DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION

RH-TP-09-29,590

In re: 815 Maryland Avenue, N.E., Unit B-3

Ward Six (6)

CAROLINE C. KARPINSKI
Tenant/Appellant

v.

EVOLVE PROPERTY MANAGEMENT, LLC
Housing Provider/Appellee

DECISION AND ORDER

August 19, 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),[1] based on a petition filed in the Housing Regulation Administration (HRA), Rental Accommodations Division (RAD) of the District of Columbia Department of Housing and Community Development (DHCD). 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), 14 DCMR §§ 3800-4399 (2004) govern these proceedings.

[1] The Office of Administrative Hearings (OAH) assumed jurisdiction over tenant petitions from the Department of Consumer and Regulatory Affairs (DCRA), Rental Accommodations and Conversion Division (RACD) pursuant to the OAH Establishment Act, D.C. OFFICIAL CODE § 2-1831.03(b-1)(1) (Supp. 2005). The functions and duties of RACD were transferred to DHCD by the Fiscal Year Budget Support Act of 2007, D.C. Law 17-20, 54 DCR 7052 (Sept. 18, 2007) (codified at D.C. OFFICIAL CODE § 42-3502.03a (Supp. 2008)).

I. PROCEDURAL HISTORY

On May 13, 2009, Caroline Karpinski the tenant (Tenant) of the housing accommodation located at 815 Maryland Avenue, N.E., Unit B-3 (Housing Accommodation), filed Tenant Petition RH-TP-09-29,590 (Tenant Petition) alleging that housing provider, Evolve Property Management, LLC (Housing Provider), violated the Act as follows:

1. The rent increase was made while my/our units were not in substantial compliance with DC Housing Regulations;

2. Services and/or facilities provided as part of rent and/or tenancy have been substantially reduced; and

3. The landlord (housing provider), manager, or other agent has taken retaliatory action against me/us in violation of Section 502 of the Act.

Tenant Petition at 1-2; Record for RH-TP-09-29,590 (R.) at 25-6.

An evidentiary hearing was held on October 6, 2009 before Administrative Law Judge (ALJ), Louis Burnett. *See* R. at 48. On September 14, 2010, the ALJ issued a final order, Caroline C. Karpinski v. Evolve Property Management, LLC, RH-TP-09-29,590 (OAH Sept, 14, 2010) (Final Order). *See* R. at 49-71. The ALJ made the following findings of fact in the Final Order:[2]

1. On March 30, 1992, Tenant entered into a lease agreement to lease the Housing Accommodation, a basement apartment in a 27 unit apartment building (the "Building"). On December 29, 2003, Tenant sent a letter to Housing Provider requesting information about her security deposit. Tenant inquired as to the location of her security deposit and the interest rate for each six month period during 2003. PX 109. Tenant did not receive a response from Housing Provider to this inquiry.

2. On May 1, 2006, Housing Provider increased the monthly rental payment to $545 and on June 1, 2009, increased Tenant's rent to $571 a month. RX 201. Throughout the tenancy, the Housing Provider furnished ice and snow

[2] The findings of fact are stated in the same language as found in the Final Order, except that the Commission has numbered the ALJ's paragraphs for ease of reference.

removal, monthly pest control services, and maintenance of the common areas.

3. The Housing Provider engaged an independent contractor to provide pest control in the Building and distributed a Pest Control Preparation Guide (the "PCP Guide") to the Building tenants. PX 104. The PCP Guide provides steps tenants are to follow before any scheduled pest control treatment in their apartments. Among other things, tenants are directed to empty all kitchen cabinets and drawers. In the event a tenant fails to adequately prepare their unit for a scheduled treatment without notifying the Housing Provider, the PCP Guide states that the Housing Provider will perform emergency preparations in that tenant's unit and charge the tenant $50 for this service.

