

DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION

RH-TP-12-28,898
(formerly RH-TP-07-28,898)¹

490 M Street, S.W., Unit W106

Ward Six (6)

ROBIN Y. JACKSON
Tenant/Appellant

v.

THEOFANIS "FRANK" PETERS
Housing Provider/Appellee

DECISION AND ORDER

September 27, 2013

SZEGEDY-MASZAK, CHAIRPERSON. 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 and Conversion Division (RACD), Housing Regulation Administration (HRA), of the District of Columbia Department of Consumer and Regulatory Affairs (DCRA).² 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), and the District of Columbia Municipal Regulations (DCMR), 1

¹ The Commission observes that, on remand, the ALJ altered the case number in this matter from RH-TP-07-28,898 to RH-TP-12-28,898.

² The Office of Administrative Hearings (OAH) assumed jurisdiction over tenant petitions from RACD pursuant to the OAH Establishment Act, D.C. OFFICIAL CODE § 2-1831.01, -1831.03(b-1)(1) (Supp. 2005). The functions and duties of RACD in DCRA were transferred to 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)).

DCMR §§ 2800-2899 (2004), 1 DCMR §§ 2920-2941 (2004), 14 DCMR §§ 3800-4399 (2004) govern these proceedings.

I. PROCEDURAL HISTORY³

On February 20, 2007, Tenant/Appellant, Robin Y. Jackson (Tenant), residing at 490 M Street, S.W., Unit # W106 (Housing Accommodation), filed Tenant Petition RH-TP-07-28,898 (Tenant Petition) with RACD, claiming that the Housing Provider/Appellee, Theofanis “Frank” Peters (Housing Provider), violated the Act as follows: retaliatory action was directed against the Tenant by the Housing Provider for exercising the Tenant’s rights in violation of D.C. OFFICIAL CODE §§ 42-3505.02(a)-(b) (2001). Tenant Petition at 5; R. at 27.

On April 25, 2007, the Tenant filed an Amended and Supplemental Tenant Petition (hereinafter “Amended Tenant Petition”), claiming that the Housing Provider illegally back-dated a rent increase notice, unreasonably increased the rent from \$1,250 per month to \$1,550 per month, and further retaliated against the Tenant by filing a “baseless” eviction action, in response to her pending Tenant Petition and her refusal to change the OAH hearing date. Amended Tenant Petition at 1-2; R. at 101-102. On June 5, 2007, the ALJ held a hearing on the Tenant Petition. OAH Hearing CD June 5, 2007. R. at 248-49. On December 30, 2008, the ALJ issued her Final Order: Jackson v. Peters, RH-TP-07-28,898 (OAH Dec. 30, 2008) (Final Order). R. at 301-324.

In the Final Order, the ALJ found that the Tenant had failed to prove any of the allegations in her Tenant Petition, specifically that she had not sustained her burden of proof to

³ The complete procedural history prior to the ALJ’s Final Order After Remand is contained in the Commission’s February 3, 2012 Decision and Order: Jackson v. Peters, RH-TP-07-28,898 (RHC Feb. 3, 2012).

establish that the Housing Provider had directed retaliatory action against her, under D.C. OFFICIAL CODE § 42-3505.02(b) (2001). *See* Final Order at 19; R. at 306.

On January 21, 2009, the Tenant filed a Notice of Appeal (hereinafter “Notice of Appeal”) claiming that the ALJ erred in holding that substantial evidence in the record supported the determination that the Housing Provider did not improperly retaliated against the Tenant under D.C. OFFICIAL CODE §§ 42-3505.02(a)-(b). Notice of Appeal at 1-2. On June 11, 2009, the Commission held its (first) appellate hearing.

