

DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION

RH-TP-09-29,715

In re: 4941 North Capitol Street, N.E., Unit 21

Ward Five (5)

GELMAN MANAGEMENT COMPANY
Housing Provider/Appellant

v.

DEBRA CAMPBELL
Tenant/Appellee

DECISION AND ORDER

December 23, 2013

SZEGEDY-MASZAK, CHAIRMAN. This case is on appeal to the Rental Housing Commission (Commission) from a decision and 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 (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 (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 Office of Administrative Hearings (OAH) assumed jurisdiction over the conduct of hearings on tenant petitions from the RACD and the Rent Administrator 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 the Rental Accommodations Division (RAD) of the Department of Housing and Community Development (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 § 42-3502.03a (2001 Supp. 2008)).

I. PROCEDURAL HISTORY

On September 16, 2009, Tenant/Appellee Debra Campbell (Tenant), residing at 4941 North Capitol Street, N.E., Unit 21, Washington, D.C. 20011 (Housing Accommodation), filed Tenant Petition RH-TP-09-29,715 (Tenant Petition) against Housing Provider/Appellant Gelman Management Company (Housing Provider) claiming the following violations of the Act:

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.

See Tenant Petition at 1-2; Record for RH-TP-09-29,715 (R.) at 10-11.²

Evidentiary hearings were held before Administrative Law Judge (ALJ) Caryn Hines on April 8, 2010 and May 12, 2010. R. at 71-72, 76-77.

On December 15, 2010, the ALJ issued a final order, Campbell v. Gelman Mgmt. Co., RH-TP-09-29,715 (OAH Dec. 15, 2010) (Final Order). In the Final Order the ALJ made the following findings of fact:³

1. The housing accommodation that is the subject of the [T]enant [P]etition is located at 4941 North Capitol Street NE, Unit 21.
2. Tenant has resided in the [H]ousing [A]ccommodation since December 12, 2003. Petitioner's Exhibit (PX) 101.

² On March 31, 2010, the Tenant filed a Motion to Amend Tenant Petition (hereinafter "Motion to Amend") and an Amended Tenant Petition, claiming the following additional violation of the Act: "[t]he 2007 rent increase is invalid because the Housing Provider did not file a 2007 Certificate of Rent Increase with RAD." Amended Tenant Petition at 4-5; R. at 62-63. The Tenant's Motion to Amend was granted by the ALJ on the record at the April 8, 2010 hearing. *See* Hearing CD (OAH Apr. 8, 2010). However, the Tenant subsequently withdrew this claim on May 24, 2010. *See* Petitioner's Amended Post-Hearing Memorandum (OAH May 24, 2010) at 23-24; R. at 102-103.

³ The findings of fact are recited here using the same language and paragraph numbers as the ALJ in the Final Order.

3. Effective March 1, 2007, Tenant's rent was increased from \$835 to \$887. PX 115.
4. Effective March 1, 2008, Tenant's rent was increased from \$887 to \$910. PX 111.
5. Effective March 1, 2009, Tenant's rent was increased from \$910 to \$935. PX 116.
6. Effective March 1, 2010, Tenant's rent was increased from \$935 to \$950. PX 112.
7. Since the beginning of her tenancy in 2003, Tenant continuously contacted Housing Provider about chronic problems with air and moisture coming through all of the windows of the rental unit because of improper weatherproofing.
8. In June 2008, Tenant had problems with the living room window not opening or closing with ease and coming off its track. Tenant sent maintenance requests to Housing Provider on August 5, 2008, May 11, 2009, June 18, 2009, and June 22, 2009. PXs 106, 107, 108, 121. Housing Provider repaired the handles of the windows and put the window back on its track after the June 22, 2009, request. Tenant contacted DCRA who sent Housing Inspector Stroman to inspect the unit on September 3, 2008. Inspector Stroman cited Housing Provider for the living room window not being capable of opening or closing with ease. PX 101. Housing Provider repaired the window. The handle broke again and Tenant was unable to open the window and the window came off its track. Tenant sent a repair request to Housing Provider on September 30, 2009, PX 109, and another repair request on October 16, 2009. PX 110. After Housing Provider failed to respond to the first request, Tenant again contacted the Department of Consumer and Regulatory Affairs (DCRA), who sent Housing Inspector Harris to inspect the unit on October 10, 2009. Inspector Harris cited Housing Provider for the living room window not being capable of opening or closing with ease. PX 105. At some point prior to the April hearing, Housing Provider came to Tenant's unit to repair the window. As of April 2010, Tenant did not know if the problem remained.
9. Tenant notified Housing Provider via maintenance requests during the "rainy season" in March or April of 2007 that paint was chipping and peeling on the living room wall. Housing Provider repaired the wall and the paint chipped and peeled again in March or April of 2008. Housing Provider repaired the wall again and the paint chipped and peeled again in March or April of 2009. PX 118.