A. Tenant's Claims of Housing Code Violations and Substantial Reductions in Services and/or Facilities.

1. Icy Conditions

4. On February 12, 2008, after weather forecasts the previous day had predicted freezing rain, widespread icy conditions existed throughout the District. Late that day, the Tenant slipped and fell on the icy walkway outside the Housing Accommodation and suffered an injury. PX 101 and PX 102. Tenant contacted Jeff Prince, a co-owner of the Housing Provider, to report the incident, and he advised her to spread sand and salt on the walkway. Shortly after this conversation, Mr. Prince called Tenant and advised that the phone number she had called was a personal phone line, and that she should call a different number to report problems. He also advised her to call an ambulance if she was injured. Although the Housing Provider did not take any action to immediately abate the icy conditions, due to warmer weather, the ice melted the following day. Tenant deducted $60.96 from her April 2008 rent and $19.86 from the June 2008 rent for the medical expenses associated with her injury that were not covered by insurance. PX 103. The Housing Provider did not object to these deductions.

2. Maintenance of Common Areas

5. In May 2008, the basement hallway in the apartment complex flooded after a heavy rain. Tenant left a message on the property manager's voice mail advising of the flooding; however, she did not receive a response to her call. The carpet in the hallway remained wet for several days after the flooding, thus posing potential concerns as well as the inconvenience of walking on wet carpets. Housing Provider installed new drains shortly after the flooding and has since removed the carpeting and replaced it with tile.
6. Beginning in October 2008, the Housing Provider's employees frequently failed to vacuum dust, dirt and debris from the carpet in the hallway accessing

Petitioner's apartment. On November 3, 2008, and November 27, 2008, Tenant advised the Housing Provider of this problem. PX 105. Thereafter, the hallway cleaning was inconsistent, with two weeks or more sometimes elapsing between cleanings. On May 9, 2009, the Housing Provider's employees vacuumed the upstairs but not the basement common areas servicing Tenant's unit. Tenant contended that the lack of cleaning was a persistent problem but, other than May 9, 2009, was unable to provide specific dates that the Housing Provider failed to clean the hallways or identify the duration of this condition.

3. Electrical Outage

7. On the morning of April 5, 2009, the electricity to the building in which Tenant's apartment is located went out. Tenant testified that when she left her unit, the exit signs in the common area hallway were not functioning. She did not indicate how long this deficiency lasted.

4. Pest Control Services

8. Housing Provider scheduled its contractor to perform monthly pest control services and required residents to adequately prepare their kitchen areas for treatment. Adequate preparation included emptying kitchen cabinets and cleaning countertops. PX 104. After performing routine pest control, the Housing Provider's contractor notified tenants by leaving a doorknob tag advising them that its contractor had serviced their units.

9. On October 14, 2008, after the Housing Provider scheduled a treatment, Tenant did not find the usual doorknob tag. Additionally, the doors to her kitchen cabinets remained as she had left them earlier in the day. As a result, she believed that the Housing Provider had failed to provide scheduled pest control services and deducted $50 from her November 2008 rent payment for its failure to service her unit. PX 105 and 106. Tenant's rationale for deducting this amount was that it was identical to the fee ta the Housing Provider imposed on tenants for failing to prepare their apartments for scheduled pest control treatments.

B. Retaliation

1. Notices of Past Rent Due (Tenant's Deduction From Rent)

10. After the Tenant's deduction of $50 from her November rent payment, the following correspondence between the parties ensued:
    - On November 12, 2008, Housing Provider sent Tenant a notice of past rent due in the amount of $50, for her unapproved deduction. PX 105 (p.2).

- On November 17, 2008, Tenant sent a letter notifying Housing Provider of the failure to service her unit. PX 105.

- Housing Provider sent a notice to pay rent or quit on November 17, 2008. PX 106 (p.3).

- On November 22, 2008, Tenant sent Housing Provider a letter explaining the reasons for her deduction, and a check for $50 for the unpaid rent. PX 106.

- Tenant did not receive a response to her November 17, 2008 or November 22, 2008 letters.