On August 18, 2011, the Commission issued an initial Decision and Order, in which it affirmed the ALJ’s Final Order: Jackson, RH-TP-07-28,898 (RHC Aug. 18, 2011) (Initial Decision and Order). The Commission determined that substantial evidence in the record supported the ALJ’s conclusions of law that the Housing Provider had not illegally retaliated against the Tenant in violation of D.C. OFFICIAL CODE §§ 42-3505.02(a)-(b) (2001) on the four (4) grounds stated in the Notice of Appeal. *See id.* at 8-18.

On September 6, 2011, the Tenant filed Petitioner/Appellant’s Motion for Reconsideration (hereinafter “Motion for Reconsideration”) with the Commission pursuant to 14 DCMR § 3823.1 (2004), claiming, *inter alia*, that the Commission had failed to maintain a tape recording of its hearing. Motion for Reconsideration at 1-2. On September 21, 2011, the Commission granted the Tenant’s Motion for Reconsideration under 14 DCMR § 3820.1 (2004), and ordered a new hearing to be held. *See Jackson*, RH-TP-07-28,898 (RHC Sept. 21, 2011) (Order on Motion for Reconsideration). On December 8, 2011, the Commission held its (second) appellate hearing in this appeal.

On February 3, 2012, the Commission issued a second Decision and Order, Jackson, RH-TP-07-28,898 (RHC Feb. 3, 2012) (Second Decision and Order), again determining that

substantial evidence in the record supported the ALJ's conclusions of law that the Housing Provider had not illegally retaliated against the Tenant in violation of D.C. OFFICIAL CODE §§ 42-3505.02(a)-(b) (2001). *See Jackson*, RH-TP-07-28,898 (RHC Feb. 3, 2012). However, the Commission remanded the case to the ALJ for the purpose of issuing revised findings of fact and conclusions of law, because the Commission determined that the ALJ had failed to indicate how she had applied her findings of fact to the applicable legal standards in order to reach her conclusions of law. *See id.* at 16-21.

On August 17, 2012, the ALJ issued a Final Order After Remand, *Jackson*, RH-TP-12-28,898 (OAH Aug. 17, 2012) (Final Order After Remand). In the Final Order After Remand, the ALJ made the following Findings of Fact:⁴

A. Leasing the Unit

1. Housing Provider is a shareholder in Tiber Island, located at 490 M Street, S.W., where he had executed a Proprietary Lease for apartment W106, a cooperative apartment unit in the building.
2. This unit is located over open exterior space adjacent to the building lobby.
3. On June 30, 2003, Housing Provider and Tenant entered into a "Tiber Island Cooperative Homes, Inc. Apartment Sublease Agreement" (Tenant/Petitioner Exhibit ("PX") 100), whereby Tenant sublet apartment W106 from Housing Provider for one year commencing July 1, 2003, at a monthly rent of \$1,200.
4. In signing the sublease, tenant acknowledged that the housing unit was exempt from the rent stabilization provisions of the Rental Housing Act.

⁴ The Commission notes that the findings of fact are recited herein using the same language and paragraph numbers as the ALJ in the Final Order After Remand.

The Commission further observes that the findings of fact contained in the Final Order are nearly identical to the findings of fact contained in the Final Order After Remand, except that in the Final Order After Remand the ALJ has created additional paragraphs within the findings of fact (but using the same language), has numbered each paragraph, and has inserted section headings. *Compare* Final Order After Remand, *with* Final Order. Where the language of the findings of fact in the Final Order After Remand differs from the Final Order, the Commission has noted it herein.

5. The sublease provided (PX 100), in pertinent part, as follows:⁵

7. MAINTENANCE.

* * *

Tenant shall prompt [sic] report to the Landlord any problems requiring repairs or replacement beyond general maintenance. Tenant shall order all necessary repairs or replacements only from the Landlord. Tenant agrees that any repairs or requests for service ordered on or about the Premises without the prior approval from Landlord shall be paid for by Tenant. Tenant shall be responsible for any repair or replacement of property, equipment, or appliances made necessary due to the negligence by acts of commission or omission of Tenant, his family, guests, employees, or invitees. Landlord may consider the failure of Tenant to maintain Premises in accordance with Tenant's responsibilities agreed to herein as a breach of this Agreement and may elect to terminate this Agreement.

