

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

2009 SEP 25 A 11:17

NORA THOMPSON,  
Tenant/Petitioner,

v.

CAPITOL LIFESTYLE MANAGEMENT  
AND ERNEST BOYKIN, III  
Housing Providers/Respondents.

Case No.: RH-TP-08-29387  
*In re* 1704 R Street SE  
Unit 3

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**FINAL ORDER**

**I. Introduction**

On August 11, 2009, Tenant/Petitioner Nora Thompson filed Tenant Petition (“TP”) 29,387 against Housing Providers/Respondents Capitol Lifestyle Management and Ernest Boykin, III alleging that: (1) Housing Providers increased Tenant’s rent while her unit was not in substantial compliance with the D.C. Housing Regulations; (2) the services and facilities provided in connection with Tenant’s unit were substantially reduced; and (3) Housing Providers served Tenant a Notice to Vacate in violation of Section 501 of the Rental Housing Act of 1985 (“the Act”).

On September 5, 2008, this administrative court issued a Case Management Order (“CMO”) setting this matter for a hearing on October 1, 2008, at 9:30 a.m. Tenant appeared at the hearing. Samantha Dancil, owner of the building in which Tenant’s unit

was located, and Ernest Boykin and Michael Lewis, representatives for Capitol Lifestyle Management also appeared at the hearing. During the hearing, I admitted into evidence Tenant/Petitioner's Exhibits ("PX") PX100-110 and Housing Provider's/Respondent's Exhibits ("RX") RX200-203, which are listed in Appendix A attached to this Order.

## **II. Findings of Fact**

1. Tenant has leased Unit 3 in 1704 R Street SE ("the housing accommodation") since February 1, 2001. Tenant's rent was \$400 at the beginning of her tenancy.
2. Effective January 1, 2008, Tenant's rent was increased by \$200 to \$600 PX 100.
3. When Tenant moved into the housing accommodation, the housing provider was Willie Davis, Jr. He remained the housing provider until the housing accommodation was purchased by Samantha Dancil on May 31, 2008.
4. Tenant knew that the building in which her unit was located was being offered for sale. At the time of purchase to the date of the hearing there was a for sale sign in front of the housing accommodation.
5. On August 1, 2008, Housing Providers delivered to Tenant a letter notifying Tenant that Ms. Dancil had purchased the property and Capitol Lifestyle Management was the new management company for the housing accommodation. RX 201.
6. Attached to the letter providing the new owner's name was a Notice to Vacate requesting Tenant vacate by July 31, 2008. PX 100, RX 201.

7. Housing Providers posted a second Notice to Vacate or Quit on Tenant's door on August 5, 2009.

8. Since 2001, the housing accommodation has been in need of numerous repairs. The bathroom and living room ceilings were cracking and peeling; the window casing surrounding the back porch window was rotted allowing water to seep into the unit; and the front door lock to Tenant's unit malfunctioned. PX 102-104, PX 110.

9. Tenant did contact the previous housing provider, Mr. Davis about the problems with the unit or the building in which her unit was located.

10. The back yard of the housing accommodation was filled with trash, debris, and drug paraphernalia from June 2008 until September 20, 2008. PX 105-106.

11. Housing Providers had not cut the front yard or trimmed the bushes along the front door walkway of the housing accommodation from July 2008 until September 20, 2008. PX 107-109.

12. Tenant did not contact Housing Providers about the problems with her unit or the building in which her unit was located.

## **II. Discussion and Conclusions of Law**

### **A. Jurisdiction**

This matter is governed by the Rental Housing Act of 1985 (D.C. Official Code §§ 42-3501.01 et. seq.) ("Rental Housing Act" or "the Act"), Chapters 41-43 of 14 District of Columbia Municipal Regulations ("DCMR"), the District of Columbia

Administrative Procedures Act (D.C. Official Code §§ 2-501 et. seq.) (“DCAPA”), and OAH Rules (1 DCMR 2800 et. seq. and 1 DCMR 2920 et. seq.).

**B. Housing Providers increased Tenant’s rent while her unit was not in substantial compliance with the D.C. Housing Regulations**

Tenant alleges that Housing Providers increased Tenant’s rent while her unit was not in substantial compliance with the D.C. Housing Regulations. On September 27, 2007, Tenant’s previous housing provider, Mr. Davis raised her rent from \$400.00 to \$600.00 effective January 1, 2008. PX 100. There is no evidence in the record that Samantha Dancil, Ernest Boykin, III or Capitol Lifestyle Management raised Tenant’s rent. Because Housing Providers did not raise Tenant’s rent, Tenant can not claim Housing Providers increased her rent while her unit was not in substantial compliance with the D.C. Housing Regulations.

