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DISTRICT OF COLUMBIA
OFFICE OF
ADMINISTRATIVE HEARINGS

2009 JUN 23 A 10: 26

CHRIS CARTER
Tenant/Petitioner

v.

AMANDA SHIPE
Housing Provider/Respondent

Case No.: RH-TP-08-29411
In re 219 K Street, NE

FINAL ORDER

I. Introduction

At an evidentiary hearing on November 17, 2008, Tenant/Petitioner Chris Carter presented evidence in support of his claims that Housing Provider/Respondent Amanda Shipe violated the Rental Housing Act by not properly registering the Property, retaliating against him and serving him with an unlawful notice to vacate. Chris Carter testified in support of the tenant petition he filed on August 27, 2008; Amanda Shipe testified in defense. Based on the following findings of fact and conclusions of law, I conclude that Housing Provider violated the Act by failing to register before renting the rental unit and by serving Tenant with an unlawful notice to vacate. Because I conclude that these violations were intentional, I impose a fine of \$1,000 on Housing Provider.

II. Findings of Fact

1. Chris Carter rented a room in a house at 219 K Street, NE (the Property) on March 1, 2008. Two other men also rented rooms in the house. Amanda Shipe

owns the house and rented it to Tenant under a lease that specified a termination date of August 31, 2008. Housing Provider expected Tenant to vacate on that date.

2. Housing Provider did not have a business license when she rented the room to Tenant. On September 1, 2008, however, she obtained the license. RX 207.
3. On August 16, 2008, Housing Provider sent an email to Tenant reminding him that his lease expired on August 31, 2008, and that he must vacate by that date. PX 109(2).
4. On August 17, 2008, Housing Provider sent Tenant an email stating that she would move into her home as soon as the other tenants moved out, adding "I expect you to be out ASAP." PX 109(5). In another email, she wrote, "Again, I will be moving in 8/31." PX 109(6).
5. On September 9, 2008, Housing Provider put an advertisement on Craigslist for an unfurnished room at K Street, NE at 2nd on Capitol Hill, referring to the Property. The ad stated, "The owners are rarely ever home during the week and gone on most weekends to 2nd home or traveling. The house is yours most of the time." PX 108

III. Conclusions of Law

Tenant alleges in his tenant petition that Housing Provider violated the Rental Housing Act by 1) not registering the Property properly; 2) taking retaliatory action

against him; and 3) serving an unlawful notice to vacate. He also alleges that Housing Provider failed to return his security deposit.

This matter is 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.

A Registration and Notice

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. Although Housing Provider ultimately obtained a residential housing business license, she did not have a license when she rented the room to Tenant, nor did she register the property during his tenancy. In fact, she claimed a homestead exemption for the Property during that time, although she did not reside there. Thus, Tenant has proven that Housing Provider violated the Act by not obtaining a license and registering when she rented rooms¹ at the Property.

¹ Tenant suggested that the Property was a rooming house, but “rooming house” applies to a building occupied by or offered for occupancy to five or more persons. D.C. Official Code § 47-2828(b); 4 DCMR 199. There is no evidence to prove that the building in this case met the five or more person prerequisite.

B. Retaliation

Tenant alleges that Housing Provider retaliated against him by asking him to vacate without providing proper notice.

“Retaliatory action,’ is action intentionally taken against a tenant by a housing provider to injure or get back at the tenant for having exercised rights protected by §502 [D.C. Official Code § 42-3505.02] of the Act.” 14 DCMR § 4303.1. If within six months of engaging in a “protected act,” a housing provider takes certain statutorily defined “housing provider action,” a tenant benefits from a presumption of retaliation, including that the housing provider took “an action not otherwise permitted by law,” unless Housing Provider “comes forward with clear and convincing evidence to rebut this presumption.” D.C. Official Code § 42-3505.02 (b); *DeSzunyogh v. Smith*, 604 A.2d 1, 4 (1992); *Twyman v. Johnson*, 655 A.2d 850, 858 (D.C. 1995).

