

DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION

NV 09-001

In re: 3133 Connecticut Ave., N.W.

Ward Three (3)

TENANTS OF 3133 CONNECTICUT AVENUE, N.W.

Tenants/Appellants

v.

KLINGLE CORPORATION

Housing Provider/Appellee

DECISION AND ORDER

September 1, 2015

SZEGEDY-MASZAK, CHAIRMAN. This case is on appeal to the Rental Housing Commission (Commission) from a final order issued by Acting Rent Administrator Keith Anderson (Acting Rent Administrator), based on a petition filed in the Rental Accommodations Division (RAD) of the District of Columbia Department of Housing and Community Development (DHCD).¹ The applicable provisions of the Rental Housing Act of 1985 (Act), D.C. Law 6-10, D.C. OFFICIAL CODE §§ 42-3501.01-3509.07 (2001), the District of Columbia Administrative Procedure Act (“DCAPA”), D.C. OFFICIAL CODE §§ 2-501-510 (2001), and the District of Columbia Municipal Regulations (“DCMR”), 1 DCMR §§ 2800-2899 (2004), 1 DCMR §§ 2920-2941 (2004), 14 DCMR §§ 3800-4399 (2004) govern these proceedings.

¹ OAH assumed jurisdiction over petitions arising under the Act from the Department of Consumer and Regulatory Affairs (DCRA), Rental Accommodations and Conversion Division (RACD) pursuant to the Office of Administrative Hearings Establishment Act, D.C. Law 14-76, D.C. OFFICIAL CODE § 2-1831.03(b-1)(1) (2007 Repl.). The functions and duties of RACD in DCRA were transferred to DHCD by § 2003 the Fiscal Year 2008 Budget Support Act of 2007, D.C. Law 17-20, D.C. OFFICIAL CODE § 42-3502.04b (2010 Repl.).

I. PROCEDURAL HISTORY

Housing Provider/Appellee Klingle Corporation (Housing Provider), filed an “Application for Approval of Issuance of Notice to Vacate Pursuant to D.C. Code § 42-3505.01(f) (501(f) Application) with RAD on July 31, 2009, with respect to the housing accommodation located at 3133 Connecticut Avenue, N.W. (Housing Accommodation). On October 21, 2009, the Acting Rent Administrator issued a “Notice of Pending Application for Approval to Issue Section 501(f) 120 Day Notices to Vacate and Tenants’ Statutory Right to Comment,” notifying the tenants of the Housing Accommodation that the 501(f) application was pending, providing information regarding the process for the 501(f) Application’s consideration, and notifying the tenants of their statutory right to comment on the 501(f) Application. Klingle Corporation v. Tenants of 3133 Connecticut [Ave.] NW, NV 09-001 (RAD Oct. 21, 2009).

The Acting Rent Administrator issued a final order on March 3, 2010: Klingle Corporation v. Tenants of 3133 Connecticut [Ave.] NW, NV 09-001 (RAD Mar. 3, 2010) (Final Order). The Final Order indicated that comments had been filed by the following tenants of the Housing Accommodation: Kenneth Mazzer and Wendy Tiefenbacher (Unit 115), Robert Barnes (Unit 223), Joyce and Walker Diamanti (Unit 414), Harry and Karen Marks (Unit 415), Mary Sue Flanagan (Unit 419), Lloyd and Margot Siegel (Unit 502), Nicole Witenstein (Unit 504), Don Wassem (Unit 506), Mark Stopher and Sachiko Murase (Unit 519), James and Betty Jane Sakes (Unit 602), Lee and Nicole Cohen (Unit 714), Carol Mergen (Unit 715), Blake and Wendy Nelson (Unit 802), Suzanne Crawford (Unit 805), Philipia Rappoport (Unit 818), Christine Burkhardt (Unit 901), Tamara Browne (Unit 1006), and Peter and Kaia Schwartz (Unit 1024). Final Order at 4; R. at 695.