8. CARPETS. In order to keep sound transmission to a minimum level, and for the protection of the floors, the Tenant shall, at Tenant's own expense, promptly cover at least 80% of the gross floor area of said Premises with carpets or rugs and pads.

15. MAINTENANCE OF THE PREMISES.

* * *

The Tenant shall promptly report to the Landlord and to the Corporation any defect, damage, malfunction or breakage in the premises, building structure, equipment or fixtures. Except in cases of an emergency nature, the Tenant shall not order repairs on or about the Premises without prior approval from the Landlord. The Tenant will be held solely responsible for any damage to the premises or any repairs made necessary due to negligent acts of commission or omission of the Tenant, his family, guests, agents, employees, trades people, or other persons. The Tenant shall pay for all such damage and repairs.

27. WAIVER. No waiver by the landlord of a breach by the Tenant of any term or condition of this Sublease shall operate or be construed as a waiver of the term or condition itself, or any subsequent or continuing breach thereof, or of any other term or condition of this Sublease. Acquiescence in a default shall not operate as a waiver of that default, even where the acquiescence continues for an extended period of time.

⁵ In the Final Order After Remand, the ALJ inserted the citation to "PX 100" in this finding of fact. *Compare* Final Order After Remand at 5; R. at 379, *with* Final Order at 3; R. at 322.

6. Tenant also received a copy of a “Tiber Island Cooperative Homes, Inc. Sublease Application Procedures” document (PX 101), which contained essentially identical language to Provision 7 in the sublease, requiring a tenant to promptly report to the landlord (rather than the maintenance staff of the cooperative) any problems requiring repairs or replacement beyond general maintenance.⁶

B. Building Maintenance Procedures

7. Tiber Island has a maintenance staff for the building, responsible for building functions such as heating, air conditioning, electrical and plumbing (flooding). For these services, tenants directly contact the staff of the cooperative. For all other services, tenants are to contact their landlords to make arrangements for work to be done.
8. Tiber Island charges the landlords for services for which the cooperative is not directly responsible.
9. Tenant usually called or visited the reception desk regarding maintenance issues, rather than contacting Housing Provider.
10. The staff at the desk filled out Maintenance Orders for all requests. If the service is within the scope of work of the maintenance staff, the Maintenance Order is given to a maintenance man, who completes the work, fills out time and materials information and signs off on the Maintenance Order.
11. Maintenance Orders for completed or disapproved work are maintained in Tiber Island’s file for the particular unit.⁷
12. If the request is for maintenance work outside of that work which is within the Cooperative’s responsibility, a tenant is generally advised to call his/her landlord to make payment arrangements for that service. On occasion, a staff person may have made the call to the landlord to request approval for the work and the charge.

C. Dispute over Increasing the Rent

13. A dispute arose in 2005 over Housing Provider’s attempt to raise Tenant’s rent.
14. Housing Provider filed an action in the Superior Court of the District of Columbia Landlord Tenant Branch and Tenant filed a Tenant Petition (TP 28,451) with the

⁶ In the recitation of this finding of fact in the Final Order After Remand, the ALJ deleted the word “Exhibit,” which had appeared before the term “PX 101,” in the Final Order. *Compare* Final Order After Remand at 6; R. at 378, *with* Final Order at 4; R. at 321.

⁷ In the Final Order, this sentence was stated as follows: “Maintenance Orders are maintained in Tiber Island’s file for the particular unit, whether disapproved or for completed work.” *See* Final Order at 5; R. at 320.

Department of Consumer and Regulatory Affairs' Housing Regulation Administration.

15. The parties settled both those matters with a settlement agreement entered into on May 31, 2006.⁸ Housing Provider/Respondent Exhibit ("RX") 204.
16. Among other terms, the parties agreed that the housing unit was exempt from rent control, that Tenant's rent would be \$1,250 per month, and that Housing Provider would not seek to increase that rent amount before May 31, 2007.

