

DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION

RH-TP-06-28,207

In re: 5113 Western Avenue, N.W.

Ward Three (3)

MARGUERITE CORSETTI TRUST, et al.
Housing Providers/Appellants

v.

MARIO J. SEGRETI
Tenant/Appellee

ORDER AFTER REMAND

January 12, 2015

SZEGEDY-MASZAK, CHAIRMAN. This case is before the Rental Housing Commission (Commission) on remand from a Memorandum Opinion and Judgment issued by the District of Columbia Court of Appeals (DCCA). The applicable provisions of the Rental Housing Act of 1985 (Rental Housing 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- 2-510 (Supp. 2008), 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.

I. PROCEDURAL HISTORY

On October 14, 2004, Tenant/Appellee Mario J. Segreti (Tenant), residing at 5113 Western Avenue, N.W. (Housing Accommodation), filed Tenant Petition RH-TP-06-28,207 (Tenant Petition) with the Rental Accommodations and Conversion Division (RACD),¹ claiming that Housing

¹ The Office of Administrative Hearings (OAH) assumed jurisdiction over tenant petitions from RACD and the Department of Consumer and Regulatory Affairs (DCRA) pursuant to the OAH Establishment Act, D.C. OFFICIAL CODE

Providers/Appellants Marguerite Corsetti Trust (Corsetti Trust) and trustee Luke Deiuliis (collectively, Housing Providers) claiming various violations of the Act.² Tenant Petition at 1-5; Record for RH-TP-06-28,207 (R.) at 19-23.

On June 3, 2009, Administrative Law Judge (ALJ) Jennifer M. Long issued a final order, Segreti v. Marguerite Corsetti Trust, RH-TP-06-28,207 (OAH Jun. 3, 2009) (Final Order). In the Final Order, the ALJ determined as follows:

- (1) the Tenant's claims were not barred by the doctrine of collateral estoppel;
- (2) the Tenant met the statutory definition of a "tenant" under the Act at D.C. OFFICIAL CODE § 42-3501.03(36) (2001);³
- (3) the Housing Providers were not entitled to a small landlord exemption, under D.C. OFFICIAL CODE § 42-3502.05(a)(3);⁴
- (4) a counterclaim filed in the D.C. Superior Court requesting rent in the amount of \$3,000 per month constituted an illegal rent increase because the Housing Accommodation was not properly registered;
- (5) the Housing Providers substantially reduced services at the Housing Accommodation by eliminating water and electricity services for a five-day period;

§ 2-1831.01, -1831.03(b-1)(1) (Supp. 2008). The functions and duties of RACD were transferred to the Department of Housing and Community Development (DHCD) from DCRA by the Fiscal Year Budget Support Act of 2007, D.C. Law 17-20, 54 DCR 7052 (September 18, 2007) (codified at D.C. OFFICIAL CODE § 42-3502.03a (Supp. 2008).

² The Commission notes that a complete procedural history of this case prior to the DCCA's remand is contained in the Commission's decision dated September 18, 2012. Marguerite Corsetti Trust v. Segreti, Rh-TP-06-28,207 (RHC Sept. 18, 2012) at 2-9.

³ D.C. OFFICIAL CODE § 42-3502.03(36) provides as follows: "'Tenant' includes a tenant, subtenant, lessee, sublessee, or other person entitled to the possession, occupancy, or the benefits of any rental unit owned by another person."

⁴ D.C. OFFICIAL CODE § 42-3502.05(a)(3)(D) provides in relevant part the following: "Sections 42-3502.05(f) through 42-3502.19, except § 42-3502.17, shall apply to each rental unit in the District except: . . . (3) Any rental unit in any housing accommodation of 4 or fewer rental units, including any aggregate of 4 rental units whether within the same structure or not[.]"

(6) the elimination of water and electricity services constituted retaliatory action under D.C.

OFFICIAL CODE § 42-3505.02;⁵ and

(7) the Tenant was served with a notice to vacate in violation of D.C. OFFICIAL CODE § 42-3505.01(a).⁶ Final Order at 4-24; R. at 528-48.