The Acting Rent Administrator made the following findings of fact in the Final Order:²

1. On July 31, 2009, Petitioner Klingle Corporation filed 501(f) Application for Approval of Issuance of Notices to Vacate Pursuant to D.C. Code 42-3505.01(f) with RAD for authorization to require that Tenants temporarily vacate their rental units in order to perform renovations including and relating to the plumbing, electrical and mechanical systems, which can not [sic] safely or reasonably be completed while the rental units are occupied.
2. The Application contains the following information:
 - (1) A copy of the Notice to Tenants of Application for Approval of Issuance of Notice to Vacate Pursuant to D[.]C[.] Code Sect. 42-3505.01(f) with the following attachments:
 - (a) A copy of D[.]C[.] Official Code Sect. [501](f)(1);
 - (b) List of sources of technical assistance for Tenants;
 - (c) Summary of the plan for the alterations and renovations; and
 - (d) A copy of the Application Memorandum.
 - (2) Detailed statement regarding the necessity for the alterations and renovations and the need for Tenants to relocate while the work is being performed, including a Third Party Engineer's Report and Repair Logs[;]
 - (3) Timetable for the alterations including:
 - (a) Building vacancy chart;
 - (b) Schematic of work zones by groups of tiers;
 - (c) The relocation of the Tenant from the rental unit and back to the rental unit;
 - (d) The commencement of the work; and
 - (e) The completion of the work;
 - (4) Relocation Plan including the amount of relocation assistance and a list of tenants and their addresses and phone numbers;

² The findings of fact are recited herein using the language of the ALJ in the Final Order.

- (5) Schematic of each unit's finished work; and
 - (6) Draft 120 - Day Notice to Vacate for each Tenant.
3. In the Application, Petitioner proposes to replace the electrical, plumbing and mechanical systems; install a new life safety system and air conditioning throughout the housing accommodation; and install dishwashers and clothes washers and dryers in each unit. The proposed alterations and renovations are necessary to bring the rental units and the housing accommodation into compliance with the District of Columbia Housing code insofar as the infrastructure systems are chronically in states of disrepair and prone to failure because they are old, worn and are far beyond the useful life for each system. The new life safety system is needed for compliance with the District of Columbia Building Code.

More specifically, the Application states that:

1. The Kennedy-Warren commenced use as a housing accommodation in 1929. The electrical, plumbing and mechanical systems are the original systems installed in 1929 and are approximately eighty (80) years old.
2. Each system is beyond its useful life and is constantly in need of repair and maintenance. The systems are leaking, corroded, blocked, worn-out, and potentially unsafe and poised for chronic and/or major failure.
3. Replacement of the electrical, plumbing and mechanical systems will require the tenants to vacate their rental units. Currently 78 of the 309 units are occupied.
4. The alterations and renovations can be done sequentially in four vertical zones or tiers so that while one or two are being renovated, the other zones will not be affected. Each of the 78 Tenants can remain in the building and will be temporarily relocated to comparable units in one of the four tiers.
5. In 2006, Petitioner renovated the horizontal infrastructure/feeder located in the basement for the plumbing and electrical systems without relocating any Tenants, which included installing new electric switchgear and replacing the sanitary sewer lines, gas distribution lines and domestic water supply lines. The vertical portions of the two systems, once replaced, can be "plugged into" the new horizontal infrastructure, which will minimize the amount of time the tenants are relocated from their current units.

