

DISTRICT OF COLUMBIA
OFFICE OF ADMINISTRATIVE HEARINGS
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SYLVIA DYES
Tenant/Petitioner

v.

PEABODY & THEOHARIS MANAGEMENT
Housing Provider/ Respondent

Case No.: 2010-DHCD-TP 29,980

Agency No.: TP 29,980

In re: 2407 15th Street, NW #102

FINAL ORDER

Tenant/Petitioner Sylvia Dyes filed a tenant petition asserting violations of the Rental Housing Act of 1985 (the “Rental Housing Act” or the “Act”). Ms. Dyes and Housing Provider Peabody & Theoharis Management (“Housing Provider”) appeared at a hearing on May 11, 2011. For reasons I discuss below, I conclude that Ms. Dyes’s claims are barred under the doctrine of *res judicata* on account of a judgment in the Superior Court of the District of Columbia Landlord and Tenant Branch (“Landlord and Tenant Branch”) involving the same issues and the same parties. The tenant petition is dismissed with prejudice.

I. INTRODUCTION

On September 29, 2010, Ms. Dyes filed Tenant/Petition (“TP”) 29,980 with the Rent Administrator in the Rental Accommodations Division (“RAD”) of the Department of Housing and Community Development (“DHCD”). The petition alleged violations of the Rental Housing Act at the Housing Accommodation, 2407 15th Street NW, Unit 102, by Housing Provider —

that: (1) Ms. Dyes's rent was increased when the Rental Unit was not in substantial compliance with the District of Columbia Housing Regulations. (2) Services and/or facilities provided as part of the tenancy had been substantially reduced or permanently eliminated. (3) Housing Provider took retaliatory action against Ms. Dyes in violation of the Act because Ms. Dyes exercised her rights as a tenant under the Act.

At a prehearing telephone conference on March 21, 2011, Housing Provider's counsel advised that Housing Provider planned to file a motion to dismiss on the grounds that Ms. Dyes's claims were barred under the doctrine of *res judicata* on account of a judgment between the parties in the Landlord and Tenant Branch. I then set a schedule for briefing the motion to dismiss and scheduled an evidentiary hearing on the motion. Housing Provider filed its motion to dismiss on April 5, 2011. Ms. Dyes did not file a written response to the motion.¹ On May 11, 2011, Ms. Dyes and Housing Provider's counsel, Stephen Hessler, appeared for the evidentiary hearing. Mr. Hessler argued the motion. Ms. Dyes presented argument and sworn testimony in opposition to the motion.

II. FINDINGS OF FACT

1. Ms. Dyes leased the Rental Unit here in December 2000. The Tenant Ledger attached to Housing Provider's motion to dismiss indicates that Ms. Dyes's rent was \$1,073 in September

¹ Following the hearing, Ms. Dyes filed a motion seeking additional time to respond to the motion to dismiss. I never acted on this motion. Because Ms. Dyes never filed a response, I now deny the motion as moot.

2007, three years before the tenant petition was filed.² Mot. To Dismiss Exhibit 2A. Housing Provider increased the rent to \$1,132 in March 2008, to \$1,193 in March 2009, and to \$1,217 in March 2010. Tr. 85.³ In July 2010, Ms. Dyes stopped paying rent. Mot. To Dismiss Exhibit 2A. On July 21, 2010, Housing Provider filed a complaint for possession in the Superior Court of the District of Columbia Landlord and Tenant Branch, No. LT 18180-10. Docket Sheet.⁴

2. Ms. Dyes stopped paying rent because she was unhappy with conditions in her apartment and in the building. She believed security in the building was lax, that the back door was not secure, and that the building was being used for prostitution and drug dealing. She complained that the building's laundry facilities were inadequate.

3. Within the apartment, Ms. Dyes's principal concern involved paint. In 2008 Ms. Dyes gave birth to a daughter. Ms. Dyes became concerned that the apartment might contain lead paint, although the judge in the Landlord and Tenant Branch case observed that Ms. Dyes presented no evidence of lead paint danger in that case. Housing Provider arranged to paint the unit, but Ms. Dyes was concerned that her daughter, who was sensitive to fumes, would be

² The Rental Housing Act prohibits Tenant from contesting "any rent adjustment . . . more than 3 years after the effective date of the adjustment." D.C. Official Code § 42-3502.06(e). This statute of limitations "bars any investigation of the validity of rent levels, or of adjustments in either the rent levels or rent ceilings [now abolished], in place more than three years prior to the date of the filing of a tenant petition and thus treats them as unchallengeable. *Kennedy v D.C. Rental Hous. Comm'n*, 709 A.2d 94, 97 (D.C. 1998).

