

DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION

RH-TP-08-29,478

In re: 1239 Vermont Avenue N.W., Unit 908

Ward Two (2)

JOSEPH BRATCHER
Tenant/Appellant

v.

CALVIN JOHNSON
Housing Provider/Appellee

DECISION AND ORDER

March 27, 2014

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 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- 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 OAH assumed jurisdiction over tenant petitions from the Rental Accommodations and Conversions Division (RACD) pursuant to the OAH Establishment Act, D.C. OFFICIAL CODE § 2-1831.01-1831.03(b-1)(1) (2001 Supp. 2005). The functions and duties of the RACD were transferred to DHCD 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 § 42-3502.03(a) (2001 Supp. 2008).

I. PROCEDURAL HISTORY

On November 12, 2008, Tenant/Appellant Joseph Bratcher (Tenant), residing in Unit 908 at 1239 Vermont Avenue N.W. (Housing Accommodation), filed Tenant Petition RH-TP-08-29,478 (Tenant Petition) with RAD, claiming that the Housing Provider/Appellee Calvin Johnson (Housing Provider) violated the Act as follows: (1) the building where the Tenant's rental unit was located was not properly registered with the RAD; (2) the rent increase was larger than the increase allowed by any applicable provision of the Act; (3) the Housing Provider did not give the Tenant a proper 30 day notice of rent increase before the increase was charged; (4) the Housing Provider substantially reduced the services and facilities in connection with the Tenant's housing accommodation; (5) the Housing Provider took retaliatory action against the Tenant in violation of Section 502 of the Act; (6) the Housing Provider served the Tenant with a Notice to Vacate that violates Section 501 of the Act. *See* Tenant Petition at 1-2; Record for RH-TP-08-29,478 (R.) at 44-45.

On July 14, 2009, a hearing was held on the Tenant's Motion to Amend the Tenant Petition ("Motion to Amend"), and Administrative Law Judge Hines (ALJ) subsequently denied the Motion to Amend on the record at that hearing. R. at 147-48; Hearing CD (OAH July 14, 2009).

Evidentiary hearings were held before the ALJ on August 27, 2009 and October 20, 2009. On March 18, 2010, the ALJ issued the Final Order in this case: Bratcher v. Johnson, RH-

TP-08-29,478 (OAH Mar. 18, 2010) (Final Order) at 1-31; R. at 119-49. The ALJ made the following determinations in the Final Order:²

1. The Housing Provider lost his exemption status as an individual landlord on August 19, 2008, when he filed a claim of exemption form indicating that the property was owned by Calyndie Property Rentals, LLC. Final Order at 7; R. at 143.
2. Tenant prevails on his claim that his rental unit was not properly registered in violation of the Act, because the Housing Provider's claim of exemption was not valid. The penalty for violating this provision of the Act is an imposition of a fine under D.C. OFFICIAL CODE § 42-3509.01(b) (2001). There is no evidence that Housing Provider acted "willfully," within the meaning of D.C. OFFICIAL CODE § 42-3509.01(b), and therefore no fine is imposed on the Housing Provider. *See id.* at 8-9; R. at 141-42.
3. Tenant claimed that a rent increase on September 1, 2005, was greater than what is allowed by any applicable provision of the Act; Tenant filed the Tenant Petition on November 12, 2008, which is more than three years from the effective date of the challenged rent adjustment. Because the statute of limitations, at D.C. OFFICIAL CODE § 42-3502.06(e), has run on Tenant's claim, Tenant does not prevail. *See id.* at 9-10; R. at 140-41.
4. Tenant claimed that the Housing Provider failed to provide a proper 30 day notice of rent increase, for the rent increase effective on September 1, 2005. Tenant filed the Tenant Petition on November 12, 2008, which is more than three years from the effective date of the rent adjustment. Tenant does not prevail because the statute of limitations at D.C. OFFICIAL CODE § 42-3502.06(e) has run on his claim. *See id.* at 10; R. at 140.
5. Tenant claimed that a failure to return a parking space constituted a reduction in facilities, under D.C. OFFICIAL CODE § 42-3502.11. Pursuant to the parties' lease agreement, the use of the parking space was not authorized by the payment of the rent charged, and was therefore not a related facility under the Act. *See id.* at 11-12; R. at 138-39.
6. Tenant alleges that the swimming pool at the Housing Accommodation was not filled with water; the swimming pool is a facility that the Tenant was entitled to use because he was paying rent at the Housing Accommodation,

² The Commission recites herein a summary of the ALJ's conclusions on each of the issues raised in the Tenant Petition and discussed in the "Conclusions of Law" section of the Final Order. *See* Final Order at 6-23; R. at 127-44.

and thus a related facility under the Act. *See id.* at 12-13; R. at 138-37. The value of the reduction was \$10.00 per week for the twelve-week pool season in 2006. *See id.* at 15-16; R. at 134-35. The Tenant did not prove the duration of the reduction in facilities during 2007, and thus is not entitled to any rent reduction for the 2007 pool season. *See id.* at 16; R. at 134.

7. Tenant claims that facilities in his unit were substantially reduced when a clothes dryer was removed from his unit. The clothes dryer was a facility that the Tenant was entitled to use because he was paying rent at the Housing Accommodation, and therefore a related facility under the Act. *See id.* at 13-14; R. at 136-37. The reduction was valued at \$25.00 per month. *See id.* at 17; R. at 133.
8. Tenant claims that, within six (6) months of his attempt to enforce rights under his lease, the Housing Provider committed three (3) acts of retaliatory conduct: (1) filed complaints for possession for non-payment of rent in July and November 2008; (2) failed to allow Tenant to retain a pet in his unit; and (3) refused to return a parking space for the unit. *See id.* at 18-19; R. at 132-32. For each allegation of retaliation, the Housing Provider satisfied his burden of showing, by clear and convincing evidence, that his actions were not retaliatory. *See id.* at 19-21 R. at 129-31.
9. Tenant claims that the Housing Provider served a Notice to Vacate on April 1, 2008, that was in violation of Section 501 of the Act. *See id.* at 21; R at 129. The Notice to Vacate does not give the minimum time for the Tenant to vacate, and thus was an improper Notice to Vacate under the Act. *See id.* at 22; R. at 128. The penalty for violating this provision of the Act is an imposition of a fine under D.C. OFFICIAL CODE § 42-3509.01(b). There is no evidence that Housing Provider acted “willfully,” within the meaning of D.C. OFFICIAL CODE § 42-3509.01(b), and therefore no fine is imposed on the Housing Provider. *See id.* at 22-23; R. at 127-128.

On May 27, 2010, the Tenant filed a timely Notice of Appeal for RH-TP-08-29,478 (Notice of Appeal). The Commission held the appellate hearing on April 12, 2012.

II. STANDARD OF REVIEW

The Commission’s standard of review is derived from the DCAPA, *see* D.C. OFFICIAL CODE § 2-509 (2001), and provides the following:

The Commission shall reverse final decisions of the Rent Administrator which the Commission finds to be based upon arbitrary action, capricious action, or an abuse of discretion, or which contain conclusions of law not in accordance with

