

DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION

RH-TP-07-29,040

In re: 3636 16th Street, N.W., Unit A868

Ward One (1)

THE WOODNER APARTMENTS
Housing Provider/Appellant/Cross-Appellee

v.

GLORIA TAYLOR
Tenant/Appellee/Cross-Appellant

DECISION AND ORDER

September 1, 2015

PER CURIAM. 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 Rental Accommodations and Conversion Division (RACD), Housing Regulation Administration (HRA), of the District of Columbia Department of Consumer and Regulatory Affairs (DCRA).¹ The applicable provisions of the Rental Housing Act of 1985 (Rental Housing Act), D.C. LAW 6-10, D.C. OFFICIAL CODE §§ 42-3501.01-42-3509.07 (2001), the District of Columbia Administrative Procedure Act (DCAPA), D.C. OFFICIAL CODE §§ 2-501- 2-510 (2001 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.

¹ The OAH assumed jurisdiction over tenant petitions from the DCRA and RACD pursuant to the OAH Establishment Act, D.C. OFFICIAL CODE § 2-1831.03(b-1)(1) (2001 Supp. 2005). The functions and duties of DCRA, RACD were transferred to the Department of Housing and Community Development (DHCD), Rental Accommodations Division (RAD) 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 § 42-3502.04b (2012 Repl.)).

I. PROCEDURAL HISTORY

On August 10, 2007, Tenant/Appellee/Cross-Appellant, Gloria Taylor (Tenant), residing in Unit A868 of 3636 16th Street, N.W. (Housing Accommodation), filed Tenant Petition (TP) 29,040 with the RACD, claiming that the Housing Provider/Appellant/Cross-Appellee, The Woodner Apartments (Housing Provider), violated the Act as follows: (1) the rent increase was larger than the amount of the increase which was allowed by any applicable provision of the Rental Housing Act of 1985; (2) the rent ceiling filed with the Rental Accommodations and Conversion Division is improper; (3) a rent increase was taken while the unit was not in substantial compliance with the D.C. Housing Regulations; (4) services and/or facilities provided in connection with the rental of the unit have been substantially reduced; and (5) retaliatory action has been directed against me by the Housing Provider, manager or other agent for exercising our rights in violation of Section 502 of the Rental Housing Act of 1985. TP at 1-12; Record for TP 29,040 (R.) at 19-30.

On January 8, 2008, Administrative Law Judge Erika L. Pierson (ALJ) held a hearing on this matter. See Hearing CD (OAH Jan. 8, 2008). On September 16, 2008, the ALJ issued a final order: Taylor v. Woodner Apartments, RH-TP-07-29,040 (OAH Sept. 16, 2008) (Final Order). R. at 137-192. The ALJ made the following findings of fact in the Final Order:²

A. Housing Provider's Motion and Tenant's Status

1. Tenant, Gloria Taylor, is 73 years old and has resided in unit A868 at 3636 16th Street, N.W. ("The Woodner Apartments"), since November 1, 2005. The lease for the apartment was signed by Tenant's adult son, David Taylor, on November 1, 2005. PX 101. David Taylor never resided at the apartment but rented the apartment for his mother and adult disabled brother, Timothy Taylor, to reside in.

² The Commission has numbered the paragraphs in the ALJ's Final Order for ease of reference.

2. Within the first 30 days that Ms. Taylor occupied the apartment she expressed concerns about conditions in the apartment to the building account manager, Livia Hall. At that time, Ms. Hall was not aware that the apartment was occupied by someone other than David Taylor. Ms. Hall contacted David Taylor and told him that there were unauthorized occupants in the apartment which had to be added to the lease. Soon thereafter, Gloria Taylor received a letter, addressed to her son David, stating that there were undocumented persons living in the apartment, that information was needed about the occupants, and that Housing Provider needed to gain access to the apartment for an inspection regarding Ms. Taylor's complaint. David Taylor faxed Ms. Hall notice that his mother and brother were authorized occupants of the apartment. On December 30, 2005, Ms. Hall sent Gloria Taylor a letter requesting the she provide picture identification for herself and Timothy Taylor so that the building would have their information on file. PX 102. Ms. Taylor complied and provided copies of identification for herself and Timothy.
3. During Gloria Taylor's first year in the apartment, David Taylor was supplementing her rent. Ms. Taylor would send David Taylor \$800 each month and David Taylor would send a check to Housing Provider for the full amount of the rent. Beginning in December 2006, Ms. Taylor began to pay the rent directly to Housing Provider by cashier's check rather than through her son. PX 103. Housing Provider was aware that Ms. Taylor and her son Timothy were occupying the apartment since at least November 30, 2005, and accepted rent payments from Ms. Taylor on a monthly basis.