³ Refers to the transcript of proceedings in the Superior Court of the District of Columbia Landlord and Tenant Branch, *Peabody Theoharis Mgmt. v. Dyes*, No L & T 18180-10 (Feb. 24, 2011), attached to Housing Provider's motion to dismiss.

⁴ Refers to the docket sheet in Superior Court of the District of Columbia Landlord and Tenant Branch, *Peabody Theoharis Mgmt. v. Dyes*, No LT18180-10 (Feb. 24, 2011), attached to Housing Provider's motion to dismiss.

sickened by the wet paint. Ms. Dyes sent Housing Provider an email asking Housing Provider to move Ms. Dyes and her daughter to another unit while the apartment was being painted. Housing Provider did not respond to the email and the apartment was never painted.

4. In addition to her concerns about security and lead paint, Ms. Dyes made a number of requests for repairs in her apartment between 2008 and 2010. The judge in the Landlord and Tenant Branch noted that Housing Provider had responded to these requests promptly and concluded that “we have management trying to be responsive.” Tr. at 98.

5. After Housing Provider initiated its possessory action in the Landlord and Tenant Branch, the Superior Court judge entered a protective order directing Ms. Dyes to make monthly rental payments into the court registry.⁵ On September 22, 2010, Ms. Dyes filed an Answer and Counterclaim in the Landlord and Tenant Branch action. Docket Sheet. There is no evidence in the record of the specific assertions that Ms. Dyes raised.

6. The trial of the Landlord and Tenant Branch action took place on two days, concluding on February 24, 2011. At the close of the trial the judge concluded that: “I am not prepared to award a rent abatement in a circumstance where the landlord made efforts like it did here to fix the problems and when the people who were there to fix it were kicked out of the unit.” Tr. 100. On March 4, 2011, the judge ordered disbursement of \$7,440.47 from the court registry to Housing Provider and \$200.53 to Ms. Dyes. Ms. Dyes filed a motion for

⁵ Housing Provider waived its claim to recover amounts for its rent increases, so the Landlord and Tenant Branch judge did stay the action pending disposition of the tenant petition here. *See Drayton v. Poretsky Mgmt., Inc.*, 462 A.2d 1115 (D.C. 1983) (holding that, because the Rent Administrator (now OAH) has primary jurisdiction over rent increases under the Rental Housing Act, the Superior Court of the District of Columbia should stay an action for possession until the validity of a rent increase is resolved).

reconsideration on March 25, 2011. The court had not acted on it as of the date of the May 11, 2011, hearing.

III. CONCLUSIONS OF LAW⁶

A. Res Judicata

1. The doctrine of res judicata “precludes relitigation of the same claim between the same parties.” *Elwell v. Elwell*, 947 A.2d 1136, 1139 (D.C. 2008). *Res judicata*, provides that “a final judgment on the merits of a claim bars relitigation in a subsequent proceeding of the same claim between the same parties or their privies.” *Patton v. Klein*, 746 A.2d 866, 870 (D.C. 1999) (citations omitted). The doctrine not only bars claims that were actually raised in the prior proceeding, but also to any claim that might have been raised. *Washington Med. Ctr., Inc., v. Holle*, 573 A.2d 1269, 1280-81 (D.C. 1990). The rationale is that the judgment embodies an adjudication of all the parties’ rights arising out of the transaction involved. *Id.* at 1281.

2. The Superior Court of District of Columbia and OAH have concurrent jurisdiction over claims alleging reduction in services and facilities and claims for retaliation. *Interstate Gen. Corp. v D.C. Rental Hous. Comm'n*, 441 A.2d 252, 254 (D.C. 1982); *Bedell v. Clark*, 2003 D.C. Rental Hous. Comm'n LEXIS 693, TP 29,979 (RHC Apr. 29, 2003) at 7 (citing *Robinson v. Edwin B. Feldman Co.*, 514 A.2d 799 (D.C. 1986)); *DeSzunyogh v. William C. Smith & Co.*, 604