10. The inside sash of both bedroom windows had loose or peeling paint in September 2008. Housing Provider was cited for this condition on September 3, 2008 by Inspector Stroman. PX 101. Housing Provider repaired this condition but it recurred in March or April of 2009.
11. Mold accumulated on the window sill of the bedroom Tenant's grandchildren occupied during the winters of 2007, 2008, and 2009 because the window could not be shut completely and was not weatherproofed. PXs 101, 119. These conditions existed on March 1, 2007, March 1, 2008, and March 1, 2009 and were cited by DCRA Housing Inspectors Stroman and Harris on September 3, 2008 and October 20, 2009, respectively. PXs 101, 105. Tenant cleaned mold off the window once every two weeks during the winter months of 2007, 2008, 2009. Tenant sealed the window with duct tape.
12. Since the beginning of Tenant's tenancy in 2003, the bathroom window of the rental unit has leaked air. Tenant complained to Housing Provider about the condition of the bathroom window on August 5, 2008. PX 106. DCRA Housing Inspector Johnson cited this condition in her report on January 8, 2009. PX 102. Tenant sealed the window sill with duct tape and plastic in November 2009. PX 120.
13. The screens in the windows of the rental unit did not fit. Tenant provided a written complaint to Housing Provider of this condition on August 5, 2008. PX 106[.] DCRA Housing Inspector Stroman cited Housing Provider for this condition on January 12, 2009. PX 103. Housing Provider attempted to replace the screens with screens that were too short. The screens were not replaced as of the date of the May 12, 2010 hearing.
14. Tenant's unit has been infested with mice from the beginning of her tenancy through the date of the hearing. PX 123. Tenant's complaints to Housing Provider were ongoing since 2006 and she listed it in a repair request on August 5, 2008. PX 106. Housing Provider provided pest control services, plugged mice holes, and gave Tenant containers for her food but the problem was not eradicated as of the date of the May 12, 2010 hearing.
15. The concrete walkways in the back of Tenant's building have been crumbling since the beginning of her tenancy and remained that way as of the date of the May 12, 2010 hearing. PXs 124, 125.
16. The concrete sidewalks in the front of Tenant's building have been crumbling since the beginning of her tenancy and remain that way as of the date of the hearing. The step railing along the concrete sidewalk has been unsecure since Tenant moved into the housing accommodation in 2003. PXs [sic] 126, RX 235. Tenant never notified Housing Provider about the condition.