**C. Tenant’s Allegation that the Services and Facilities Have Been Substantially Reduced**

Tenant alleges that Housing Providers substantially reduced the services and facilities provided as part of rent and or her tenancy by not repairing the roof which caused leaking to the bathroom and living room ceilings, not repairing the ledge to the back porch window, not providing front lawn maintenance, not removing trash in the back yard, and not repairing the front door lock to Tenant’s unit.

To establish a claim for reduction in services and facilities, Tenant “must present competent evidence of the existence, duration, and severity of the reduced

services.”<sup>1</sup> “Further, if the reduced service is within the tenant’s unit she must show that she notified the housing provider that service was required.”<sup>2</sup>

There is no evidence in the record that Tenant informed Housing Providers that there were repairs needed in her apartment. In fact Tenant conceded and Housing Providers confirmed that Tenant has had no contact with Housing Providers at all. Tenant’s argument that she did not know who her housing providers were because of the sale of the building in which her unit is located is unpersuasive because she knew which Housing Providers to name in which to bring this tenant petition. However, Tenant did not use this same information at any time to notify Housing Providers regarding the problems that persisted in her unit. In fact, Housing Providers were unsuccessful for months in reaching Tenant to introduce themselves and converse regarding potential concerns Tenant may have had with her unit. Additionally, Housing Providers sent correspondence to Tenant with contact information inviting her to contact them with questions and concerns. Housing Provider Boykin read into the record journal entries spanning from August 8, 2008 to September 28, 2008 as evidence of unsuccessful attempts to contact Tenant either by telephone or personally at the housing accommodation. There is no evidence in the record that Tenant tried to contact Housing Providers to inform them of the conditions in her unit. Because Tenant did not contact Housing Providers regarding the alleged reduction of services and facilities, Tenant can not prevail on this claim.

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<sup>1</sup> Jonathan Woodner Co. v. Enobakhare, TP 27,730 (RHC Feb. 3, 2005) at 11 (citations omitted).

<sup>2</sup> *Id.*

**D. Tenant's Allegation that Housing Providers Served a Notice to Vacate on Tenant in Violation of the Act.**

Tenant's petition alleges that Housing Providers served Tenant a Notice to Vacate which violates Section 501 of the Act. All notices to vacate shall contain a statement detailing the reasons for the eviction, and if the housing accommodation is required to be registered, a statement that the housing accommodation is registered with the Rent Administrator.<sup>3</sup>

Housing Providers served Tenant with two Notices to Vacate. The first Notice, delivered to Tenant on August 2, 2008 is an undated letter in which they state, "...Let this letter serve as formal notice that you must vacate the property by July 31, 2008. I appreciate your cooperation in this matter, and wish you all the best in your future endeavors. If you have any questions, please feel free to contact me at (301) 808-0404. Please forward July's rent (\$600) to 8961 Town Center Circle, Suite 208 Largo Md. 20774." RX 202. This Notice to Vacate did not contain a reason for the eviction, information regarding whether the housing accommodation is required to be registered or a statement that the housing accommodation is registered with the Rent Administrator. Therefore it is in violation of Section 501 of the Act.

The second notice to Tenant is a 30-Day Nonpayment Notice to Quit that was posted on her door on August 5, 2008. PX 113,115(a),(c). This Notice to Quit or Vacate provides as the reason for eviction Tenant's failure to pay the monthly rent of \$400 and states "[i]f you do not pay your total rent due within the time period pursuant to this Notice, this Notice shall be your Notice to Quit and Vacate, and you are hereby notified

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<sup>3</sup>D.C. Official Code § 42-3505.01(a).

that you are to quit and vacate the premises occupied by you.” The Notice gives Tenant “30 full days from the first day from the first day after service of this Notice within which to pay your rent or vacate. . . .” PX 113. However, this Notice to Quit or Vacate also fails to contain information regarding whether the housing accommodation is required to be registered and a statement that the housing accommodation is registered with the Rent Administrator.

Accordingly, I conclude that Housing Providers served Tenant two improper Notices to Vacate.

### III. Remedy

The penalty for serving an improper Notice to Vacate is a fine.<sup>4</sup> To impose a fine, it must be proven that Housing Providers “intended to violate or were aware that they were violating” a provision of the Rental Housing Act.<sup>5</sup> The Court of Appeals and the Rental Housing Commission (“RHC”) have determined that a finding of willfulness must be supported by facts demonstrating that the housing provider intended to violate the law.<sup>6</sup> In *Quality Mgmt.*, the Court of Appeals held that the term, “willful,” requires proof of a culpable mental state, *i.e.*, intent to violate the law.<sup>7</sup> Willfulness means

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<sup>4</sup> D.C. Official Code § 42-3509.01(b).

<sup>5</sup> *Quality Mgmt., Inc., v. D.C. Rental Hous. Comm’n*, 505 A.2d 73, 76 (D.C. 1986); *see also Miller v. D.C. Rental Hous. Comm’n*, 870 A.2d 556, 558 (D.C. 2005).