D. Building-wide Window Replacement Project

17. In 2006, Tiber Island had a window replacement project ongoing.
18. On June 8, 2006, Tiber Island notified occupants of the West Tower, including Tenant, that the second phase of the project – replacing the picture window above the convector unit in the living room – would begin on June 12, 2006. RX 200.
19. The notice advised Tenant that her unit scheduled for window replacement on June 15, 2006.
20. The notice also informed residents that the work area needed to be cleared, that residents were responsible for the removal of drapes and vertical blinds (in bold face type) and that there would be a \$50 charge if Tiber Island maintenance staff were requested to remove or reinstall the blinds. *Id.* Further, the notice advised residents that the schedule might change due to weather.
21. On June 12, 2006, Tiber Island notified occupants of the West Tower, including Tenant, of a delay in the schedule. RX 201. The notice advised Tenant that her unit was scheduled for June 16, 2006. All other information contained in the prior notice remained the same. These notices went only to the occupants, not to the owners of units.

E. Window Blinds

22. Tenant's key was "red-flagged," meaning that maintenance men could not enter the unit without her prior approval.⁹

⁸ The Commission observes that in the Final Order, the ALJ stated that the Settlement Agreement was entered into on March 31, 2006. *See* Final Order at 5; R. at 220. Based on its review of the record, the Commission is satisfied that the correct date of the Settlement Agreement is May 31, 2006. *See* Housing Provider's Exhibit 204; R. at 385.

⁹ The Commission observes that in the Final Order, the ALJ omitted the word "her" from this sentence in the findings of fact. *See* Final Order at 6; R. at 319.

23. On or after June 16, 2006, the blinds were removed and the living room window replaced in Tenant's unit. It was up to Tenant to reinstall the blinds or make arrangements to have them reinstalled for the \$50 fee.
24. On November 17, 2006, Tenant made a request for three maintenance items: reinstall the blinds, replace the ball in the toilet, and fix drywall that had been knocked out in a Tiber Island pipe replacement project.
25. Geraldine Williams, an administrative assistant for Tiber Island, filled out Maintenance Order No. 5170. RX 202.
26. Tim Clark, a maintenance man, fixed the toilet on November 20, 2006. He also told Tenant that there would be a charge to reinstall the blinds located above the living room picture window.
27. Ken, the Chief Engineer, noted on the Maintenance Order that Tenant was to call Judy Tyrrell [sic], the General Manager, about the blinds and drywall. *Id.*
28. Tenant never contacted Ms. Tyrell on those issues.
29. Some time thereafter, Ms. Williams contacted Housing Provider about the Tenant's outstanding request to reinstall the blinds in Tenant's unit and the charge for Tiber Island's maintenance staff to do the reinstallation.
30. Until that time, Housing Provider was not aware that the blinds had been taken down. He tried to reach Ms. Tyrell who was away.
31. On January 10, 2007, Housing Provider went to the cooperative to speak to Ms. Tyrell.
32. Housing Provider then learned that the cooperative's Board of Directors had determined that a charge would be assessed for removing or reinstalling drapes or blinds for the window replacement project, as the cooperative did not want to be responsible for mishandling a tenant's or owner's expensive drapes and blinds.
33. During the discussion, Ms. Tyrell agreed that Tenant's blinds would be reinstalled without charge.
34. After Tenant approved the reinstallation of the blinds, Ms. Tyrell arranged for maintenance man Tim Clark to reinstall the blinds on January 16, 2007.¹⁰

F. Lease Violations

¹⁰ The Commission observes that the ALJ stated this sentence in the Final Order as follows: "After contact with Tenant to get her approval, Ms. Tyrell arranged for maintenance man Tim Clark to reinstall the blinds on January 16, 2007." See Final Order at 7; R. at 218.