

DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION

RH-TP-10-29,891

In re: 3536 Center Street, N.W., Unit 36

Ward Two (2)

BADEBANA ATCHOLE
Tenant/Appellant

v.

CRAIG ROYAL
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 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 May 17, 2010, Tenant/Appellant Badebana Atchole (Tenant), residing in Unit 36 of 3536 Center Street, N.W. (Housing Accommodation), filed Tenant Petition RH-TP-10-29,891 (Tenant Petition) with RAD, claiming that Housing Provider/Appellee Craig Royal (Housing Provider) violated the Act as follows:² (1) “[t]he rent increase was larger than the increase allowed by any applicable provision of the Act;” and (2) “[t]he rent increase was made while my/our units were not in substantial compliance with DC Housing Regulations.” Tenant Petition at 1-2; Record for Tenant Petition (R.) at 22-23.

On September 7, 2010, Administrative Law Judge Caryn L. Hines (ALJ) issued a case management order (CMO) scheduling a hearing for October 21, 2010. CMO at 1-2; R. at 34-5. On November 10, 2011, the ALJ issued a final order, Badebana Atchole v. Craig Royal, RH-TP-10-29,891 (OAH Nov. 10, 2011) (Final Order). The ALJ made the following findings of fact in the Final Order:³

1. The Housing Accommodation is located at 3536 Center Street NW, Unit 36.
2. Tenant has resided in the Housing Accommodation since May 3, 1999. Petitioner’s Exhibit (PX) 101.
3. Housing Provider purchased the 22-unit building from Ymos, Inc. on February 24, 2008. PX 107.
4. Ymos, Inc. increased Tenant’s rent from \$770 to \$822, effective July 1, 2009. PX 106.
5. Housing Provider took possession of the building in which the Housing Accommodation is located on December 28, 2009. On that date Housing Provider asked the tenants if they had any problems within their units. Tenant did not raise any concerns about housing code violations in his unit at this time. PX 109 and Respondent’s Exhibit (RX) 209.

² The claims are recited herein using the language of the Tenant Petition.

³ The ALJ’s findings of fact are recited herein using the language of the Final Order.

6. Tenant's unit was infested with mice, bedbugs, and roaches from the beginning of his tenancy in 1999 until June 2010. PXs 113, 123-125, 127 and RX 209.
7. On January 7, 2010, Tenant defaulted on his rent payment. Housing Provider sought payment of the rent in the Superior Court of the District of Columbia (Superior Court). PX 110.
8. The parties had a hearing on January 14, 2010, in Superior Court at which Housing Provider learned that Department of Consumer and Regulatory Affairs (DCRA) cited him for various housing code violations and had issued Notices of Violation on April 7, 2009. After learning of the violations, Housing Provider sent his Property Manager, Brian Brown to inspect Tenant's unit. All of the violations were abated except the bedbugs, mice, and roach infestation. PXs 103, 109, 110 and RX 207.
9. On multiple occasions beginning January 21, 2010, Housing Provider asked Tenant to give him a key to Tenant's apartment. Tenant refused. Tenant also postponed extermination appointments that conflicted with his schedule. PXs 109, 110 and 112.
10. Housing Provider served Tenant with a Notice of Increase in Rent Charged on March 30, 2010, increasing Tenant's rent by \$20 per month from \$822 to \$842. Housing Provider based the rent increase on the Consumer Price Index, Urban Wage Earners and Clerical Workers, Washington-Baltimore, DC-Md-Va-Wv. (CPI-W). The rent increase was effective July 1, 2010. PX 105.
11. On May 19, 2010, a DCRA inspector inspected Tenant's unit and cited Housing Provider for seven housing code violations which included cracks on the wall, dampness and an infestation of roaches, bedbugs "or other type of vermin." PX 102.
12. DCRA deemed all of the violations abated on June 18, 2010. RX 209.
13. On September 17, 2010, Tenant notified Brian Brown, the Property Manager that the hallways needed to be cleaned more often. PX 112.

Final Order at 2-4; R. at 61-63.

The ALJ made the following conclusions of law:⁴

B. Tenant's Claims Concerning Substantial Housing Code Violations and Services and Facilities Reductions⁵

⁴ The ALJ's conclusions of law are recited herein using the language of the Final Order, except that the Commission has numbered the ALJ's paragraphs for ease of reference.

1. Claim that the rent increase in 2009 by Ymos, Inc., is improper because substantial housing code violations existed

1. Tenant claims that significant housing code violations existed throughout his tenancy. Specifically, he claims the violations existed at the time that his previous housing provider Ymos, Inc. increased his rent in 2009, therefore making the subsequent rent increase by Housing Provider Craig Royal in 2010 illegal.
2. Under the Act, a housing provider is prohibited from increasing rent unless the rental unit and the common areas of the housing accommodation are in “substantial compliance” with the housing regulations. D.C. OFFICIAL CODE § 42-3502.08(a)(1)(A) [(2001)]. The Act defines a “substantial violation” as: “the presence of any housing condition, the existence of which violates the housing regulations . . . and may endanger or materially impair the health and safety of any tenant or person occupying the property.” D.C. OFFICIAL CODE § 42-3502.1(35).
3. The rental housing regulations, in turn, list specific conditions that constitute substantial housing violations. 14 DCMR [§] 4216.2 [(2004)]. These include: “[I]nfestation of insects or rodents.” 14 DCMR [§] 4216.2(i).
4. Tenant is challenging the rent increase that took effect on July 1, 2009, when Ymos, Inc. was his housing provider. Although, Housing Provider Craig Royal signed and dated the multi-unit sales contract on February 18, 2008, for reasons not entirely clear to this administrative court he did not take possession of the building until December 28, 2009. PX 107. However, tenants are obligated to provide notice of conditions existing within their units. Tenant provided no evidence that he provided notice of these violations to Ymos, Inc., the previous housing provider. Housing Provider Craig Royal did not receive notice of any violations until the proceeding on January 14, 2010, in Superior Court. Because Tenant provided no evidence that he provided notice of substantial housing code violations existing when Ymos, Inc. increased his rent, he has not met his burden of proof. *See* OAH 2822.1 [(1 DCMR § 2822.1)]. Also see DCAPA, D.C. OFFICIAL CODE §[]2-509(b) (“[i]n contested cases . . . the proponent of rule or order shall have the burden of proof”); *Battle v. McElvene*, TP 24,752 (RHC May 18, 2000) (dismissal with prejudice was appropriate when the tenant failed to sustain his burden of proof under the DCAPA); *Parecco v. D.C. Rental Hous. Comm’n*, 885 A.2d 327, 334 (D.C. 2005) (tenant has the burden of proof in rental housing cases).

2. Substantial Housing Code Violations in 2010, under Craig Royal, current Housing Provider

⁵ The Commission omits the ALJ’s statement concerning jurisdiction from its recitation of the ALJ’s conclusions of law. *See* Final Order at 4; R. at 61.