

**DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION**

RH-SF-09-20,098

*In re:* 2480 16th Street, NW

Ward One (1)

**TENANTS OF 2480 16th STREET NW**  
Tenants/Appellants/Cross-Appellees

v.

**DORCHESTER HOUSE ASSOCIATES, LLC**  
Housing Provider/Appellee/Cross-Appellant

**DECISION AND ORDER**

September 25, 2015

**SZEGEDY-MASZAK, CHAIRMAN.** This case is on appeal to the Rental Housing Commission (Commission) from a final order issued by the Office of Administrative Hearings (OAH) based on a petition filed in the Housing Regulation Administration (HRA) of the District of Columbia Department of Department of Consumer and Regulatory Affairs (DCRA).<sup>1</sup> 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.

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<sup>1</sup> OAH assumed jurisdiction over tenant petitions from the 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 Department of Housing and Community Development (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**

### **A. The Proceedings Before OAH**

On February 6, 2009, Housing Provider/Appellee/Cross-Appellant Dorchester House Associates, LLC (Housing Provider) filed a Petition for Change in Related Services and/or Facilities, RH-SF-09-20,098 (Services/Facilities Petition) with HRA, regarding the Housing Accommodation located at 2480 16th Street, NW (Housing Accommodation). *See* Services/Facilities Petition at 1-2; Record for RH-SF-09-20,098 (R.) at 72-73. The Services/Facilities Petition indicated that the Housing Provider wished to complete “major renovation[s]” to the heating, cooling, and ventilation systems at the Housing Accommodation. Services/Facilities Petition at 5a; R. at 59.

Multiple evidentiary hearings were held before Administrative Law Judge Erika Pierson (ALJ) between September 2009, and May 2010, and the ALJ issued a final order on May 20, 2011: Dorchester House Associates, LLC v. Tenants of 2480 16th Street, NW, RH-SF-09-20,098 (OAH May 20, 2011) (Final Order).<sup>2</sup> Final Order at 1-55; R. at 775-830. The ALJ made the following findings of fact in the Final Order:<sup>3</sup>

### **A. The Current Heating and Cooling Costs**

1. The petition in this case involves a multi-dwelling apartment complex known as the “Dorchester House” located at 2480 16th Street, NW. The building has 395 apartments, which are a combination of efficiency, one-bedroom, and two-bedrooms apartments. The building was constructed in 1941 and is owned by Dorchester House Associates, LLC. John Hoskinson is one of three owners that make up Dorchester House Associates, LLC. Many of the tenants have been living in the building for long periods of time.

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<sup>2</sup> The evidentiary hearings occurred on the following dates: September 14, 2009, September 15, 2009, November 4, 2009, November 5, 2009, November 17, 2009, March 16, 2010, March 17, 2010, April 27, 2010, April 28, 2010, and May 3, 2010. Final Order at 3; R. at 828.

<sup>3</sup> The findings of fact are recited here using the language of the ALJ in the Final Order, except that the paragraphs have been numbered for ease of reference.

2. Currently, the costs of utilities (heat, gas, water, and electric) are included in the rent charged and paid by Housing Provider. Electric usage is charged to Housing Provider through two master meters for the building, which include apartments, common areas, and commercial offices located in the building. Unit May 2009, heat was provided through steam radiators in each individual apartment. Air conditioning was offered to the tenants as an optional service during the summer months. Tenants could rent a window unit from Housing Provider or purchase their own window unit and pay an electricity surcharge of \$75/month to cover the additional electric costs. The Rental Housing Commission has previously held that air conditioning at Dorchester Housing [sic] is an optional service. *Brookens v. Hagner Mgmt[.] Corp.*, TP 3788 (RHC Aug. 30, 1995 (RHC Aug. 30, 1995) (“Absent a petition for change in related services or facilities, once an optional service always an optional service . . . As an optional service they are outside the purview of the Rental Housing Act”).

