Property Manager” it appears to this administrative court that the dominant role Mr. Henry performed was that of property manager and an employee of Mr. Benson Medley.

Mr. Henry occupied the housing accommodation as the property manager. His responsibilities included keeping

property and hallways clean and in an appropriate manner... deposit all garbage and waste in a clean and sanitary manner into proper receptacles move to pick up location on scheduled garbage collection days.... To the best of his abilities reduce property trespassing. Eliminate trespassers from loitering on property steps, hallways, and backyard Use his judgment and when necessary involve the community police to assist in the elimination of the constant and loitering on property. Keep trespassers out of vacant apartments and will involve the police whenever unauthorized individuals are in vacant apartments... use extreme caution and ... supervise property frequently to assure that no one is on the property to ensure the highest safety during after construction hours...form a tenant association in order to prepare for the conversion process to condominiums.⁴

³ D.C. Code § 45-2503(33).

⁴ PX#106.

Clearly from the agreement, Mr. Henry's presence in the building was important to Mr. Benjamin Medley to prevent trespassers from affecting the renovations being done to the property. An apartment occupied by an employee or agent of the owner as his or her dwelling is not being rented or offered for rent.⁵ The Medleys were not offering the housing accommodation for rent and in fact the housing accommodation was not in a condition to be rented because the radiators had been removed, the kitchen and bathroom pipes under the sink had been removed, and water was only available for two weeks of every month from September 2007 to May 2008.

I find that Mr. Henry was an employee of Mr. Medley's and not a tenant under the Rental Housing Act of 1985 because Mr. Henry did not occupy a rental unit. Although Mr. Benson Medley had no desire to continue the arrangement with Mr. Henry that his father began, it still appears that Mr. Henry is not a tenant of his. Because Mr. Henry did not occupy a rental unit and he is not a tenant, this administrative court has no jurisdiction to hear his claims against Mr. Benson Medley as a housing provider. Therefore, Mr. Henry's claims against Benson Medley are dismissed with prejudice.

IV. ORDER

Therefore, it is, this 24th day of August 2009:


ORDERED that Tenant does not prevail on the claims in RH-TP-08-29385 that (1) services and/or facilities provided as part of rent and/or tenancy have been substantially reduced; (2) Housing Provider has taken retaliatory action against Tenant in

⁵ *Anderson et al v. Wm J. Davis, Inc.*, 553 A.2d 648, 650 (D.C. 1989). *See also Middleton v. W. J. Davis, Inc.*, TP 22,268 & TP 23, 065 RHC Mar. 23, 1999) at 111.

violation of Section 502 of the Act; and (3) Housing Provider served a Notice to Vacate on Tenant which violates Section 501 of the Act and therefore TP 29385 is **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:

E. Ken Henry
1012 Harvard Street, NW
Unit 3
Washington, DC 20001

Benson Medley
510 Oglethorpe Street NW
Washington, DC 20011

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 8-24, 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	Notice of Violation dated October 1, 2007
101	1	Notice of Violation dated September 17, 2007 double sided
102	1	Notice of Violation dated December 13, 2007 double sided
103	1	Notice of Violation dated September 17, 2007 double sided
104	1	Notice of Violation dated October 1, 2007 double sided
105	2	Notice to Correct or Vacate dated April 10, 2008
106	3	Lease Agreement/Property Management Agreement dated July 15, 2006
Respondent		