6. The subject renovations will involve alterations and renovations to the units themselves. They will include removing and replacing all of the original plumbing lines which will accommodate washer and dryers and dishwashers; replacing the electrical systems to accommodate modern data transfer lines; replacing the fire alarm bells in the hallways with a modern fire life system that will include sprinklers in the units and common areas; and replacing the steam engine boilers to accommodate a new heating, ventilation and air conditioning (HVAC) system.
7. The exiting piping system serving the bathrooms will be removed from the building by tiers and through the roof where necessary. Walls and ceilings concealing the existing waste piping will be either removed or cut open to access the piping for removal and replacement. Plumbing fixtures will be removed, store and reinstalled. Existing water closets and kitchen piping will be replaced, including bath and kitchen faucets. New kitchen sinks with garbage disposals and dishwashers will be installed. New piping will be installed to accommodate the new washers and dryers and dishwashers, which will require drilling through the floors of the units.
8. Exiting Tenants can choose to have the dishwasher/disposal and a washer/dry appliance package installed, while the new amenities will be installed in all vacant units. In order to replace the piping, the water supply to the tier will be shut off and walls and ceilings will be cut open for access, requiring that each tier be vacated while the work is performed. The water supply piping system will also be similarly removed and replaced.
9. New electrical wiring will be installed from the main switch gear room in the garage/basement area through the walls to new electric panels in each apartment. The new electrical system will replace the current sub panel fuse box system located in the hallways and will provide circuit breaker protection for the Tenants. Petitioner also proposes to install new telephone/data [sic] wiring with telephone jacks and data outlets in each apartment. The electrical system replacement is necessary to meet new Code requirements.
10. A new two-pipe, central heating and air conditioning system will be installed including a new chiller plant and boiler plant to be constructed in the garage/basement. The new system will replace the original steam heat system that uses radiators and window air conditioning units. The piping runs vertically up through the building to the units and must be installed tier by tier, as with the plumbing and electrical system renovations. Only two of the four boilers are

currently in use. They have exceeded their useful lives by at least thirty (30) years and are obsolete.

11. The plumbing, electrical and mechanical renovations require the installation of a life safety system under the District of Columbia Building Code. The system proposed by Petitioner will consist of sprinkler, alarm, smoke detector and strobe lighting system. The sprinkler main line will be installed in the center of the corridor ceiling on each floor. From the main line, branch lines will be installed in each apartment which will be enclosed in a drywall bulkhead along the perimeter of the room ceilings. To conceal the sprinkler main line and the electrical wiring for the alarms, smoke detectors and strobe lights, new drywall ceiling will be installed in the corridors along with new ceiling lighting. Carpet will also be replaced.
4. Tenants argue that the Application does not sufficiently describe the renovations to be performed, and therefore, should be denied as improperly filed. (See Comments of Tenants; Report by J. Marsh, dated August 21, 2009). RAD disagrees. The Application submitted provides sufficient information that puts both the Tenants and the Government on notice as to what Petitioner intends to accomplish by the proposed renovations. RAD determines that while the Application could provide more detailed information, as urged by the Marsh report, it is not deficient as presented. DCRA and DHCD officials reviewed the Application without the need for supplemental documentation or additional explanations. Accordingly, RAD determines that the Application was complete when filed on July 31, 2009. (See Report by Don Masoero, dated October 19, 2009 and Report by Paul Walker, dated December 4, 2009).
5. Tenants argue that Petitioner has not provided a sufficient explanation as to why the electrical, plumbing and mechanical systems need to be replaced. RAD disagrees. RAD finds that assertions made by Petitioner's third[-]party contractor were verified, as the statute requires, by building inspectors from DCRA as well as from DHCD. Moreover, in responding to specific questions posed by the OTA regarding assertions Petitioners made in the application, both DCRA and DHCD unequivocally confirmed the need for the systems replacement. Specifically, site visits to the property by Petitioner's third[-]party contractor, and building inspectors from DCRA and DHCD revealed, among other things, that each system is far beyond its useful life; is poised for chronic and/or major failure; and in their present condition warrants the scope of work presented in the proposed renovation plan. The current electrical system has shorted-out wires and receptacles, and cracks and disintegrating parts on main risers and fuse boxes; and instead of using breaker panels, the current electrical system is comprised of fuse boxes that are antiquated and below current electrical standards. The entire plumbing system shows signs of corrosion and cracking and needs replacement. There is no mechanical

cooling system in many of the common areas which require natural or mechanical ventilation and the radiators in the units are obsolete and susceptible to leaking water which can come into contact with the electrical system, creating a potentially hazardous condition in the units. (See Petitioner's Application/Third[-]Party Engineering Report, dated July 29, 2009; Report by Don Masoero, dated October 19, 2009; and Report by Paul Walker, dated December 4, 2009).