B. Rent and Rent Increases

4. The certified records of the RACD reflect that on June 30, 2004, prior to Ms. Taylor's occupancy, Housing Provider filed a Certificate of Election of Adjustment of General Applicability increasing the rent ceiling for Tenant's unit (#A868) from \$1,808 to \$1,860. PX 104, 104A. The rent ceiling increase derived from the 2003 CPI-W increase of 2.9%. The effective date of the rent ceiling increase was August 1, 2004. *Id.* On June 30, 2004, the rent charged for unit A868 was \$865. *Id.*
5. One month later, on July 30, 2004, Housing Provider filed with the RACD, another Certificate of Election of Adjustment of General Applicability based on the 2003 CPI-W increase of 2.9%, increasing the rent charged for Tenant's unit from \$865 to \$890, effective September 1, 2004. PX 105, 105A.
6. On May 2, 2005, Housing Provider filed with the RACD, a Certificate of Election of Adjustment of General Applicability, increasing the rent ceiling for unit A868 from \$1,860 to \$1,910, effective July 1, 2005. PX106A. The rent ceiling increase was derived from the 2005 CPI-W increase of 2.7%. *Id.*

7. The May 2, 2005, Certificate of Election of Adjustment of General Applicability, PX 106A, is a 29 page document. Pages 2-13 of Exhibit 106A are a list of affected units, reflecting on page 8 that the rent ceiling for unit A868 was increased from \$1,860 to \$1,910, effective July 1, 2005. Page 14 is a sample "Notice of Change in Rent Ceiling." Page 15 is an "Affidavit of Service of Notice of Rent Adjustment," reflecting "See Attached." The attached pages 16-26 are a list of affected units reflecting the date of service and an effective date of July 1, 2005.
8. On August 2, 2005, Housing Provider filed with the RACD an "Affidavit of Service of Notice of Rent Adjustment", increasing the rent charged for unit A868 from \$890 to \$914, effective September 1, 2005. PX 122. Attached to the Affidavit is a list of affected units and a sample "Notice of Increase in Rent Charged." *Id.* The sample Notice of Increase in Rent Charged reflects that the increase was attributable to the May 2005 CPI-W increase of 2.7%. Id.
9. Prior to Ms. Taylor residing in the unit, the documented rent level for the previous tenant was \$914/month and the rent ceiling filed with the RACD was \$1,910. PX 106, 122. At the time David Taylor signed the lease for Tenant's apartment on November 1, 2005, the rent was set at \$1,070 per month and the rent ceiling was \$1,910. PX 101. There are no documents on file with the RACD reflecting authorization for an increase in rent charged from \$914 to \$1,070.
10. On or about September 28, 2006, Ms. Taylor received a notice of rent increase, effective November 1, 2006, increasing her rent from \$1,070 to \$1,136. PX 108. The notice stated that the rent increase was authorized under section 208(h)(2) of the Rental Housing Act, based on a 4.2% CPI-W increase for the rent control year May 2006 through April 2007 ("2006 CPI-W"). *Id.* The notice of rent increase was addressed to David Taylor. *Id.* On October 16, 2006, Housing Provider filed with the RACD, a Certificate of Notice of Increase in Rent Charged which reflected that Tenant's rent was increased from \$1,070 to \$1,136, effective November 1, 2006. PX 109, 109A.
11. On November 28, 2006, Ms. Taylor filed an application with the RACD for elderly status for herself and disabled status for her son, Timothy. PX 110. The application was approved by the RACD on the same day. *Id.* Ms. Taylor immediately gave copies of the approved application to Housing Provider. On December 11, 2006, Ms. Taylor hand delivered and mailed a letter to Housing Provider requesting they revoke the proposed rent increase based on the approval of her application for elderly status. PX 111. Ms. Taylor did not receive a response from Housing Provider and beginning on November 6, 2006, she paid the increased rent amount of \$1,136/month directly to Housing Provider.