⁶ 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.*

A.2d 1, 4 (D.C. 1992). The Landlord and Tenant Branch action, was initiated two months before Ms. Dyes filed the tenant petition here and litigated conditions in Ms. Dyes's apartment during the same time period that is involved in the tenant petition here. Because Ms. Dyes's claims involving services and facilities deficiencies and retaliation were or could have been raised as a defense to the Landlord and Tenant Branch action, they are barred under the doctrine of *res judicata* in the tenant petition here. See *Russell v. Smithy Braedon Prop. Co.*, 1995 D.C. Rental Hous. Comm'n LEXIS 116, TP 22,361 (RHC July 20, 1995) (barring relitigation of identical claims between the same parties or those in privity with them, after settlement or final judgment); *Brewster v. Suitland Parkway Overlook Tenant Ass'n*, 1993 D.C. Rental Hous. Comm'n LEXIS 201, TP 22, 265 (RHC Oct. 22, 1993) (barring tenant from bringing second tenant petition involving the same parties as the earlier tenant petition, alleging identical violations involving same period and where tenant entered into settlement that resulted in the dismissal of the earlier petition).

B. Collateral Estoppel

3. The only claim present here that was not before the Landlord and Tenant Branch is Ms. Dyes's claim that Housing Provider imposed illegal rent increases in 2008, 2009, and 2010. This administrative court, as successor to the Rent Accommodations and Conversion Division of the Department of Consumer and Regulatory Affairs, has primary jurisdiction over rent increase claims.⁷ *Akassy v. William Penn Apartments Ltd. P'ship*, 891 A.2d 291, 305 (D.C. 2006); *Drayton v. Poretsky Mgmt., Inc.*, 462 A.2d 1115, 1118 (D.C. 1983). In the Landlord and

⁷ As of October 1, 2006, the Office of Administrative Hearings (OAH) holds hearings and issues decisions in cases previously heard and decided by the Rent Administrator. D.C. Official Code § 2-1831.03(b-1)(1).

Tenant Branch action, Housing Provider waived its claim for any sums arising from the rent increases.

4. Nevertheless, Ms. Dyes is precluded from litigating her rent increase claims in this forum under a judicial principle closely related to *res judicata* — collateral estoppel. “The doctrine of collateral estoppel generally precludes the relitigation of factual or legal issues decided in a previous proceeding and essential to the prior judgment.” *Borger Mgmt., Inc. v. Sindram*, 886 A.2d 52, 59 (D.C. 2005) (citations omitted). Collateral estoppel “renders conclusive in the same or a subsequent action determination of an issue of fact or law when (1) the issue is actually litigated and (2) determined by a valid, final judgment on the merits; (3) after a full and fair opportunity for litigation by the parties or their privies; (4) under circumstances where the determination was essential to the judgment, and not merely dictum.” *Cathedral Ave. Coop., Inc. v. Carter*, 971 A.2d 1143, 1150 (D.C. 2008) (quoting *Washington Med. Ctr. v. Holle*, 573 A.2d at 1283).

5. To prove here that Housing Provider’s rent increases were illegal, Ms. Dyes must prove that her unit was not in substantial compliance with the District of Columbia Housing Code at the time the rent increases were imposed. D.C. Official Code § 42-3502.08(a)(1)(A). In the Landlord and Tenant Branch, Ms. Dyes argued that she was entitled to a rent abatement because Housing Provider did not cure housing code violations. The judge concluded that she did “not find that any rent abatement is called for,” Tr. 101, noting that Housing Provider had a “fairly remarkable record with regard to attempt to fix things,” Tr. 99. Thus, after two days of trial, the judge concluded that the unit had been in substantial compliance with the housing code.

6. It follows that Ms. Dyes cannot prevail here in her challenge to Housing Provider's rent increases. To invalidate the rent increases Ms. Dyes would have to prove that her unit was not in substantial compliance with the housing code, a factual issue that was determined against her in the Landlord and Tenant Branch action and was essential to the judgment in that action.

Because all of the claims Ms. Dyes asserts in her tenant petition are barred either under the doctrine of *res judicata* or that of collateral estoppel, Ms. Dyes cannot prevail. Therefore, I dismiss the tenant petition.

IV. ORDER

For the foregoing reasons, it is this **13th** day of **March 2012**,

ORDERED, that TP 29,980 is **DISMISSED WITH PREJUDICE**, and it is further

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

Nicholas H. Cobbs
Administrative Law Judge