5. [sic] Tenants also argue that Petitioner did not demonstrate that the renovations cannot be done safely or reasonably while the units are occupied, or whether there are methods that allow the renovations to be done safely without temporarily evicting Tenants. RAD disagrees. The Application states and government officials concur that the alteration and renovation plan proposed will require the water and electricity supply to be shut off and walls and ceilings to be opened for access and then restored with new drywall and plaster work. This will require each unit to be vacated while the work is performed; and no reasonable alternative method to perform such an expansive renovation is available. Government officials also concur that the proposed alteration and renovation plan submitted by Petitioner is reasonable. (See Petitioner's Application/Third[-]Party Engineering Report, dated July 29, 2009; Report by Don Masoero, dated October 19, 2009; and Report by Paul Walker, dated December 4, 2009).
6. Tenants argue further that Petitioner failed to provide an adequate timetable for the alteration and renovation plan or to address whether there are methods which would shorten the eviction time period, if any. (See Comments by Tenants; Tilgham Report dated August 29, 2009; and Marsh Report, dated August 21, 2009). The timetable provided by Petitioner in the application states that the renovation plan will take 120 days for work in each tier to be completed and that the work will be documented by the submission of status reports every 60 days, as required by the statute. Petitioner also took steps to shorten the period of eviction by completing work that did not require Tenant relocation prior to submitting the instant Application. RAD finds that the timetable for the alterations and repairs submitted by Petitioner to be sufficient and consistent with the requirements of the statute.
7. Tenants argue that the proposed alterations and renovations are not in the interest of the Tenants because (1) the alterations and renovations will expose Tenants to hazardous particles and lead paint chips; (2) the proposed timetable for relocation is too long; (3) moving away from and back to their current units will inherently cause an undesirable, stressful disruption in their lives; (4) Petitioner has not provided the identity and condition of the unit to which it proposes to relocate each tenant; (5) the addition of the washer and dryers, dishwashers, HVAC system and sprinklers are unnecessary and unwanted; and (6) the alterations and renovations will substantially alter or destroy certain facilities in each unit. (See Comments by Tenants).

8. RAD finds that Petitioner's proposal to move tenants out of the tier where the work is being completed and separate those from the construction site will avoid exposing tenants to dust particles, lead paint chips or other hazardous conditions. Petitioner began work related to the application in or around October 2009 and has continued such work to date. Between October 2009 and the present, RAD and the OTA received numerous complaints from Tenants that the construction has seriously compromised living conditions at the property, including adverse environmental and physical impacts and intrusions into occupied units. Though unconfirmed by inspections conducted by DCRA, these complaints raise health and safety concerns that must be addressed through negotiations between the Parties and the Government.
9. RAD also finds that the 120-day relocation period is neither too long nor unreasonable, given the nature and scope of the proposed alteration and relocation plan. (See Comments by Tenants). RAD also determines that moving - in and of itself - under any circumstances is an inherently stressful ordeal; however, it is not appropriate to deny the Application because tenants will be inconvenienced, even if to a considerable degree. Petitioner has attempted to minimize the inconvenience and disruption of having to move by proposing to relocate each Tenant to a unit in another tier within the housing accommodation. RAD also finds that while Petitioner has not identified the specific unit where each tenant will be relocated, Petitioner state in the Application that each tenant will be moved to a unit that is as large as or larger than their current unit. Accordingly, RAD rejects Tenants' argument that the proposed alterations and renovations are not in the interest of the Tenants based on reasons (1) through (4) above.
10. RAD agrees that, while the plumbing, electrical and mechanical system replacements are needed, the washers and dryers and dishwashers are unnecessary and not in the interest of certain Tenants. The housing accommodation currently has a laundry room with large washers and dryers, and washers and dryers and dishwashers have already been installed in some units in the housing accommodation without requiring Tenants to temporarily relocate. The washers and dryers to be installed are smaller than those in the laundry room and will result in a higher electricity cost. Petitioner, however, stated in the Application that tenants may choose whether to have the dishwashers and washers and dryers installed in their units. Consequently, RAD finds that the issue of whether these amenities are necessary and in the interest of the tenants is moot.
11. RAD agrees that the proposed alterations and renovations will alter certain facilities in each unit. Based on the schematic and the renovation plans provided in the Application by Petitioner; the Tilgham Report submitted by Tenants Blake and Wendy Nelson; and comments submitted by several Tenants, the proposed alterations will result in (1) the reduction in certain