12. When Ms. Hall received Ms. Taylor's application for elderly status, she contacted Ms. Taylor's son, David Taylor, and told him that he did not qualify for elderly status. Because David Taylor is the lease holder for the apartment, Housing Provider determined that they would not reduce the rent based on Gloria Taylor's elderly status because she was not a signatory on the lease. Ms. Hall has been the account manager for the Woodner Apartments for three to four years and is familiar with the elderly exception provided for in the Rental Housing Act.
13. On May 18, 2007, Ms. Taylor received (addressed to "David Taylor"), a Notice of Increase in Rent Charged, increasing her rent from \$1,136 to \$1,198.48, based on the 2007 CPI-W increase of 3.5%. PX 112. The rent increase was effective July 1, 2007, and reflected an increase of 5.5% (3.5% CPI-W plus 2%). *Id.* Ms. Taylor paid the increased rent amount beginning July 1, 2007. Ms. Hall is aware that Housing Providers are only permitted to increase a tenants rent once every 12 months and she provided no explanation for the July 1, 2007, rent increase.

C. Tenant's Allegations Regarding Services and Facilities & Housing Code Violations

14. Ms. Taylor first complained about problems with her apartment on November 11, 2005. At that time, Tenant's son, David, submitted a written work request complaining about insufficient heat and water pressure, a leak in the bathroom sink, an inoperable oven pilot light, and roaches. PX 113.
15. In May 2006, Housing Provider placed a notice under Ms. Taylor's door informing her of an annual inspection of her unit to take place on May 15, 2006, to check the physical condition of her apartment. PX 114. Ms. Taylor was present when Earl Jones inspected her unit on May 15, 2006. Following the inspection, Ms. Taylor prepared a list of problems with her apartment and sent it to Housing Provider by mail and in person. Ms. Taylor listed the following problems with her apartment:
 1. Faulty commode which fails to operate every four or five days from the inception of occupancy through May 12, 2006.
 2. Mice and roaches in unit.
 3. Insufficient heat in living and sleeping areas all through the winter months; the bathroom is unheated.
 4. Insufficient lighting in kitchen and sleeping areas; no light in closets and pantry.
 5. The oven simply does not work.

PX 115. In addition to the May 15, 2006, inspection by Housing Provider, the District of Columbia Department of Consumer and Regulatory Affairs (“DCRA”) inspected Ms. Taylor’s apartment on three occasions: August 1, 2006, December 5, 2006, and January 27, 2007.

16. Between November 2005 and August 2008, Ms. Taylor has complained to Housing Provider and DCRA about the following problems in her unit: (1) intermittent inoperable toilet; (2) inoperable exhaust fan in the bathroom; (3) inoperable oven; (4) insufficient hot water; (5) inadequate heat; and (6) mice, roach, and bed bug infestations.

(1) Inoperable Toilet

17. Between November 14, 2005 and November 12, 2007, Ms. Taylor submitted at least 83 written work requests regarding the toilet being clogged or out of order. PX 118. Each time, maintenance repaired the toilet, usually within 3-4 hours of the request. On January 29, 2007, Housing Provider replaced the flush valve and flapper ball in Tenant’s toilet and replaced the wax sealant. Tenant continued to have problems with the toilet clogging after the January 29, 2007 repair, and Housing Provider continued to respond to each complaint of a clogged toilet. Ms. Taylor complained to DCRA about the toilet in January 2007, and no notice of violation was issued after an inspection.

(2) Exhaust Fan

18. Ms. Taylor complained on at least two occasions, to Housing Provider and DCRA, that the bathroom either has no exhaust fan or the exhaust fan is inoperable. There are no fans in the individual apartment units; rather, the building has a fan on the roof that connects to the bathroom vents which pulls heat out of the bathrooms. Ms. Taylor’s complaint regarding the exhaust fan was investigated by DCRA on January 27, 2007. No notice of violation was issued.

(3) Inoperable Oven

19. Ms. Taylor testified that the oven in her apartment has never worked since she moved in. Ms. Hall inspected the oven in Ms. Taylor’s apartment on two occasions: during the building-wide inspection in May 2006 and once with DCRA inspector Turner on January 27, 2007. On both occasions, the pilot light was on, the boiler heated and the oven was hot. No notice of violation was ever issued by DCRA for the oven being inoperable. No repairs were ever made by Housing Provider.

