

ALLEGHENY COUNTY HEALTH DEPARTMENT  
ADMINISTRATIVE HEARING

SHIRLEY SNYDER, : In Re: 1231 Lincoln Avenue  
: Pittsburgh, PA 15206  
Appellant, : SR#: HCE-20160606-3222  
: :  
v. : Copies Sent To:  
: Vijya Patel, Esq.  
ALLEGHENY COUNTY HEALTH : Allegheny County Health Department  
DEPARTMENT, : 301 39<sup>th</sup> Street, Building 7  
: Pittsburgh, PA 15201  
Appellee. : :  
: Shirley Snyder  
: P.O. Box 4878  
: Pittsburgh, PA 15206

**DECISION AND ORDER OF THE ALLEGHENY COUNTY HEALTH  
DEPARTMENT HEARING OFFICER**

**I. INTRODUCTION**

At issue in this case is whether a landlord corrected housing violations relating to improper heating and storm windows. Appellant Shirley Snyder (“Appellant”) challenges a determination by the Allegheny County Health Department (“ACHD”) that he failed to correct numerous violations to 1231 Lincoln Avenue (the “Property”). Specifically, Appellant disputes the ACHD’s findings that no permanent primary heat was provided, a vent-free gas space heater was observed in a bedroom, and that an exterior-mounted storm window was not weathertight or watertight. I find that Appellant has failed to demonstrate that any of the ACHD’s findings were wrong. Therefore, Appellant’s request for relief is denied.

## II. EVIDENCE

The following exhibits were introduced into evidence by the ACHD:<sup>1</sup>

- D1: April 10<sup>th</sup> Penalty Letter
- D2: Fifth Inspection, dated March 27, 2017
- D3: Lawrence Robinson's Affidavit, dated August 25, 2017
- D4: First Inspection, dated August 11, 2016
- D5: Second Inspection, dated September 20, 2016
- D6: Third Inspection, dated September 29, 2016
- D7: Fourth Inspection, dated January 26, 2017
- D8: David Namey's Affidavit, dated August 25, 2017
- D9: Email from Manufacturer to David Namey and catalog attachment, dated June 20-29, 2017
- D10: Manufacturer's letter to Appellant, undated

## III. FINDINGS OF FACT

Based on my review of the evidence and having resolved all issues of credibility, I find the following facts:

1. ACHD Environmental Health Specialist Lawrence Robinson inspected the Property on the following dates: August 11, 2016, September 20, 2016, September 29, 2016, and January 26, 2017. (Exs. D3-D7).
2. On March 27, 2017, Mr. Robinson again conducted an inspection of the Property, and observed the following:
  - a. A vent-free gas heater manufactured by Mr. Heater in a bedroom;
  - b. A lack of a primary means of heat in the Property;
  - c. Several habitable rooms and a bathroom that lacked approved means of heat;
  - d. A storm window that was neither weathertight nor watertight; and
  - e. Vacant portions of the Property were reoccupied without inspection and approval by the ACHD. (Exs. D2, D3).
3. The manufacturer's letter to Appellant does not indicate whether vent-free gas heaters may be used as permanent primary heat sources, or whether they may be placed in bedrooms or bathrooms. (Ex. D10).
4. The manufacturer's specifications declare that a vent-free gas space heater is a supplemental heat source, not a primary heat source. (Ex. D9).

---

<sup>1</sup> Appellant did not submit any formal exhibits or a brief. However, he submitted a series of documents discussed during the January 13, 2017 conference, as well as correspondence between him and the ACHD.

5. The specifications also state that vent-free gas space heaters may not be used in bedrooms or bathrooms. (Ex. D9).
6. The Property was reoccupied before repairs were completed, before a re-inspection with the ACHD was scheduled, and before obtaining ACHD's approval. (Exs. D2, D3, D6, D7, D8).
7. Although there was never a formal Hearing in this matter, a conference was held on January 13, 2017 to explain all violations observed, and to recommend compliance measures to Appellant. (Exs. D3, D8). Present at the conference were Hearing Officer Max Slater, Appellant Shirley Snyder, ACHD Assistant Solicitor Vijya Patel, ACHD Housing Program Chief David Namey, Lawrence Robinson, and ACHD Housing Operations Manager Lori Horowitz. (Exs. D3 and D8).
8. After the conference and the fifth inspection, both the Appellant and the ACHD have agreed to have the Hearing Officer decide this matter based on written submissions.