As Tenant points out correctly, Housing Provider took “housing provider action” when she told him his lease had expired and he was to leave the house. Tenant has not shown, however, that the notice to vacate was in response to any tenant protected act, such as a report to a housing inspector or complaint about conditions. Without establishing the requisite “tenant’s exercise of a right” pursuant to D.C. Official Code § 42-3505.02(b)(1), Tenant has not proven retaliation under the Act.

C. Tenant's Claims Concerning an Improper Notice To Vacate

Tenant's third claim is that Housing Provider served him with a notice to vacate that violated the requirements of the Rental Housing Act. In defense, Housing Provider contends that she intended to use the house as her personal residence. To assess this claim, two significant statutory provisions must be examined. First, 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). If a housing provider bases an eviction on reasons other than the nonpayment of rent, the housing provider must provide 30 day written notice to correct or vacate, specify the reasons for the eviction if correction is not made, and serve a copy of the notice on the Rent Administrator. 14 DCMR 4301.1. In this case, Housing Provider attempted to evict Tenant even though he continued to pay rent, without complying with the notice provisions listed in the regulations.

In spite of a housing provider's noncompliance with 14 DCMR 3101.1, 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).

Irrespective of any right Housing Provider may have to personal use and occupancy of the Property, in this case, Housing Provider violated the Act by not providing Tenant with the requisite 90-day notice. Further undermining the validity of the notice to vacate, Housing Provider advertised for another tenant on Craigslist within weeks of demanding that Mr. Carter vacate.

D. Penalty

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. *See* D.C. Official Code § 42-3502.08(a)(1)(B). 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 the status of the Property when she claimed the homestead exemption, a willful act. Furthermore, by

advertising for a new tenant within weeks of telling Mr. Carter that he had to vacate undermines her theory that a tenant could not live at the Property because she was reclaiming it as her residence. Such egregious, willful deception warrants a fine of \$1,000

E. Security Deposit

Finally, Tenant alleged that Ms. Shipe improperly retained his security deposit. At the time the tenant petition in this matter was filed, the administrative court's jurisdiction was limited to adjudicating the nonpayment of interest on security deposits. D.C. Official Code § 42-3502.17(b). The District of Columbia Superior Court had jurisdiction over the refund. *See Jordan v. Charles E. Smith Residential Realty*, TP 24,389 (RHC July 16, 1999) at 6. Tenant's claim that Housing Provider improperly retained her security deposit, therefore, is dismissed for lack of jurisdiction².

IV. Order

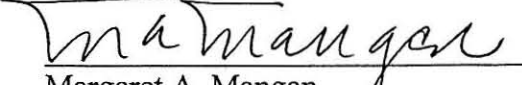
Therefore, it is this 23rd day of June, 2009:

ORDERED, that Amanda Shipe shall pay a total fine of **ONE THOUSAND DOLLARS (\$1,000)** 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**, and it is further

² OAH did not obtain jurisdiction over security deposits until March 17, 2009. 56 D.C. Reg. 1332 (Jan. 23, 2009).

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


Margaret A. Mangan
Administrative Law Judge

APPENDIX

Tenant/Petitioner's Exhibits (PX):

- 100 Tenant Petition
- 101 Certificate from DCRA regarding business license on August 27, 2008
- 102 DCRA Business License Verification web page
- 103 Property Detail of 219 K Street, NE
- 104 Medical Discharge Instructions September 3, 2008
- 105 Room Lease Agreement
- 106 Residential Sublease
- 107 Room Lease Agreement with Brandon Keith
- 108 Craigslist Advertisement dated September 8, 2008
- 109 Email Correspondence
- 110 Photographs

Housing Provider/Respondent Exhibits (RX):

- 200 Repair/Purchase List
- 201 The House Doctor Estimate September 10, 2008
- 202 Invoice for Electrician September 24, 2008
- 203 Receipt for Order September 4, 2008
- 204 Home Depot receipts
- 205 Photograph
- 206 (A-J) Email Correspondence
- 207 Business License September 1, 2008

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

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-08-29411 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

Certificate of service
By Priority Mail / Delivery Confirmation
(Postage Paid):

Chris Carter
10440 Rockville Pike, Unit 301
Rockville, MD 20852

Amanda Shipe
219 K Street, NE
Washington, DC 20002

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 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