#### **B. The Decision to Convert**

3. Prior to the renovations, steam radiators provided heat to individual apartments. Tenants were not able to control the temperature in their apartments because the radiator system only had on/off capabilities. Apartments on the lower floors were often extremely hot as the steam passed through the system to the higher floors. The steam came from boilers located on the roof of the building. At the time of the conversion, the existing boilers were approximately five years old. Although the average life of an industrial boiler is 20 years, the boilers at Dorchester House had an average life of 10 years and were replaced in the 1980’s and again in the 1990’s. The pipes that return condensation to the building were corroded and leaking. It was not feasible to replace the pipes which were underground and enclosed in the walls because of asbestos, which would require vacating the building for such a renovation. Replacement with a similar steam based system would have resulted in the same problems.
4. Terry A. Busby, President of Urban Structures, Inc., was the Construction Manager for the renovations at Dorchester House. Mr. Busby found that the pipes that returned condensation in the building were corroded and leaking. Mr. Busby further found that the underground pipes that carried the steam from the radiator system were severely damaged, causing water back-ups and frequent leaks in the apartments. Housing Provider made the decision to replace the system with a new water-source heating [sic] and cooling system.

#### **C. The Water-Source Heating and Cooling System & Electrical Upgrades**

5. In May 2009, Housing Provider completed a major renovation project where it replaced the existing radiator heating system with a “water-source-heat-pump.” The electricity in turn, was converted from master meters to individual meters in each apartment and commercial space. The cost of the renovation, \$10 million dollars, was borne entirely by Housing Provider and not passed on to the tenants. Installation of the new heating system also required Housing Provider to replace the boilers, which were located on the roof. Individual heating, ventilation, and air conditioning (HVAC) units were placed in each apartment. In some apartments (depending the apartment size and configuration), the HVAC units were placed in the walls. In other apartments, they were placed in the kitchen and/or dining room, enclosed with dry wall, resulting in the loss of some space in the apartments.
6. The system that Housing Provider installed provides both heating and cooling with individually controlled thermostats in each apartment. The system is energy efficient and operates by pushing air through a closed loop system. Heat is added and removed from the loop using a boiler and a cooling tower. In cold weather, the heat pump removes heat from the water loop and transfers it to hot air. In the warm months, the water is cooled and provides cold air to the apartments. Air and heat can be provided to different apartments at the same time. Gas boilers located on the roof of the building heat the water. Housing Provider is responsible for the costs for water and for gas to heat the water and there is no proposal to transfer these costs to the tenants. The water-source-heat-pump system was more expensive to install than some other available systems, but is less expensive to run because it is energy efficient and environmentally friendly. It is environmentally friendly because tenants who pay their own electric costs are more energy conservative and therefore individual metering is recommended by the International Energy Conservation Code, which has been adopted by the District of Columbia. The system itself will cause diminution in green house [sic] gases.
7. To run the new heating and cooling system, it was necessary to also upgrade the existing electrical system to accommodate the heat pumps. The electrical system for each apartment could only bear a load of 60 amps, which is below the Building Code requirement of 100 amps and inadequate for modern electrical needs such as microwaves and computers running concurrently. Current building code requires a minimum of 180 amps. The electrical panels in the apartments contained old style glass fuses which had to be changed frequently from being overloaded. The electrical upgrade included individual electric panels in each apartment with capacity for 125 amps and a circuit breaker. The wire conduits for the electricity were run across the ceilings of the apartments and are visible, but painted to match the ceiling color. RS. 220.