#### **IV. DISCUSSION**

In an administrative appeal of a final agency action of the ACHD, the appellant "shall bear the burden of proof and the burden going forward with respect to all issues." Article XI § 1105.D.7. Therefore, Appellant bears the burden of proving by a preponderance of the evidence that: (1) the permanent primary means of heat is operable and capable of adequately and safely heating all habitable rooms, bathrooms, and corridors; (2) a vent-free gas space heater was not placed in a bedroom; and (3) the storm window is weathertight and watertight.

**A. Appellant failed to show that legally compliant heating was used in all habitable rooms, bathrooms and corridors of the Property.**

Appellant has not demonstrated that lawful permanent primary heat sources were installed in every habitable room and bathroom of the Property. The relevant ACHD regulation, Article VI § 629, “Utilities and Fixtures: Heating,” states:

“(A) Every dwelling occupied during the heating season shall have heating facilities which are properly installed, maintained in a safe and good working condition, and capable of safely and adequately heating all habitable rooms, rooms containing a toilet, bathtub or shower, communicating corridors within dwelling units, and community corridors within rooming houses from rooming units to rooms containing a toilet, bathtub or shower.”

A “dwelling” as defined in Article VI § 604, must provide a permanent primary means of heat that safely and adequately heats all “habitable rooms, bathrooms, and corridors.”

Although the permanent electric baseboards used by Appellant are currently approved, they were not installed in every habitable room and bathroom, as discussed in the conference. During the fourth and fifth inspections, Mr. Robinson observed that electric baseboards were not installed in the first-floor kitchen and bathroom, second-floor kitchen, and third-floor bedroom. (Exs. D2, D3, D8). Appellant failed to show that these rooms were heated with another approved, primary and permanent means of heat. (Exs. D2, D3). Thus, Appellant remains in violation of Article VI § 629(A) for failing to provide a permanent primary heat source in operable condition, and able to adequately and safely heat all habitable rooms, bathrooms, and corridors at the Property.

**B. Appellant's use of space heaters violates ACHD Regulations.**

Appellant has also run afoul of ACHD housing regulations by improperly using vent-free gas space heaters as a permanent primary heat source in bathrooms and bedrooms. The relevant ACHD regulation, Article VI § 629, "Utilities and Fixtures: Heating," declares: "(E) The Director may prohibit the use of any heating device which the Director has determined to be a danger to health or safety."

Article XII, § 1205, which lays out guidelines for when vent-free heaters, such as those observed at the Property and cited by the ACHD can be used, states:

"A. It shall be unlawful to install or use any unapproved gas room or space heater. With the exception of approved unvented heaters, all types of gas room, space and water heaters installed or used in the County of Allegheny shall be connected to a proper, adequate and safe chimney, flue or vent. Adequate ventilation for combustion purposes shall be provided.

"B. NO unvented heater shall be installed in sleeping quarters, bathrooms, recreational vehicles, mobile homes or institutions such as, but not limited to, homes for aged, sanitariums, convalescent homes, orphanages, rooming houses, daycare centers, and schools."

Additionally, the manufacturer's specifications for the vent-free gas heaters used by Appellant at the Property declare that these products should not be used as a primary heat source in any room, and are not for use in bedrooms or bathrooms. (Ex. D9).

During the fifth inspection, Mr. Robinson cited Appellant for using a vent-free gas space heater to heat a bedroom. (Ex. D3). Both the manufacturer's instructions and ACHD regulations clearly indicate that these heaters may not be

used as primary heat sources in bedrooms or bathrooms. (Art. XII § 1205(B), Exs. D2-D5, D7, D9).

