DISTRICT OF COLUMBIA
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JENNIFER HUM, Tenant/Petitioner, v. EUGENE R. DUDA AND CRISTINA E. ANTELO, Housing Providers/Respondents.	Case No.: RH-TP-08-29461 *In re*: 2312 1st Street, NW

FINAL ORDER

I. Introduction

At issue are claims Tenant/Petitioner Jennifer Hum alleged in the tenant petition she filed on October 14, 2008: 1) Was the building in which her unit was located properly registered? 2) Were services and facilities in the rental unit substantially reduced? 3) Did Housing Provider take retaliatory action against her? 4) Was her security deposit deposited properly?

At the hearing on January 22, 2009, Jennifer Hum, self represented, testified on her own behalf. Housing Providers/Respondents, Cristina Antelo and Eugene Duda, also self represented, testified and called as witnesses Joseph Duda and Phillip Palmer. Exhibits are listed in the appendix. Based on testimony at the hearing and record as a whole, I conclude that Tenant is entitled to $418.16 in rent refunds for reductions in services and facilities as set out in the following findings of fact and conclusions of law.

II. Findings of Fact

1. In June 2008, Tenant Jennifer Hum rented a room on the third floor at 2312 1st Street, NW (the Property) from Eugene Duda and Cristina Antelo, who lived in the main part of the house. Tenant shared a second floor bathroom and common areas with Housing Providers and one other tenant. Tenant had access to the back yard. At the time of the rental, Housing Providers had not registered the property and did not possess a business license.

2. Tenant and Housing Provider agreed to a monthly rent of $900.

3. Tenant gave Housing Providers a security deposit when she moved in.

4. At the inception of the tenancy at issue, Housing Providers were renovating their house. Housing Provider told Tenant about the renovation work. Tenant inspected the unit before agreeing to rent it.

5. During the renovation, floorboards were widely spaced, and the back staircase did not have a railing. Usual access to the backyard was blocked, so Housing Providers offered Tenant a key to the basement, which would provide access to the yard. Tenant declined to take the key.

6. Tenant requested but never received a lock and key for her room. Housing Providers did not provide a key because the door was one with a glass doorknob that they chose not to disturb with a lock and key mechanism.

7. Tenant returned to the house one day to find plastic sealing the living room and dining room. The area was dusty, which bothered Tenant, although she did not tell Housing Providers that the dust was a problem for her.

8. On August 8, 2008, no hot water was available at the house. Housing Providers were out of town. Tenant did not notify Housing Providers about the problem. She went to a friend's house where there was hot water. When Tenant returned on August 9, there was still no hot water. Housing Providers returned on Sunday, August 10, 2008, when they learned about the lack of hot water. The next day, Ms. Antelo emailed Tenant to apologize for the problem and promised a solution. Within two days of their learning about the lack of hot water, the problem was remedied.

9. On August 9, 2008, Housing Provider Antelo left a voice mail message for Tenant to inquire about unpaid rent. Tenant did not return the call. Ms. Antelo did not see Tenant at the house on August 10th. On August 11, 2008, Ms. Antelo emailed Tenant about unpaid rent; she did not receive a response. Then she noticed that Tenant's toiletries were gone from the bathroom and food gone from the refrigerator. Housing Providers thought Tenant had moved out.

10. On August 12, 2008, a friend of Tenant's, Mr. Lee, was at the house with a key to receive a delivery Tenant was expecting. Housing Providers thought Mr. Lee had moved in without their knowledge or agreement. Mr. Duda confronted him, had an unpleasant encounter, and insisted that Mr. Lee relinquish the key.

11. On October 14, 2008, Tenant filed the tenant petition at issue.

12. Housing Providers registered the Property and applied for a Basic a Business License on January 14, 2009, after they learned that registration and a license are required for rental property. RX 201, RX 202.

III. Conclusions of Law

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, 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. Tenant's claims are considered in turn.

A. 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 Providers did not have a business license when they rented the unit to Tenant, in violation of the Act. Nor had they properly registered the Property. 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." 14 DCMR 4101.6.

Although Housing Providers did not have a proper license and registration at the time they rented a unit to Tenant, within six months, Housing Providers registered the Property, RX 201, and applied for a Basic a Business License. RX 202.

The Act does not impose 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. "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, Tenant has not proven that Housing Providers intentionally violated or were aware they were violating the Act. No fine, therefore, is imposed.

B. Services and Facilities

Tenant alleges that dust in the house, lack of a key to her unit, exposed wiring, widely spaced floorboards, and lack of railing or lighting in a stairwell, constituted reductions in services and facilities.

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). "'Rent' means the entire amount of money, money's worth, benefit, bonus, or gratuity, demanded, received, or charged by a housing provider as a condition of occupancy or use of a rental unit, its related services, and its facilities." D.C. Official Code § 42-3501.03 (28) (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, *see* 14 DCMR 105.2(c), after housing providers are notified of a reduction in services and facilities, they must be given a reasonable time to abate a problem. A tenant is entitled to a rent refund for substantial reduction only if the service is "not promptly restored to the previous level." 14 DCMR 4211.6; *Parreco v. D.C.. Rental Hous. Comm'n*, 885 A.2d 327, 337 (D.C. 2005).

Under applicable regulations, "habitation" means "any place used as a dwelling unit or rooming unit. 14 DCMR 199. Tenant's room, therefore, was "habitation." "An owner shall provide to each tenant, when the tenant first enters into possession of a habitation, an adequate lock and key for each door used or capable of being used as an entrance to or egress from the habitation, and shall keep each lock in good repair. Each lock shall be capable of being locked from inside and outside the habitation." 14 DCMR 607.2.

