

**DISTRICT OF COLUMBIA
OFFICE OF ADMINISTRATIVE HEARINGS**

One Judiciary Square
441 Fourth Street, NW
Washington, DC 20001-2714
TEL: (202) 442-9094
FAX: (202) 442-4789

DISTRICT OF COLUMBIA
DEPARTMENT OF CONSUMER AND
REGULATORY AFFAIRS

Petitioner

v.

BLANCHE HEARD-SMITH
Respondent

Case No.: 2011-DCRA-Q106414
NOI No.: Q106414

FINAL ORDER

I. Introduction

This case arises under the Civil Infractions Act of 1985, as amended, D.C. Official Code §§ 2-1801.01 - 2-1802.05, and Title 14 of the District of Columbia Municipal Regulations (“DCMR”). By Notice of Infraction (“NOI”) Q106414 served March 28, 2011, Petitioner, the District of Columbia Department of Consumer and Regulatory Affairs (“DCRA”), charged Respondent Blanche Heard-Smith with three violations. The first charge was a violation of 14 DCMR 902.1, a housing code regulation which, among other things, requires landlords to maintain “egress facilities” such as doorways free from obstructions that might present hazards in a fire emergency. This charge arises specifically out of the failure to replace a double-key lock with a thumb-turn lock on an exterior door at 1154 4th St., NE (the “Property”). The second charge was a violation of 14 DCMR 904.4, for a smoke detector that was not wired directly to the house current. The last charge was a violation of 14 DCMR 600.2, because the drain in a bathing facility in the second floor bathroom was obstructed. These violations allegedly occurred

on December 27, 2010 and DCRA sought a total of \$5,000 in fines - \$2,000 each for the first two charges and \$1,000 for the third charge.

Respondent answered the NOI with a plea of Admit with Explanation (“AWE”), and filed an explanatory letter and exhibits. The exhibits included (i) a picture of a new thumb turn lock on the security door and (ii) an electrical permit issued on March 1, 2011. Respondent never denied that the issues existed, but simply asked the court to “consider” her submission to resolve the case.

On May 13, 2011, DCRA filed a “Response to Admission with Explanation” which opposed any reduction of the \$5,000 fine. The filing carries no persuasive value because, among other things, it ignores Respondent’s corrective action evidence (*i.e.* the new thumb lock and electrical permit) and otherwise distorts Respondent’s AWE submission. For example, despite the statement that Respondent had an ongoing contract with Rotor Rooter to ensure that Tenant’s drains were kept clear and despite the fact that DCRA’s own activity log states that the drain obstruction was cleared by December 20, 2010 – *before Respondent received the Notice of Infraction* – DCRA inexplicably claims the drain was obstructed on the date both the first and second dates of re-inspection. DCRA also misstates that Respondent “attempts to place blame on the tenant for the conditions that existed on the Property.” Respondent made no such claim, and she merely stated that Tenant failed to notify her of the problems before contacting DCRA. Mischaracterizing the record is not an effective means of opposing a fine reduction, thus, I assign no weight to the DCRA Response.

As far as the circumstances surrounding the notice of violation are concerned, Respondent’s version of the material facts is uncontested. Based on the entire record, I make the following findings and conclusions:

II. Findings of Fact

The material facts are not in dispute. Respondent owned and operated the Property as a single-family rental. By Notice of Violation (“NOV”) CRM1100135 issued November 18, 2010, a DCRA Inspector directed Respondent to correct three issues: 1.) a double-key lock installed on the front security gate for security purposes, which presented a fire safety hazard in violation of 14 DCMR 902.1, 2.) a smoke detector that was not wired directly to the house current, which presented a fire safety hazard in violation of 14 DCMR 904.4, and 3.) a clogged bathtub drain, in violation of 14 DCMR 600.2. The NOV, on its face, stated that the violations must be abated within one day “from receipt of this notice.” *Id.* DCRA sent the NOV to Respondent by regular mail; however DCRA was informed by Tenant on December 20, 2010 that the NOV was sent to the property and Tenant failed to give it to Respondent. *See* Exhibit 102 (Activity Log, entry 6). Copies of the NOV were sent to Respondent via e-mail and regular mail at a new mailing address she provided. *Id.* On March 28, 2011, based on the alleged unabated violations found on December 27, 2010, the Inspector issued the \$5,000 Notice of Infractions (“NOI”) commencing this case.