#### **D. Loss of Square Footage**

8. The efficiency apartments have one HVAC unit. Depending on size, some one-bedroom units have one or two HVAC units. All two-bedroom apartments have two HVAC units. The majority of the apartments have one bedroom. The HVAC units were placed on the longest wall in the apartments and were enclosed in dry wall, which changed the physical appearance and available space in the rooms. For example, David Castleberry (#127), lost approximately 17 feet of wall use in his apartment due to the installation of the HVAC.
9. In Bonnie Branner's one-bedroom apartment (#821), she lost the use of six feet of wall in her bedroom. The electrical box that was installed in the kitchen measures 18 inches wide and 4 inches deep. Ms. Branner had to move her baker's rack that previously sat on the wall where the electrical panel was placed and she has a large picture she is no longer able to hang. Ms. Branner also had to rearrange the furniture in her living room to accommodate the HVAC. RX. 220. Photographs of Ms. Branner's apartment before and after the HVAC show that in her living room, the television had to be moved to the opposite corner, otherwise the living room looks the same.
10. Richard Mancini, a 30 year resident of Dorchester House, resides in unit 214, a large one-bedroom. Mr. Mancini had to reconfigure his living room to accommodate the HVAC for which he lost two feet of wall space. Mr. Mancini testified that he had to switch his living room and dining room because his rug no longer fit in the living room. Mr. Mancini lost approximately 15 square feet between the living room and kitchen. Mr. Mancini elected to pay his own electricity beginning in June 2009 and his average bill was \$80/month. His highest bill was \$110 in February 2010. Bills in the summer months averaged \$60.
11. Vernell Grissom resides in apartment 912, a one-bedroom unit with two HVACs installed. The wall that was added for the electrical panel blocks the sunlight from her living room window to her dining room and she had to remove some decorative items. Because of the HVAC in her bedroom, Ms. Grissom's armoire no longer fit in the bedroom and had to be placed outside of the kitchen. Ms. Grissom lost two feet of space in her living room.
12. Anne Cooke, apartment 442, has resided in the building for 32 years and lives in a large one-bedroom apartment with two HVACs. Ms. Cooke testified that she lost approximately 14 square feet in her living room, dining room, and bedroom from the HVAC installation. Because of the HVAC, Ms. Cooke had to move the television in her bedroom and now has to sit on the bed to watch television.
13. Lorenzo Calender II, has resided in apartment 245, a large two-bedroom, for 14 years. His apartment has two HVACs and he lost approximately 21 inches of wall space in his living room. Mr. Calender has an extensive private library

and lost space for his bookshelves. The [a]rmoire in his second bedroom had to be moved to accommodate the HVAC.

14. Housing Provider engaged an architect to calculate the square footage of the units and the amount of floor space occupied by the HVAC equipment. Aubrey Grant, Architect with Eric Cobert & Associates, performed the calculations using BOMA (Building Owners and Managers Association) standards for measuring leasable residential square footage. PX. 105. The BOMA standard to obtain a gross measurement is to measure the perimeter of the rental unit and computing the area within the perimeter, without any deduction for interior walls or cabinets. PX 106. The measurements were calculated by computer for each type of apartment using information from floor models and drawings. The HVAC units in each of the apartment types occupies [sic] less than one percent (1%) of the total square footage of the apartments, except for 35 one-bedroom units where the HVAC occupied 1.05% of the space. *Id.* [sic]. Housing Provider, specifically owner John Hoskinson, then took these square foot measurements and converted them to dollar amounts, which is discussed further in the conclusions of law.

**E. The HUD Allowance**

15. Under the Tenant-based voucher program (also known as Section 8), the local Public Housing Agency (PHA) is authorized to determine a utility allowance for families receiving assistance. The utility allowance must be determined based on the typical cost of utilities and services paid by energy-conservative households that occupy housing of similar size and type in the same locality. 24 CFR [§] 5.362, PX 115. In developing the allowance, the PHA must use normal patterns of consumption for the community as a whole and current utility rates. *Id.*
16. The U.S. Department of Housing and Urban Development (HUD) provides for the following monthly utility allowances for high-rise apartments in the District of Columbia, as of August 5, 2008 (PX 115, RX 202):

<b>TABLE A: HUD SECTION 8 HOUSING MONTHLY ALLOWANCE FOR TENANT FURNISHED UTILITIES 8/5/2008</b>			
	<b>Efficiency</b>	<b>One-Bedroom</b>	<b>Two-Bedroom</b>
<b>Electric Heat</b>	\$69	\$92	\$115
<b>General Electric</b>	\$26	\$34	\$43
<b>Air Conditioning</b>	\$9	\$11	\$14
<b>TOTAL</b>	\$104	\$137	\$172