Of the claims listed as reductions in services and facilities, Tenant provided direct notice in only one instance, the lack of a key to her unit. Lack of notice for the other reductions in services and facilities Tenant listed bars recovery for them. *See Calomiris Inv. Corp. v. Milam*, TP 20,144 and TP 20,160 and 20,248, *supra.* Tenant notified Housing Provider of the lack of a

key to her unit. Housing Providers concede that they never intended to put a lock on the door to the rental unit. The reduction was substantial because of safety considerations. Tenant is entitled to a 15% reduction in the rent she was charged, whether or not paid. D.C. Official Code § 42-3501.03 (28); *Kapusta v. D.C. Rental Hous. Comm'n*, 704 A.2d 286, 287 (D.C. 1997).

The following chart shows the calculation for the 15% reduction in rent for the three month tenancy plus interest to the date of the decision at the three percent interest rate set for judgments of the Superior Court of the District of Columbia on the date of this final order.

Date	Rent charged	% reduction	Reduction	Months held	Interest rate	Interest due	
Jun-08	$900.00	15%	$135.00	14	0.0025	4.725	
Jul-08	$900.00	15%	$135.00	13	0.0025	4.3875	
Aug-08	$900.00	15%	$135.00	12	0.0025	4.05	
			$405.00			13.16	$418.16

C. Retaliation

Tenant alleges that Housing Providers took retaliatory action against her. She contends that Housing Provider engaged in self help eviction, failing to serve her with a proper notice to vacate. Tenant described in detail a confrontational interaction between Housing Providers and Mr. Lee, an interaction she did not witness. Mr. Lee did not testify. Tenant suggests that the confrontation was an eviction with Housing Providers' insisting that her friend return the key to the Property. I credit as more reliable the testimony from Housing Providers, one of whom was present and has personal knowledge of the interaction. Housing Providers did not evict Tenant. Rather, they had a good faith basis to believe that she had moved without paying rent for August and without telling them. Hence they demanded the key from her friend who they believed had no right to enter the property.

"'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 a housing provider takes certain statutorily defined "housing provider action," within six months of a tenant's "protected act," a tenant benefits from a presumption of retaliation. If Tenant meets the threshold criteria, she benefits from the presumption of retaliation. The presumption includes 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). In this case, the entire tenancy, including Tenant's complaint and Housing Provider's response, was within six months.

Protected acts include a tenant's request for repairs, § 3505.02 (b)(2). Tenant's request for a lock and key for the door to her room would qualify as such a protected act. "Housing provider action" includes "seek[ing] to recover possession of a rental unit, action that would otherwise increase rent, decrease services, increase the obligation of a tenant, harass, . . . terminat[e] . . . tenancy without cause or any other form of threat or coercion." § 42-3505.02(a).

The act Tenant alleges was retaliatory was directed to her friend who was not a tenant. Since the action was not directed toward her, it was not retaliation under the Rental Housing Act.

Even if Tenant would benefit from a presumption of retaliation, Housing Providers have provided clear and convincing evidence to rebut the presumption effectively. Clear and convincing evidence is "evidence that will produce in the mind of the trier of fact a firm belief or conviction as to the facts sought to be established." *Lumpkins v. CSL Locksmith, LLC*, 911 A.2d

418, 426, n. 7 (D.C. 2006) (quoting *In re Dortch,* 860 A.2d 346, 358 (D.C. 2004)). Housing Providers believed Tenant had moved. It reasonably followed that they would ask for any keys others had for the Property. Hence, Tenant's claim for retaliation under the Act is denied.

D. Security Deposit

Finally, Tenant alleged that Housing Providers improperly deposited her security deposit. This administrative court's jurisdiction is limited to adjudicating the nonpayment of interest on security deposits. D.C. Official Code § 42-3502.17(b). A tenant is not entitled to interest if her tenancy was less than one year. 14 DCMR 311.2. The District of Columbia Superior Court has jurisdiction over other aspects of security deposits. *See Jordan v. Charles E. Smith Residential Realty,* TP 24,389 (RHC July 16, 1999) at 6. Tenant's claim that Housing Provider improperly deposited her security deposit, therefore, is dismissed for lack of jurisdiction.

IV. ORDER

Therefore, it is this 9th day of September, 2009,

ORDERED, that Housing Providers pay Tenant **FOUR HUNDRED EIGHTEEN DOLLARS AND SIXTEEN CENTS ($418.16)** in rent refunds for reductions in services and facilities; 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 Final Order are set forth below.

Margaret A. Mangan
Administrative Law Judge

EXHIBITS

Petitioner's Exhibits (PX):

100: Copies of emails between parties 8/11/09; 6/5/08

Respondent's Exhibits (RX):

200: Photographs
201: RAD Registration and claim of Exemption Form dated 1/14/09
202: Letter to Eugene Duda dated 1/14/09
203: Notice of Business Tax Registration
204: E-Z Pass Transactions
205: Building Permit
206: Electrical Permit
207: Plumbing Permit
208: Nemocolin Woodlands Resort Transactions
209: Ryan Greenlaw Affidavit
210: Emails

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 with Delivery Confirmation (Postage Paid):

Jennifer Hum
58–52 229 Street
Bayside, NY 11364

Eugene R. Duda
Cristina E. Antelo
2312 1st Street, NW
Washington, DC 20001

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 9-9, 2009, this document was caused to be served upon the above-named parties at the addresses and by the means stated.

Latteja Jackson
Clerk / Deputy Clerk