Before Tenant moved in, Respondent had the property inspected by Community Partnership. Respondent failed the first inspection because there was no smoke detector on the second floor. Respondent asked if a battery operated smoke detector would meet city requirements, and was told by the Community Partnership inspector that it would. Respondent purchased a battery operated smoke detector, and passed the second inspection.

Respondent repeatedly scheduled appointments to correct the violations; however Tenant was belligerent and failed to keep the appointments. In dealing with the multiple citations and recalcitrant Tenant, however, Respondent was unable to abate the violations in a timely manner.

Respondent abated the first violation by installing the required thumb-turn lock, although the exact date of abatement is unknown. Prior to this, respondent had not given Tenant a key to the double-key lock, preventing Tenant from locking the security door, and thus mitigating the obstruction. Respondent abated the second violation by wiring the smoke detector to the house current, although the exact date of abatement is unknown. Respondent abated the third violation sometime between November 23, 2010 and December 20, 2010, prior to receiving the NOV. *See* Exhibit 102 (Activity Log, entry 6). It is unclear why DCRA cited Respondent for failure to abate the third violation when its own Activity Log states that this violation was abated prior to Respondent receiving notice of the NOV. *Id.*

III. Conclusions of Law

a. Double-Key Lock

Respondent violated 14 DCMR 902.1 on December 27, 2010, due to a key lock on an entrance door at the Property that presented a fire hazard.¹ The violation is punishable by a \$2,000 fine. 16 DCMR 3201.1(a); 16 DCMR 3305.1(k). Although Respondent is liable for the violation, I may reduce the fine based on equitable mitigating factors unique to the case, including but not limited to, acceptance of personal responsibility, good faith efforts to comply with the law, corrective action, and concrete steps to prevent future violations.

There is some question in this matter as to whether a double-key lock presents an “obstruction” when the Tenant does not have access to the key, and thus cannot lock the door and obstruct the fire egress. I do not agree that this fact removes Respondent’s liability for this

¹ The regulation provides as follows:

It shall be the duty of the operator of each housing business to keep fire escapes, stairways, and other egress facilities in a good state of repair and free from obstruction.

violation. Respondent's solution of leaving the door unlocked was merely a temporary solution to a permanent problem. At any point, this double-key lock could become an obstruction – either through Respondent giving the key to Tenant, or by Respondent locking the door herself. However, I do find that Respondent's temporary solution of refusing to give Tenant a key to the security door a mitigating circumstance, particularly in light of the fact that Respondent has since changed the lock and permanently abated the problem. Thus, I will revise the fine accordingly.

b. Smoke Detector Not Directly Wired to House Current

Respondent violated 14 DCMR 904.4 on December 27, 2010, by failing to provide a smoke detector that was wired directly into the house current. That regulation requires the operator of a "housing business" comply with the Smoke Detector Act of 1978, D.C. Official Code § 6-751.01-751.10. Under the Smoke Detector Act of 1978, owners of certain "dwelling units" must "directly wire" smoke detectors "to the power supply of the building." *Id.* The violation is punishable by a \$2,000 fine. 16 DCMR 3201.1(a); 16 DCMR 3305.1(o). As noted above, mitigating factors unique to the case may reduce the size of any fine levied.

Respondent accepted responsibility for the violation; demonstrated good faith attempts to comply with the law; and eventually corrected the violation. Prior to Tenant's initial occupancy of the Property, Respondent had the Property inspected by Community Partnership in an effort to ensure compliance with housing code. Respondent originally did not pass Community Partnership's inspection for failure to have a smoke detector, and immediately corrected the matter by installing a battery-operated smoke detector, which Respondent was assured was in compliance with DC law. Upon receiving the NOV and realizing that a hard-wired connection was required for the smoke detector, Respondent immediately attempted to abate the problem,

but was delayed by Tenant's refusal to make the property accessible for repairs. Respondent was finally able to abate the problem. Based upon Respondent's good faith efforts to comply with the law, I will revise the fine accordingly.

c. Clogged Drain

Respondent is alleged to have violated 14 DCMR 600.2 on December 27, 2010, by failing to keep the bathtub drain clear at Property. On December 20, 2010, prior to the re-issuance of the NOV, DCRA's Activity Log clearly shows that the violation had been abated. A Notice of Infraction should never have been issued for this violation. Therefore, I am dismissing this violation with prejudice.²

d. Summary

Mitigating factors support reducing the fine on the record presented. Respondent's timely correction of multiple violations at the Property displayed a good-faith effort to comply with the law and a corresponding acceptance of accountability for the overall condition of the Property. Despite the distractions occasioned by her tenants' recalcitrant behavior, she also corrected the lock violation and the smoke detector violation, albeit somewhat late. Based on the combined weight of the foregoing mitigating factors, I shall reduce the fine for the lock to \$400; reduce the fine for the smoke detector to \$400; and, as noted above, dismiss with prejudice the fine for the clogged bathtub. As a result, the total fine shall be \$800.