Final Order at 3-9; R. at 821-28 (footnotes omitted). The ALJ made the following conclusions of law in the Final Order:<sup>4</sup>

...<sup>5</sup>

**C. Legal Standard for Granting a Services and Facilities Petition**

1. The housing regulations provide that I shall approve a related services or related facilities petition if I find the following:
  - (a) The change shall not adversely affect the health, safety, and security of the tenants;
  - (b) The change shall not directly result in a substantial violation of the Housing Code;
  - (c) The change shall not be retaliatory, as defined in § 502 of the Act; and
  - (d) The change shall not be intended to cause displacement of tenants from the housing accommodation.

14 DCMR [§] 4211.2.

2. In considering the above factors, I find that Housing Provider's petition should be granted:
  - (a) There is no evidence that the change adversely affects the health, safety, or security of the Tenants. There was some testimony, specifically from Tenants Branner and Calender, that the air quality in the apartments has decreased as a result of the new HVAC system. However, there was no evidence that Tenants' health was adversely affected by the change.
  - (b) The change does not result in a violation of the Housing Code. Tenants' [sic] argued that Housing Provider violated the Housing Code by performing the renovations without the approval of this administrative court. However, Tenants' [sic] are confusing the requirements for a capitol [sic] improvement petition with the requirements for a petition to change services. In a capital improvement petition, a housing provider is prohibited from implementing the improvements until approved by the court or 60 days has lapsed. 14 DCMR [§] 4210.10. However, Housing Provider has not proposed to pass the cost of

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<sup>4</sup> The conclusions of law are recited here using the language of the ALJ in the Final Order, except that the paragraphs have been numbered for ease of reference.

<sup>5</sup> The Commission omits a recitation of the ALJ's overview of the issues to be resolved, and statement of jurisdiction. Final Order at 9; R. at 821.

the actual renovations (installation of HVAC and electrical upgrades) on to the Tenants, which is the purpose of a capitol [sic] improvement petition. Housing Provider requests only to adjust rents for the individual metering of the electrical costs, which is properly done though a petition to change services. Housing Provider continues to pay for the building-wide electrical costs while the petition is pending and therefore, Housing Provider has not violated the Rental Housing Act and there was no evidence presented that Housing Provider otherwise violated the Housing Code.

(c) There was no evidence presented by the Tenants that the change in services was retaliatory.

(d) No tenants were displaced because of the renovations and no Tenants will be displaced as a result of assuming responsibility for the payment of their own electrical costs.

3. Having determined that the petition should be granted, the Act provides that I may increase or decrease the rent charged to reflect proportionally the value of the change in services or facilities. D.C. Official Code § 42-3502.11 (2005 [sic]). As such, the remaining issues, which I will address in turn, go to how much the rent should be either increased and/or decreased.

#### **D. Loss of Square Footage**

4. Tenants have argued that because they have lost square footage in their apartments to accommodate the HVAC systems, their rents should be reduced accordingly to compensate for the loss of space. It is the position of Housing Provider that loss of square footage is not a factor that should be calculated in the rent adjustments because the changes were *de minimis* and apartment value is not based on square footage. Nonetheless, in anticipation that Tenants might request loss of square footage to be factored into the rent adjustments, Housing Provider engaged an architect to calculate the square footage of the units and the amount of floor space occupied by the HVAC equipment. Aubrey Grant, Architect with Eric Cobert & Associates, performed the calculations using BOMA standards and determined that that [sic] the HVAC units occupied less than one percent of the total apartment square footage (except for 35 one-bedroom units where the HVAC occupied 1.05% of the space).
5. Owner John Hoskinson then took these square foot measurements and converted them to dollar amounts. Admittedly, there was no industry standard for doing so and therefore Mr. Hoskinson used his experience and knowledge to make these calculations. Typically, to determine a price per square foot, one would divide the property value by the total square feet. Here, a standard dollar amount per square foot would not be possible because each apartment is charged a different rent. Because of the varying rents, identical apartments would have different prices per