(4) Insufficient Hot Water

20. Ms. Taylor complained that, prior to February 2007, the water in her apartment was often lukewarm or cold. All tenants in the building draw hot

water from one of two boilers. Housing Provider has not received any complaints regarding insufficient hot water from the units above or below Ms. Taylor's apartment. Ms. Taylor reported that the problem with the hot water was corrected on February 27, 2007; however, Housing Provider did not make any repairs to the building heaters. No notice of violation regarding lack of hot water was ever issued by DCRA.

(5) Inadequate Heat

21. Ms. Taylor complained that until the Fall of 2006, the heat in her apartment was inadequate. In the Fall of 2006, Housing Provider changed the filters in the convectors, which is done at the change of every season. No other repairs were made to the heating units. In January 2007, Ms. Taylor filed a complaint with DCRA regarding inadequate heat and inoperable toilet, exhaust fan, and oven. On January 27, 2007, DCRA inspected Ms. Taylor's apartment, accompanied by Ms. Hall. Upon inspection, Ms. Hall found the apartment to be very hot and the oven, which Ms. Taylor had reported as inoperable, was turned on to help heat the apartment. No notice of violation for inadequate heat was issued by DCRA.

(6) Mice, Roach, and Bed Bug Infestation

22. Ms. Taylor has made numerous complaints regarding the presence of mice and roaches in her apartment since November 2005. Ms. Taylor provided photographs, taken in late 2006 and early 2007, of dead mice in her apartment. PX 100A-100G. Housing Provider has a contractor who exterminates the premises on a regular basis and exterminates individual tenants' apartments by request. Between December 2005 and November 2007, Ms. Taylor submitted at least 15 work requests for pest control services. PX 118A. Ms. Taylor was provided with traps for mice on numerous occasions as well as extermination for roaches. As of the date of the hearing, Ms. Taylor continues to have a problem with mice and roach infestation.
23. Ms. Taylor also experienced a problem with bed bugs in her apartment in March 2007. Ms. Taylor and her son had multiple bites on their bodies from bed bugs and Ms. Taylor suffered an allergic reaction and a rash for which she sought medical attention. At Ms. Taylor's request, Housing Provider treated the beds in the apartment and the adjacent areas for bed bugs which resolved the problem.

D. Tenant's Claim of Retaliation

24. In April 2006, the tenants of the Woodner Apartments formed a tenant's association and held a meeting with inspectors from DCRA, representatives of the Mayor's Office, and the Metropolitan Police Department.

25. DCRA inspectors conducted building-wide inspections on June 27, 2006, August 1, 2006, December 5, 2006, and January 27, 2007. Notices were posted informing residents of the inspection dates. PX 116, 116A, 116B. Ms. Taylor's apartment was inspected by DCRA on August 1, 2006, December 5, 2006, and January 27, 2007. On January 25, 2007, Ms. Taylor mailed DCRA Inspector, Warren Turner, a memo identifying the following problems in her apartment [PX 117]:

1. Defective commode, does not flush; reported to DCRA 12/5/06.
2. Insufficient hot water, early am and early pm.
3. Insufficient heat in living area, sleeping room; tenant use[s] a portable [heater] in winter months. Cold air comes through windows.
4. No heat in bathroom.
5. Insufficient lighting in kitchen and sleeping area; no lights in pantry, and closets.
6. The oven simply does not work; reported to DCRA 12/5/06.
7. There are mice and roaches in the unit and premises.

[PX 117]. Ms. Taylor also hand delivered a copy of the letter to Housing Provider. Ms. Hall was present in Tenant's apartment for the inspection on January 27, 2007. No notices of violation were issued by DCRA.

Final Order at 2-11; R. at 182-191.

The ALJ provided the following legal analysis of the factual findings in the Final Order:

B. Housing Provider's Motion and Tenant's Status

1. At the hearing, Housing Provider argued that the case should be dismissed because Gloria Taylor was not a "Tenant" who had rights under the Rental Housing Act. Housing Provider argued that because the lease for Ms. Taylor's apartment was signed by David Taylor, Gloria Taylor's son, he is the rightful tenant of the unit and any relief would be owed only to David Taylor.
2. As an initial matter, I reject any argument on behalf of Housing Provider that tenancy is established solely by who signs the lease or pays the rent or that no rent increase was demanded of Ms. Taylor where the notices for rent increases were addressed to David Taylor. The Rental Housing Act states that a "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." D.C. Official Code § 42-3502(36).