2. Notice of Past Rent Due (Charges for Tenant's Failing to Prepare Her Unit For Pest Control Treatment)

11. On the afternoon of February 10, 2009, Tenant returned to her unit and found a doorknob tag notifying her that her unit had received pest control treatment. The notice specified a $50 charge for failing to prepare her apartment for pest control treatment. PX 107. Tenant admitted that she had not prepared her unit for pest control treatment and that Housing Provider typically charged this amount to [t]enants for neglecting this preparation; however, she did not receive notification of the scheduled pest control visit. Tenant testified that after the contractor's pest control treatment in her apartment, her kitchen cabinets had been emptied, with the contents "scattered haphazardly over the countertops." The following correspondence between the parties then ensued:

    - On April 1, 2009, Tenant sent Housing Provider a letter stating that Housing Provider had failed to give her notice of the scheduled pest control visit and that she did not owe the $50 penalty. PX 108.

    - On April 6, 2009, Housing Provider sent Tenant a first notice of rent past due in the amount of $100, for failure to pay the $50 pest control penalty and a $50 late fee. The notice advised Tenant that a failure to pay these amounts could result in eviction. PX 110.

    - Housing Provider sent Tenant a second notice of past rent due on April 20, 2009. The notice demanded payment of the $100 and threatened termination of the lease and eviction for non-payment. PX 113.

- On May 5, 2009, Housing Provider sent Tenant a third notice of past due rent demanding payment of the $100 and again advising of possible eviction. PX 115.

- After receiving this notice, Tenant confirmed with her bank that Housing Provider had cashed her May rent payment of $545 (and a check for $9.00 for a new toilet seat). Tenant advised Housing Provider of this fact.

- Thereafter, Housing Provider sent Tenant monthly notices of past due rent in the reduced amount of $50, for failing to prepare her apartment for the pest control treatment. PX 116 and PX 118.

- On May 28, 2009, Tenant sent Housing Provider a letter stating that she had consulted with the D.C. Office of the Tenant Advocate and had been advised that she did not owe the $50 penalty. PX 117.

12. Tenant testified that she believed that the Housing Provider's attempts to collect the $50 through its letters sent on April 6, 2009, April 20, 2009, and May 5, 2009, were designed to intimidate her and to retaliate against her for her refusal to pay the $50 penalty. Tenant also claimed that Housing Provider's act of clearing her kitchen cabinets and moving the contents to her countertops "with deliberate chaotic intent" was intended to harass her so that she would move out of the Housing Accommodation.

Final Order at 3-8; R. at 64-9 (footnotes omitted).

The ALJ made the following conclusions of law in the Final Order:[3]

. . .[4]

B. Tenant's Claims Concerning an Improper Rent Increase

1. The first claim asserted in the [T]enant [P]etition is that the Housing Provider charged an improper rent increase while the unit was not in substantial compliance with the District of Columbia Housing Regulations. The Rental Housing Act prohibits a housing provider from implementing a rent increase unless the "rental unit and the common

[3] The conclusions of law are stated in the same language as found in the Final Order, except that the Commission has numbered the ALJ's paragraphs for ease of reference.

[4] The Commission omits the ALJ's statement concerning jurisdiction from its recitation of the ALJ's conclusions of law.

elements are in substantial compliance with the housing regulations." D.C. Official Code § 42-3502.08(a)(1)(A) [(2001)].

2. Here, the uncontested evidence demonstrates that (1) the icy conditions on the walkway ended the day after Tenant's accident on February 12, 1008; (2) the May 2008 flooding in the basement complex was abated several days afterwards; (3) cleanliness of the hallway common areas was allegedly an issue on May 9, 2009, but Tenant could not identify any specific dates thereafter that the hallways were not maintained; (4) the exit signs in the common area were not operable on April 5, 2008; and (5) after the alleged lapse of pest control service on October 14, 2008, the Housing Provider resumed treatments.