17. Housing Provider left chunks of cement behind the dumpster during the year of 2008. In March 2010, Housing Provider allowed trash to accumulate beside the dumpster located in the rear of the [H]ousing [A]ccommodation for two weeks. PX 127. Housing Provider hired a trash collection service to operate once daily six days a week. Housing Provider continues to allow trash to accumulate beside the dumpster as of the date of the May 12, 2010 hearing.
18. Housing Provider intermittently screwed shut the exterior exit to the laundry room since 2008. The door was sealed shut as of the date of the May 12, 2010 hearing.
19. The smoke alarm in the laundry room has not functioned since November 2009. Housing Provider properly installed the smoke alarm in the laundry room in April 2010. PX 128.
20. The laundry room has loose or peeling paint and an exposed surface. The condition has existed since Tenant moved into the [H]ousing [A]ccommodation in 2003. PX 129. DCRA Housing Inspector Johnson cited Housing Provider on January 8, 2009, for this condition. PX 101.
21. Since Tenant moved into the [H]ousing [A]ccommodation in 2003, the tub in the laundry room has overflowed when Tenant uses the washing machine once a week. Housing Provider often allows the water to stay on the floor for two days.
22. The exterior walls of the [H]ousing [A]ccommodation have holes and the brick walls are not pointed allowing for entry of mice into the unit. These conditions have existed since Tenant moved into the [Housing A]ccommodation in 2003. The conditions remained as of the date of the May 12, 2010 hearing. PX 130.
23. In June 2008, Tenant requested that Housing Provider replace her refrigerator because of a broken seal. Tenant contacted DCRA, who sent Inspector Stroman on September 3, 2008. Inspector Stroman cited Housing Provider for the refrigerator's broken seal. PX 101. Housing Provider replaced the refrigerator at a time when the temperature was warm in 2008. Tenant refused Housing Provider's attempts to replace the refrigerator three times before the refrigerator was replaced.
24. Housing Provider's resident manager, Antoinette Clemons inspects the building in which Tenant's unit is located on a daily basis.
25. On December 11, 2008, Tenant and Housing Provider filed a settlement agreement in the Superior Court of the District of Columbia Landlord and Tenant Branch (Landlord and Tenant Branch) which read in part, "this

agreement is a full and complete settlement of all claims between the parties cognizable in the landlord and tenant court up to and including the date of this agreement.” RX 201.

Final Order at 3-8; R. at 168-173. The ALJ made the following conclusions of the law in the

Final Order:⁴

...⁵

B. The consent settlement agreement dated December 11, 2008 filed with the Landlord Tenant Branch

1. Housing Provider argues that the consent settlement agreement filed with the Landlord Tenant Branch on December 11, 2008, settles all claims between the parties up until that date and therefore Tenant’s claims up to December 11, 2008, are barred by the doctrine of *res judicata*. The consent settlement agreement reads, “this agreement is a full and complete settlement of all claims between the parties cognizable in the landlord and tenant court up to and including the date of this agreement” and it is stamped “MultiDoor Filed in Open Court.” RX 201. The docket sheet from the Landlord Tenant Branch indicates that the case was closed on March 28, 2008.
2. Under the doctrine of *res judicata* or claim preclusion, a final judgment on the merits in an action precludes the same parties from litigating claims that were or could have been raised in that action. If the settlement agreement reached by the parties in the Landlord and Tenant Branch had been approved by the Court as a judgment on the merits or in the form of a consent decree, *res judicata* might bar [P]laintiff’s [(Tenant’s)] claims. But “[r]es judicata cannot operate in the absence of a judgment. A settlement agreement that has not been integrated into a consent decree [or order of a court] is not a judgment and cannot trigger *res judicata*.” The settlement agreement filed in the Landlord and Tenant Branch cannot be considered under the doctrine of *res judicata* because it is not a final judgment on the merits.
3. However, the settlement agreement embodies an agreement between the parties. The consent settlement agreement reads, “this agreement is a full and complete settlement of all claims between the parties cognizable in the landlord and tenant court up to and including the date of this agreement” and it is signed on December 11, 2008 by Tenant, a representative for Housing

⁴ The conclusions of law are recited here as stated by the ALJ in the Final Order, except that the Commission has numbered the ALJ’s paragraphs for ease of reference.

⁵ The Commission has omitted a recitation of the ALJ’s statement of jurisdiction. See Final Order at 8; R. at 168.

Provider, and attorneys for both parties. Voluntary settlement of civil controversies is in high judicial favor and that [sic] a party who received such benefit of the settlement agreement will not be permitted to deny his or her obligations unless paramount public interest requires it. Settlement agreements should generally be enforced as written, absent a showing of good cause to set it aside, such as fraud, duress, or mistake. Tenant was represented by counsel at the time she entered into the settlement agreement and has provided no evidence that she signed the agreement under duress, by mistake, or [that] fraud existed. Because Tenant received the benefit of the settlement agreement until December 11, 2008, her claims are limited to those occurring after the settlement agreement was signed.