⁵ D.C. OFFICIAL CODE § 42-3505.02 provides the following:

(a) No housing provider shall take any retaliatory action against any tenant who exercises any right conferred upon the tenant by this chapter, by any rule or order issued pursuant to this chapter, or by any other provision of law. Retaliatory action may include any action or proceeding not otherwise permitted by law which seeks to recover possession of a rental unit, action which would unlawfully increase rent, decrease services, increase the obligation of a tenant, or constitute undue or unavoidable inconvenience, violate the privacy of the tenant, harass, reduce the quality or quantity of service, any refusal to honor a lease or rental agreement or any provision of a lease or rental agreement, refusal to renew a lease or rental agreement, termination of a tenancy without cause, or any other form of threat or coercion.

(b) In determining whether an action taken by a housing provider against a tenant is retaliatory action, the trier of fact shall presume retaliatory action has been taken, and shall enter judgment in the tenant's favor unless the housing provider comes forward with clear and convincing evidence to rebut this presumption, if within the 6 months preceding the housing provider's action, the tenant:

(1) Has made a witnessed oral or written request to the housing provider to make repairs which are necessary to bring the housing accommodation or the rental unit into compliance with the housing regulations;

(2) Contacted appropriate officials of the District government, either orally in the presence of a witness or in writing, concerning existing violations of the housing regulations in the rental unit the tenant occupies or pertaining to the housing accommodation in which the rental unit is located, or reported to the officials suspected violations which, if confirmed, would render the rental unit or housing accommodation in noncompliance with the housing regulations;

(3) Legally withheld all or part of the tenant's rent after having given a reasonable notice to the housing provider, either orally in the presence of a witness or in writing, of a violation of the housing regulations;

(4) Organized, been a member of, or been involved in any lawful activities pertaining to a tenant organization;

(5) Made an effort to secure or enforce any of the tenant's rights under the tenant's lease or contract with the housing provider; or

(6) Brought legal action against the housing provider.

⁶ D.C. OFFICIAL CODE § 42-3505.01(a) provides the following:

Except as provided in this section, no tenant shall be evicted from a rental unit, notwithstanding the expiration of the tenant's lease or rental agreement, so long as the tenant continues to pay the rent to which the housing provider is entitled for the rental unit. No tenant shall be evicted from a rental unit for any reason other than for nonpayment of rent unless the tenant has been served with a written notice

The ALJ awarded the Tenant the following damages: (1) a rent rollback to \$350, the amount he had been paying prior to the illegal increase; (2) a rent refund of \$2,650 (the difference between \$3,000 and \$350) between June 2004 and July 2007 for a total of \$100,700; and (3) \$200 for the elimination of water and electricity services (trebled to \$600 as a result of her finding of bad faith). *Id.* at 19, 27-28; R, at 524-25, 533. The ALJ also imposed a \$5,000 fine after determining that the Housing Providers' elimination of water and electricity services was a willful violation of the Act. *Id.* at 28-29; R. at 523-24.

On August 7, 2009, the Housing Providers filed a Notice of Appeal of the Final Order, and after a hearing on February 7, 2012, the Commission issued its Decision and Order (Decision and Order) affirming the ALJ's Final Order in its entirety. Decision and Order at 41. Thereafter, the Housing Providers sought review of the Commission's Decision and Order with the DCCA.

II. THE DCCA'S DECISION

On September 30, 2014, the DCCA issued an Amended Memorandum Opinion and Judgment,⁷ affirming the Commission's Decision and Order in part, and reversing and remanding in part. MOJ at 3-7. The DCCA affirmed that the Tenant's claims were not barred by collateral estoppel, that the Tenant satisfied the definition of a "tenant" under the Act, and that the Housing Providers did not qualify for the small-landlord exemption. *Id.* at 3-6. The DCCA reversed the determination that the Housing Providers' counterclaim in D.C. Superior Court demanding \$3,000 in

to vacate which meets the requirements of this section. Notices to vacate for all reasons other than for nonpayment of rent shall be served upon both the tenant and the Rent Administrator. All notices to vacate shall contain a statement detailing the reasons for the eviction, and if the housing accommodation is required to be registered by this chapter, a statement that the housing accommodation is registered with the Rent Administrator.

⁷ The DCCA had issued the original Memorandum Opinion and Judgment on September 23, 2014, and indicated that the amendments made "were formatting changes and not substantive ones." Marguerite Corsetti Trust v. Segreti, Nos. 10-CV-1021, 10-CV-1039, 10-CV-529, 11-CV-1111, & 12-AA-1656, Mem. Op. & J. at 1 (D.C. Sept. 30, 2014) (MOJ). A copy of the MOJ is attached to this Order in Appendix A.