3. The Housing Provider increased Respondent's monthly rental payment to $545 on May 1, 2006, and on June 1, 2009, increased Tenant's rent to $571 a month. Although Tenant contends that icy conditions at the Housing Accommodation violated the housing code at various times between these two dates, there is no evidence that the building was not in substantial compliance with the Housing Regulations at the time the Housing Provider implemented the 2009 rent increase.

4. Because Tenant did not present evidence that the Housing Provider imposed a rent increase during the time that the Housing Accommodation was in "substantial violation" of housing regulations, Tenant failed to prove this claim.

C. Tenant's Services and Facilities Claims

5. Prior to August 5, 2006, the services and facilities provision of the Rental Housing Act provided:

> If the [Administrative Law Judge] determines that the related services or related facilities supplied by a housing provider for a housing accommodation or for any rental unit in the housing accommodation are substantially increased or decreased, the [Administrative Law Judge] may increase or decrease the rent ceiling, as applicable, to reflect proportionally the value of the change in services or facilities.

D.C. Official Code § 42-3502.11 (2005) [sic]. On August 5, 2006, the Act was amended to allow for a decrease in the rent charged when services and facilities are substantially decreased. D.C. Official Code § 42-3502.11 ([Supp.] 2006).

6. The Act defines ["related] services["] as "services provided by a housing provider, required by law or by the terms of a rental agreement, to a tenant in connection with the use and occupancy of a rental unit, including repairs, decorating and maintenance, the provision of light, heat, hot and cold water, air conditioning, telephone answering or elevator services, janitorial services, or the removal of trash and refuse." D.C. Official Code § 42-3501.03(27). The reduction of services provision of the Act "was drafted to ensure that housing providers provide services required by [the] D.C. Housing Code." *Cascade Park Apts. v. Walker*, TP-26,197 (RHC January [sic] 14, 2005) at 22 (*citing Shapiro v. Comer*, TP-21,742 (RHC August [sic] 19, 1993) at 20). "Substantial compliance with the housing code" means the absence of any substantial housing violations. Certain violations are presumed to be substantial under the rental housing regulations, including frequent lack of hot water, lack of sufficient heat, defective toilet facilities, infestation of insects or rodents, and inadequate ventilation of interior bathrooms. 14 DCMR [§] 4216.2 [(2004)].

7. To establish a claim for reduction in services and facilities, a [t]enant "must present competent evidence of the existence, duration, and severity of the reduced services." *Jonathan Woodner Co. v. Enobakhare*, TP 27,730 (RHC Feb. 3, 2005) at 11 (citations omitted). The tenant must establish that: 1) an eliminated item was a related service or facility; 2) the service was reduced and not promptly restored with a reduction in rent; 3) the housing provider had knowledge (notice) of the reduction; and 4) the reduction was substantial. *Parreco v. Akassy*, TP 27,408 (RHC Dec. 8, 2003) at 15, *rev'd on other grounds*, 885 A.2d 327 (D.C. 2005).

8. The Tenant's services and facilities reduction claims primarily concerned the common amenities to her unit. Chief among these was her uncontested claim that after a freezing rain on February 12, 2008, the Housing Provider failed to remove ice from the sidewalk accessing her apartment, even though it had previously furnished snow removal services in the common areas. Weather forecasts had predicted freezing rain, but the only evidence of actual notice to the Housing Provider that the ice had not been removed, was Tenant's call to Housing Provider's owner late in the day on February 12th. By the next day, warmer weather eliminated the need for the Housing Provider to take action.

9. Tenant testified that she slipped and fell in the common area sustaining an injury that required medical attention; however the injury itself is not compensable in this proceeding. Rather, in determining tenant damages for a loss of services, courts have weighed the impact of the service reductions on a premises' value. *Jarvins v. First National* [sic] *Realty Corp.*, 428 F.2d 1071 (D.C. Cir. 1970), *cert. denied*, 400 U.S. 925 (1970). In considering whether the Housing Provider's failure to remove ice from