² "In an Admit with Explanation case, the Administrative Law Judge shall dismiss the Notice if he or she determines that the Respondent did not commit or is not responsible for the violation charged." OAH Rule 2804.11.

IV. Order

Based on the above findings of fact, conclusions of law, and the entire record in this matter, it is this ____ day of _____ 2012:

ORDERED, that Respondent is **LIABLE** for a violation of 14 DCMR 902.1, for a double-key lock that could prevent fire egress, as charged in NOI No. Q106414, but the requested \$2000 fine is **REDUCED TO \$400**; and it is further

ORDERED, that Respondent is **LIABLE** for a violation of 14 DCMR 904.4, for a smoke detector that was not wired directly to the house current, as charged in NOI No. Q106414, but the requested \$2000 fine is **REDUCED TO \$400**; and it is further

ORDERED, that the violation of 14 DCMR 600.2, for the clogged bathroom drain is **DISMISSED WITH PREJUDICE**; and it is further

ORDERED, that the Respondent shall pay the total fine in the amount of **EIGHT HUNDRED DOLLARS (\$800)** in accordance with the attached instructions within twenty (20) calendar days of the date of mailing of this Order (fifteen (15) calendar days plus five (5) days for service by mail pursuant to D.C. Official Code §§ 2-1802.04 and 2-1802.05); and it is further

ORDERED, that any party may file a request for reconsideration within 15 calendar days of the date of mailing listed below.³ Any such request must be **RECEIVED** by the Clerk of the Office of Administrative Hearings within the deadline; and it is further

ORDERED, that the appeal rights of any party aggrieved by this Order are stated below.

Joan Davenport
Administrative Law Judge

³ 1 DCMR 2828.5, 2812.5.

PAYMENTS

If a payment is required by this Order, to be properly credited to your case(s) the payment must be sent to the attention of the Clerk of the Office of Administrative Hearings. Payments are only accepted by check or money order and must be made payable to “D.C. TREASURER.” Enclose full payment and mail the check in an envelope with required postage to:

Clerk
Office of Administrative Hearings
One Judiciary Square
441 Fourth Street, NW
Washington, DC 20001-2714

IMPORTANT: Please do not call the D.C. Court of Appeals with questions about how to make any payments required under this Order. The D.C. Court of Appeals does not accept any payments in cases decided by the Office of Administrative Hearings. **If you have questions, please call the Clerk’s Office at the Office of Administrative Hearings on 202-442-9094.**

APPEAL RIGHTS

Pursuant to D.C. Official Code § 2-1831.16(c)-(e), any party suffering a legal wrong or adversely affected or aggrieved by this Order may seek judicial review by filing a petition for review and six copies with the District of Columbia Court of Appeals at the following address:

Clerk
District of Columbia Court of Appeals
430 E Street, NW, Rm. 115
Washington, DC 20001
202-879-2700

The petition for review (and required copies) may be mailed or delivered in person to the Clerk of the Court of Appeals, and must be received by the Clerk of the Court of Appeals within 30 calendar days of the mailing date of this Order. Information on petitions for review to the Court of Appeals can be found in Title III of the Rules of the District of Columbia Court of Appeals.

IMPORTANT NOTICES:

- 1. By law, the amount of a lawfully imposed fine cannot be modified or reduced on appeal. D.C. Official Code § 2-1831.16(g).**
- 2. Filing of a petition for review does not stay (stop) the requirement to comply with a Final Order, including any requirement to pay a fine, penalty or other monetary sanction imposed by a Final Order. If you wish to request a stay, you must first file a written motion for a stay with the Office of Administrative Hearings. If the presiding Administrative Law Judge denies a stay, you then may seek a stay from the D.C. Court of Appeals.**

Certificate of Service:

By First Class Mail (Postage Paid):

Blanche Heard-Smith
1154 4th Street, NE
Washington, DC 20002

By Inter-Agency Mail:

Melinda Bolling
General Counsel
Dep't of Consumer and Regulatory Affairs
1100 4th Street, SW – 5th Floor
Washington, DC 20024

I hereby certify that on _____,
2012 this document was served upon the
parties named on this page at the address(es)
and by the means stated.

Clerk/Deputy Clerk