<sup>6</sup> *See Miller v. D.C. Rental Hous. Comm’n*, 870 A.2d 556, 558 (D.C. 2005) (holding that 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”).

<sup>7</sup> *Id.* at 76, n.6.

“something worse than good intentions coupled with bad judgment.”<sup>8</sup> In *M.B.E Inc. v. Minority Bus. Opportunity Comm’n of D.C.*, 485 A.2d 152, 158 (D.C. 1984), the Court of Appeals held that when finding willfulness the focus “is on the intentional performance of a prohibited act.” Also, a finding of willfulness requires a showing that the landlord’s conduct was intentional, or deliberate or the product of a conscious choice.<sup>9</sup>

In the instant case, there is no evidence in the record that Housing Providers intentionally or deliberately violated the Act by serving Tenant improper Notices to Vacate. Although it appears that Housing Providers did not write proper Notices to Vacate, Tenant did not prove that Housing Providers knew that this information was required and that their omission of this information was intentional or deliberate. Based upon this, I can not find that Housing Providers failure to serve proper Notices to Vacate to Tenant was intentional or deliberate. Therefore, I can not impose a fine for Housing Provider’s failure to serve proper Notices to Vacate to Tenant.

#### **IV. Conclusion**

For the reasons explained above, I find that Tenant has not sustained her burden of proof to establish (1) Housing Providers increased Tenant’s rent while her unit was not in substantial compliance with the D.C. Housing Regulations and (2) the services and facilities in connection with Tenant’s unit were substantially reduced.

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<sup>8</sup> *Sherman v. Comm’n on Licensure to Practice the Healing Art*, 407 A.2d 595, 599 (D.C. 1979) (quoting *Mullen v. United States*, 263 F.2d 275, 276 (1958)).

<sup>9</sup> *Bradley Gillian v. Powell*, TP 27,042 (RHC Dec. 19, 2002) at 9 (quoting *Ratner Mgmt. Co. v. Tenants of Shipley Park*, TP 11,613 (RHC Nov. 4, 1988) at 4-5.



I find that Tenant did sustain her burden of proof that Housing Providers served Tenant with a Notice to Vacate in violation of Section 501 of the Act. However, because there is no evidence in the record that this failure was deliberate or willful, I impose no fine for Housing Providers' failure to serve Tenant with a proper Notice to Vacate.


**V. Order**

Based upon the foregoing findings of fact and conclusions of law and the entire record in this matter, it is, this 24<sup>th</sup> day of September 2009:

**ORDERED**, that Case No.: RH-TP-08-29387 is **DISMISSED** with prejudice; and it is further

**ORDERED**, that either party may move for reconsideration of this Final Order within 10 days under OAH Rule 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

**APPENDIX A****Exhibits in Evidence**

<b>Petitioner</b>		
<b>Exhibit No.</b>	<b>Nos. of Pages</b>	<b>Description</b>
PX100	2	Letter from S. Dancil (undated) Notice to Vacate and July rent
PX101	1	Copies of rent checks for February, March, and April 2001
PX102 (a-c)		Photographs of bathroom ceiling taken August 2008
PX103		Photograph of living room ceiling taken August 2008
PX104		Photograph of back porch window taken August 2008
PX105		Photograph of backyard taken August 2008
PX106		Photograph of backyard during 3 month period taken August 2008
PX107		Photograph of front yard taken August 2008
PX108		Photograph of front yard taken August 2008
PX109		Photograph of front door walkway taken August 2008
PX 110		Photograph of front door lock taken August 2008
PX 111 (a-d)		Photographs depicting alleged drug activity taken August 2008
PX 112 (a-e)		Photographs of Tenant Petitioner's front door with screws missing taken August 2008 dated August 2008
PX 113		Photographs of Tenant Petitioner's front door with notice to quit on front door dated August 2008
PX 114	4	Notice to Quit dated August 5, 2008
<b>Respondents</b>		
RX200 (a-c)		Photographs of the front and backyard taken September 20, 2008
RX201		Letter dated August 1, 2008
RX202		Same letter as Petitioner's exhibit 100
RX203		Second page of Petitioner's exhibit 100

## 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:  
Sent By First-Class Mail (Postage Prepaid) to:**

Nora Thompson  
1704 R Street, SE  
Unit 3  
Washington, DC 20020

Capitol Lifestyle Management  
Attn: Ernest Boykin, III  
904 Pennsylvania Avenue, SE  
Second Floor B  
Washington, DC 20003

**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  
District of Columbia Department of Housing and Community Development  
Housing Regulation Administration  
1800 Martin Luther King Jr. Avenue SE  
Washington, DC 20020

I hereby certify that on 9-25, 2009, this document was caused to be served upon the above-named parties at the addresses and by the means stated.

Bunidda Rhames

Clerk / Deputy Clerk