At the January 13<sup>th</sup> conference, Appellant was also advised that that these heaters were not supposed to be used either as primary heat sources in any room, or used at all in bedrooms and bathrooms. Nevertheless, Appellant continued to use the vent-free gas heaters in bedrooms and bathrooms. (Exs. D2, D3, D7).

Appellant contends that he relied on a letter from the manufacturer regarding the oxygen depletion system, declaring that he is properly using the vent-free gas space heaters. (D10). But this letter is not relevant, as it does not address the issue of whether the heaters may be used as a primary heat source, and in what locations the heaters may be used.

The evidence indicates that the ACHD correctly penalized Appellant for improperly heating bedrooms and bathrooms with space heaters.

### **C. The storm window fails to comply with ACHD Regulations.**

The storm window that Appellant installed violates ACHD regulations by failing to be weathertight and watertight. The relevant ACHD regulation, Article VI § 624, “General Structure: Openings,” declares:

“Every window, exterior door and basement hatchway shall be weathertight and watertight and shall be kept in sound working condition and good repair. All entrance doors into a dwelling unit or rooming unit shall be equipped with a latching or locking device. All exterior windows that are capable of being opened and all other potential means of egress shall be equipped with hardware for latching.”

In four different inspections, Mr. Robinson cited the same storm window in the Property's second-floor foyer because a glass pane is missing and the window is in disrepair. (Exs. D2-D5, D7). At the January 13<sup>th</sup> conference, Appellant claimed that the glass was in the "up" position, and thus the inspector may not have seen it. However, Mr. Robinson did not observe a window pane in the "up" position during his inspections. (Ex. D3).

The evidence presented shows that Appellant failed to install a watertight and weathertight storm window. He must therefore install the exterior glass pane, and repair the storm window to comply with Article VI § 624.

**D. The ACHD may penalize Appellant for improper re-occupancy of the Property.**

Finally, Appellant improperly reoccupied vacant floors of the Property before the necessary repairs were made and a re-inspection occurred. The pertinent ACHD regulation, Article VI § 660, "Occupancy and Letting of Dwelling Units and Rooming Units," states:

"A. No person shall occupy as owner-occupant or let to another for occupancy any vacant dwelling unit, light housekeeping unit or rooming unit unless it is clean, sanitary, in good maintenance and repair and fit for human habitation. Should a unit for which violations have been identified and orders issued becomes vacant prior to correction of these violations, the owner shall have the unit inspected and corrections verified by the Department prior to any reoccupancy."

On September 29, 2016, the date of the third inspection of the Property, the ACHD observed that the second and third floors of the Property had been vacated. (Exs. D3, D6). The third inspection report notified Appellant that the Property may

not be reoccupied until the violations were repaired and the ACHD re-inspected the Property. (Exs. D3, D6).

At the January 13<sup>th</sup> conference, Appellant stated that the previously vacant floors had been reoccupied. (Exs. D3, D8). The fourth and fifth inspections indicated that the second and third floors remained occupied despite the outstanding violations. Therefore, the penalty assessed shall remain against Appellant for reoccupying the second and third floors, in violation of Article VI § 660.

## **V. CONCLUSION**

Appellant has not met his burden of proof of showing that the \$2,500 civil penalty that the ACHD levied against him for failing to repair violations to the Property was improper. Specifically, Appellant has failed to show that an acceptable permanent primary means of heat is provided at the Property, that vent-free gas space heaters are not being used in bedrooms or bathrooms, and that the storm window is repaired and glass pane installed.

Appellant must:

- 1) Install permanent primary means of heat that is capable of safely and adequately heating all habitable rooms, bedrooms and corridors, pursuant to Articles VI and XII of the ACHD Rules and Regulations.
- 2) Cease use of vent-free gas space heaters as a primary heat source in any room, and must refrain from putting them in bedrooms and bathrooms.
- 3) Repair the storm window in the second-floor foyer and install a glass pane in the exterior within ten (10) days of the date of this decision.
- 4) Upon repair of these violations, schedule a re-inspection with the ACHD.



/s/  
Max Slater  
Administrative Hearing Officer  
Allegheny County Health Department

September 11, 2017  
Dated: