

**DISTRICT OF COLUMBIA
OFFICE OF ADMINISTRATIVE HEARINGS**

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ADAM FAINBARG
Tenant/Petitioner

v.

ELEANORE BOYSE
Housing Provider/ Respondent

Case No.: 2011-DHCD-TP 30,069

In re: 1730 Crestwood Drive, NW

FINAL ORDER

Tenant/Petitioner Adam Fainbarg (“Tenant”) filed a tenant petition asserting violations of the Rental Housing Act of 1985 (the “Rental Housing Act” or the “Act”). Tenant and Housing Provider Eleanore Boyse (“Housing Provider”) appeared at a hearing on October 14, 2011. I conclude that Tenant has failed to prove these claims for reasons discussed below. The tenant petition is dismissed with prejudice.

I. INTRODUCTION

On May 17, 2012, Tenant filed Tenant/Petition (“TP”) 30,069, with the Rent Administrator in the Rental Accommodations Division (“RAD”) of the Department of Housing and Community Development (“DHCD”). The petition alleged two violations of the Rental Housing Act at the Housing Accommodation, 1730 Crestwood Drive, NW, by Housing Provider — that: (1) the Housing Accommodation was not properly registered and (2) services and/or

facilities provided as part of the tenancy had been substantially reduced or permanently eliminated.

After the parties failed to reach a resolution of the dispute in mediation, this administrative court scheduled a hearing on October 14, 2011. Mr. Fainbarg and Ms. Boyse appeared at the hearing and testified, as did David Brickman, a Tenant witness. Petitioner's Exhibits ("PX") 100 through 105 and Respondent's Exhibits ("RX") 200 and 201 were received in evidence.¹ Based on the testimony of the witnesses, the exhibits, and the record as a whole, I make the following Findings of Fact and Conclusions of Law.

II. FINDINGS OF FACT

The Housing Provider, Eleanore Boyse is joint owner of the Housing Accommodation together with her husband, a diplomat. She and her husband own no other rental properties. The house was rented once before while Ms. Boyse accompanied her husband on an assignment, but neither Ms. Boyse nor her husband is a real estate professional. Neither was aware of the Rental Housing Act's requirements for registration of rental properties or of the need to file a claim of exemption for properties that are exempt from the Act.

Mr. Fainbarg came to the District of Columbia on an internship and decided he wanted to stay after the internship ended. He had been staying with a neighbor of Ms. Boyse. In March 2010, the neighbor told Ms. Boyse that Mr. Fainbarg needed a place to stay. Ms. Boyse had a room in the basement of her house with a stovetop, oven, and private bathroom. Although she had not planned to rent out the room, she agreed to rent it to Mr. Fainbarg in response to the

¹ A list of the exhibits received in evidence is set forth in the Appendix to this Final Order.

neighbor's inquiry. Mr. Fainbarg inspected the apartment and agreed to rent it for \$775 per month, including Internet service. This was well below the market price for comparable units in the neighborhood. The parties did not sign a written lease.

Mr. Fainbarg moved into the apartment on April 3, 2010. On his first night he slept on a mattress on the floor and was disturbed by what he believed was a mouse crawling close to his head. He complained to Ms. Boyse, who did not act on the complaint initially, but then agreed to reimburse Mr. Fainbarg for mousetraps that he bought. PX 104.

Mr. Fainbarg never actually saw a live mouse in his apartment, but he continued to hear them frequently, especially at night. David Brickman, a friend of Mr. Fainbarg's who stayed in the apartment on several occasions, also heard mice scurrying around at night. Although Mr. Fainbarg set traps and borrowed a neighbor's cat several times, he did not trap any mice in the apartment. He found one mouse trapped in the furnace room. PX 104.

In addition to the mice, Mr. Fainbarg complained to Ms. Boyse of spiders and crawling insects in the apartment. He also complained, shortly after he moved in, that the dryer did not work. After Ms. Boyse cleaned out the exhaust pipe, Mr. Fainbarg sent her an email acknowledging that "[t]he dryer works perfectly," although he was bothered that the exhaust pipe did not fit all the way through the wall. PX 104.

In response to Mr. Fainbarg's continuing complaints, Ms. Boyse arranged for an exterminator to inspect the apartment on May 28, 2012. The exterminator noted holes in the baseboard where mice might be able to enter the apartment, but found no traces of mice and declined to treat the apartment.

By the time the exterminator came, Mr. Fainbarg had given notice that he was moving out. He asked Ms. Boyse to reduce his rent on account of the mice, and she refused. He then accepted an offer to house-sit in a neighboring house for the summer. He vacated the apartment on June 1, 2010.

Mr. Fainbarg filed his tenant petition on May 17, 2011.

III. CONCLUSIONS OF LAW²

A. Tenant's Claims Are Barred Because Housing Provider Is a Small Landlord Who Is Exempt from the Rent Control Provisions of the Act.

Most rental housing units in the District of Columbia are subject to the rent control provisions of the Act which regulate the rents that housing providers may charge. But the Act contains a "small landlord exemption" for housing providers who are not professional landlords. Specifically, the Act provides that the Rent Stabilization Program, D.C. Official Code §§ 42-3502.05(f) through 42-3502.19 (except § 42-3502.17) "shall apply to each rental unit in the District *except*" [emphasis added]:

(3) Any rental unit in any housing accommodation of 4 or fewer rental units, including any aggregate of 4 rental units whether within the same structure or not, provided:

(A) The housing accommodation is owned by not more than 4 natural persons;

² This matter is governed by the District of Columbia Administrative Procedure Act (D.C. Official Code §§ 2-501 *et seq.*) (DCAPA); the Rental Housing Act of 1985 (D.C. Official Code §§ 42-3501.01 *et seq.*); substantive rules implementing the Rental Housing Act at 14 District of Columbia Municipal Regulations (DCMR) 4100 - 4399; the Office of Administrative Hearings Establishment Act at D.C. Official Code § 2-1831.03(b-1)(1), which authorizes OAH to adjudicate rental housing cases; and OAH procedural rules at 1 DCMR 2800 *et seq.* and 1 DCMR 2920 *et seq.*

(B) None of the housing providers has an interest, either directly or indirectly, in any other rental unit in the District of Columbia;

(C) The housing provider of the housing accommodation files with the Rent Administrator a claim of exemption statement which consists of an oath or affirmation by the housing provider of the valid claim to the exemption. The claim of exemption statement shall also contain the signatures of each person having an interest, direct or indirect, in the housing accommodation

D.C. Official Code § 42-3502.05(a)(3).

It is undisputed that Ms. Boyse had not filed a registration or a claim of exemption for the housing accommodation with the RACD. With exceptions not relevant here, the Rental Housing Act requires housing providers either to register a housing accommodation containing rental units or to file a claim of exemption. D.C. Official Code § 42-3502.05(a)(3), (f). Tenant has proved that Housing Provider failed to comply with the provisions of the Act. The burden then shifts to Housing Provider to prove that she is exempt from coverage under the Act.

The party asserting an exemption has the burden of proving the exemption. *Goodman v. D.C. Rental Hous. Comm'n*, 573 A.2d 1293, 1297 (D.C. 1990). Notwithstanding the requirements of the Act, a housing provider can claim the benefits of the small landlord exemption and will not be penalized for failing to file a claim of exemption if he or she can prove: that: (1) the housing provider was reasonably unaware of the requirement of filing a claim of exemption; (2) the rent charged was reasonable; and (3) the housing provider is not a real estate professional. *Beamon v. Smith*, 2005 D.C. Rental Hous. Comm'n LEXIS 336, at 4³, TP 27,863 (RHC July 1, 2005) at 7 (citing *Gibbons v. Hanes*, TP 11,076 (RHC July 11, 1984)

³ Rental Housing Commission decisions in LEXIS are not paginated in the screen version. The page citation is to a printed version of the case downloaded in MS Word.

at 3, *Boer v. D.C. Rental Hous. Comm'n*, 564 A.2d 54, 57 (D.C. 1989), and *Hanson v. D.C. Rental Hous. Comm'n*, 584 A.2d 592, 597 (D.C. 1991)).

The Rental Housing Commission recently confirmed that it is not necessary for a housing provider to assert the small landlord exemption in order for the administrative court to apply the exemption. On the contrary, the Administrative Law Judge is obligated to “‘review surrounding circumstances’ and evidence in the record to determine whether ‘special circumstances’ existed.” *Smith v. Joshua*, 2012 D.C. Rental Hous. Comm'n LEXIS 18 at 6, RH-TP-07-28,961 (RHC Feb. 3, 2012) at 13 (citing *Lee v. Rae*, 1995 D.C. Rental Hous. Comm'n LEXIS 117, TP 22,520 (RHC July 13, 1995), and *Kraut v. Rashada*, 1992 D.C. Rental Hous. Comm'n LEXIS 145, TP 21,802 (RHC Oct. 20, 1992)).

I conclude, based on the evidence, that Ms. Boyse was reasonably unaware of the requirement for filing a claim of exemption and that the rent charged was reasonable. Ms. Boyse’s testimony that she was ignorant of the requirements for small landlords to file a claim of exemption is credible in light of her very limited experience as a landlord. She and her husband are natural persons, and the rental unit here is the only rental unit that they leased at the time the tenant petition was filed.

It follows that Housing Provider is eligible for the small landlord exemption in these circumstances. The record demonstrates that: (1) The housing accommodation was owned by not more than four natural persons; (2) Housing Provider did not have an interest in any other rental unit in the District of Columbia; (3) the rent charged was reasonable; and (4) Housing Provider was reasonably unaware of the requirement to file an exemption.

The violations of the Rental Housing Act that Tenant claims here, failure to register, and reduction in services or facilities, are encompassed in the rent stabilization provisions of the Act that are subject to the small landlord exemption. D.C. Official Code §§ 42-3502.05(f); 42-3502.11. Because Housing Provider is exempt from these provisions, the tenant petition must be dismissed.

B. Tenant Failed To Prove He Was Entitled to Relief Under the Act.

Even if the Housing Provider had not been exempt from the rent stabilization provisions of the Rental Housing Act, Tenant would not be entitled to relief on the facts here. Although Mr. Fainbarg proved that the property was not registered with the Rent Administrator, the only remedy available under the Act for this violation is a fine. D.C. Official Code § 42-3509.01(b). Imposition of a fine requires a finding that the housing provider's violation was willful. *Id.* This, in turn, requires a finding that the housing provider intended to violate the law. *Miller v. D.C. Rental Hous. Comm'n*, 870 A.2d 556, 558 (D.C. 2005). I credit Ms. Boyse's testimony that she was ignorant of the requirement to register the property, so there is no basis on which I could impose a fine.

To award a rent refund for a substantial reduction in services or facilities, it is necessary that the reduction qualify as "substantial." D.C. Official Code §§ 42-3502.11; 42-3509.01(a). Although Mr. Fainbarg proved that there were mice inside the walls of the apartment, the only evidence of mice inside his unit is that he sensed a mouse around his head on one occasion. No mice were trapped inside the apartment and only a single mouse was trapped in another part of the house at an uncertain time. The exterminator who inspected found no signs of mice and declined to treat the property. Therefore, the condition did not amount to an "infestation" that

would constitute a substantial reduction of services under the Rental Housing Regulations. *See* 14 DCMR 4216.2(i). Nor did Mr. Fainbarg's complaints concerning the dryer or insects constitute a condition serious enough to justify a rent reduction.

For these reasons, I find that Tenant failed to prove the allegations of the tenant petition. Thus, the petition is dismissed.

IV. ORDER

Accordingly, it is this 20th day of June, 2012,

ORDERED, that Case No. 2011-DHCD-TP 30,069 is **DISMISSED WITH PREJUDICE**; and it is further

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

/S/
Nicholas H. Cobbs
Administrative Law Judge