C. The rent increases of 2008, 2009, and 2010 were made while Tenant's unit was not in substantial compliance with the DC Housing Regulations

4. Tenant argues that her rental unit was not in substantial compliance with the D.C. Housing Regulations when Housing Provider increased her rent. The rent increases in question are: \$887 to \$910 effective March 1, 2008 (PX 111); \$910 to \$935 effective March 1, 2009 (PX 116); and \$935 to \$950 effective March 1, 2010. PX 112.
5. I will not consider the rent increase of 2008, because the settlement agreement covered all claims until December 11, 2008. RX 201. Tenant's rent was due on the first of each month and therefore at the time the settlement agreement was signed Tenant should have paid all of her rent for 2008 including her rent for December. PX 100.
6. Tenant experienced chronic problems with the windows throughout the unit. The windows throughout the rental unit and especially the living room did not have proper weather stripping. The windows also did not exclude rain from completely entering the rental unit. Further, the windows were not capable of easily being opened and closed by the window hardware. These conditions constitute housing code violations. The aggregate of the non-substantial housing code violations, makes them substantial.
7. Tenant's rental unit was infested with mice in 2009 and 2010 and remained that way until the date of the hearing. Rodent infestation is a substantial housing code violation.
8. Further, Housing Provider failed to maintain the step railing in good repair. The failure of Housing Provider to maintain safe railings is a substantial housing code violation.
9. Tenant argues that the front sidewalks and rear walkways were unsafe for walking purposes and that Housing Provider sealed the exterior laundry room

door and these conditions were substantial housing code violations. However, these conditions were not cited by the DCRA housing inspectors nor are they listed among the substantial housing code violations in 14 DCMR [§] 4216[.2] [(2004)].⁶ Evidence of substantial noncompliance shall be limited to housing regulations violation notices issued by DCRA and those listed among the substantial housing violations in 14 DCMR [§] 4216[.2] [(2004)]. Based upon the evidence Tenant presented, these conditions are not substantial housing code violations.

10. The rent for any rental unit shall not be increased above the base rent unless the rental unit and the common elements are in substantial compliance with the housing regulations. Because substantial housing code violations existed when Housing Provider increased Tenant's rent in 2009, and 2010, those rent increases are invalid.

D. Remedy

11. Any person who knowingly demands or receives any rent for a rental unit in excess of the maximum allowable rent applicable to that rental unit shall be

⁶ 14 DCMR § 4216.2 (2004) provides the following:

For purposes of this subtitle, "substantial compliance with the housing code" means the absence of any substantial housing violations as defined in § 103(35) of the Act including, but not limited to, the following:

- (a) Frequent lack of sufficient water supply;
- (b) Frequent lack of hot water;
- (c) Frequent lack of sufficient heat;
- (d) Curtailment of utility service, such as gas or electricity;
- (e) Defective electrical wiring, outlets, or fixtures;
- (f) Exposed electrical wiring or outlets not properly covered;
- (g) Leaks in the roof or walls;
- (h) Defective drains, sewage system, or toilet facilities;
- (i) Infestation of insects or rodents;
- (j) Lead paint on the interior of the dwelling, or on the exterior of the dwelling where the paint is in a location or in a condition which creates a hazard of lead poisoning to children or the occupants;
- (k) Insufficient number of acceptable exits for a dwelling, or from each floor of a rooming house;
- (l) Obstructed exits;
- (m) Accumulation of garbage or rubbish in common areas;
- (n) Plaster falling or in immediate danger or falling;
- (o) Dangerous porches, stairs, or railings;
- (p) Floor, wall, or ceilings with substantial holes;
- (q) Doors or windows insufficiently tight to maintain the required temperature or to prevent excessive heat loss;
- (r) Doors lacking required locks;
- (s) Fire hazards or absence of required fire prevention or fire control;
- (t) Inadequate ventilation of interior bathrooms; and
- (u) Large number of housing code violations, each of which may be either substantial or non-substantial, the aggregate of which is substantial, because of the number of violations.