

ALLEGHENY COUNTY HEALTH DEPARTMENT
ADMINISTRATIVE DECISION

ALEXUS DIGGS, : In Re: 257 Travella Blvd.
: Pittsburgh, PA 15235
Appellant, :
: Docket no. ACHD-21-009
v. :
: Copies Sent To:
ALLEGHENY COUNTY HEALTH : *Counsel for Alexis Diggs:*
DEPARTMENT, : Daniel G. Vitek, Esq.
: COMMUNITY JUSTICE PROJECT
Appellee. : 100 Fifth Avenue, Suite 900
: Pittsburgh, PA 15222
:
: *Counsel for ACHD:*
: Elizabeth Rubenstein, Esq.
: 301 39th Street, Building 7
: Pittsburgh, PA 15201

DECISION AND ORDER OF THE ALLEGHENY COUNTY HEALTH
DEPARTMENT HEARING OFFICER

I. INTRODUCTION

In this matter, a tenant appeals the Allegheny County Health Department’s (“ACHD” or the “Department”) determination that her apartment had adequate heat during the winter and spring of 2021. Appellant Alexis Diggs (“Ms. Diggs” or “Appellant”) was a tenant at 257 Travella Boulevard (the “Property”) in Pittsburgh. On February 3, 2021, the ACHD found that the Property had inadequate heat, and deemed it “unfit for human habitation.” The ACHD allowed Ms. Diggs to make rental payments into escrow pursuant to its Rent Withholding Program. If the landlord did not fix the inadequate heat within six months, Ms. Diggs would be entitled to the money that she deposited. Following this inspection, Ms. Diggs paid one month’s rent into escrow.

Ms. Diggs contends that her rental unit had inadequate heat during the winter and spring of 2021, and that she should thus be entitled to the return of the money she deposited into escrow.

The ACHD argues that the landlord of the Property fixed the heating issue in a timely manner, and that inspectors properly certified the Property as fit for human habitation within the applicable six-month time frame of the Rent Withholding Program.

After reviewing the briefs submitted by the parties, the evidence presented at the hearing, and the applicable law, this tribunal finds that the ACHD acted properly in certifying the Property fit for human habitation on February 12, 2021. Ms. Diggs's appeal is therefore dismissed.

II. EVIDENCE

The following exhibits were offered by Appellant, and admitted into evidence:

A1: Inspection Report, Dated April 1, 2021
A2: Inspection Report, Dated May 14, 2021
A3: Memorandum, Dated May 17, 2021
A4: Memorandum, Dated May 5, 2021

The following exhibits were offered by the ACHD, and admitted into evidence:

D1: Inspection Report, Dated January 28, 2021
D2: Invoices
D3: Rent Withholding Letter
D4: Letter, Dated March 4, 2021
D5: Inspection Report, Dated February 3, 2021
D6: Inspection Report, Dated February 12, 2021

III. FINDINGS OF FACT

1. The ACHD operates a Rent Withholding Program pursuant to the City Rent Withholding Act, 68 P.S. § 1700-1, which allows a tenant to deposit rent into

an escrow account when the Health Department has determined the tenant's rental unit to be unfit for human habitation. (Hearing Transcript ("H.T.") at 9-10).

2. The ACHD considers inadequate heat during the "heating season" to be a Class 1 violation, rendering a rental unit unfit for human habitation. (H.T. at 10-11; ACHD Rules and Regulations, Art. VI, Sections 604 and 615(B)(1.4)).
3. ACHD Regulations define the "Heating Season" as "[t]he period from October first to May thirty-first of the following year." (ACHD Rules and Regulations, Art. VI § 604).
4. If the owner of the property later corrects the violation and the Health Department determines the rental unit to be fit for human habitation within 6 months, the Rent Withholding Period is terminated, and any money deposited by the tenant is paid out to the owner. (H.T. at 10; 68 P.S. § 1700-1). Otherwise, the money is returned to the tenant. (68 P.S. § 1700-1).
5. Ms. Diggs rented a room at 257 Travella Boulevard (the "Property") in Pittsburgh, beginning in December 2020. (H.T. at 79).
6. The property has 7 bedrooms and 2 bathrooms and was occupied by six other adults in addition to Ms. Diggs. (H.T. at 80-81).
7. Upon moving into the rental unit, Ms. Diggs felt there was not enough heat and she complained to her landlord. (H.T. at 82).
8. She was provided a space heater by the property manager, but this source of heat was not enough to keep her room warm. (H.T. at 84). It also caused electrical outages when in use. (H.T. at 84).
9. Ms. Diggs continued to complain about the lack of heat but was ignored by the property manager. (H.T. at 85). She then called the Department. (H.T. at 86).
10. On January 28, 2021, responding to Ms. Diggs' complaint, the ACHD conducted an inspection of the rental unit and found the heat to be inadequate. (Ex. D1). The internal temperature measured at 50 degrees. (*Id.*).
11. Kamar Williams ("Mr. Williams"), the Property owner, reported that the issue with the heat was fixed, and a subsequent inspection was conducted by the Department on February 3, 2021. (H.T. at 21; Ex. D5). Again, the heat was found to be inadequate with temperatures measured at 42 degrees in the common area and 62 degrees in the rooming unit. (Ex. D5).

12. Given the lack of heat, the ACHD determined the property unfit for human habitation, and offered Ms. Diggs the option of escrowing her rent with the ACHD. (Ex. D3).
13. On February 12, 2021, the ACHD received a deposit from Ms. Diggs. (H.T. at 21).
14. Shortly after the February 3rd inspection, Mr. Williams contacted the Department to request a follow-up inspection. (H.T. at 97).
15. ACHD Environmental Health Specialist Sandy Spira-Fischer (“Ms. Spira-Fischer”) once again met with Appellant on February 12, 2021 and measured the temperature of both the common area and Appellant’s individual unit, this time finding the temperatures reached above the threshold level of 68 degrees Fahrenheit, as required in Article VI. (Ex. D6).
16. On March 4, 2021, Ms. Diggs received a letter from the ACHD stating that the Property was found fit for human habitation. (H.T. at 50).
17. Continuing to believe that the rental unit did not have adequate heat, Ms. Diggs filed an appeal on March 25, 2021, challenging the Department’s findings. (Ex. D4).
18. In response, the ACHD conducted another inspection on April 1, 2021. (Ex. A1). That inspection demonstrated that the rental unit did not have adequate heat with temperatures reading 54 degrees on the first floor and 56 degrees on the second floor. (*Id.*).
19. On May 14, 2021, the ACHD followed up with its investigation of the Property and conducted another inspection. (Ex. A2). After the inspector increased the temperature setting on the thermostat, the heat improved enough to pass inspection. (H.T at 59; Ex. A2, Comments).
20. On August 17, 2021, an administrative hearing was held in this matter, via Microsoft Teams.

IV. DISCUSSION

A. Burden of Proof

An appellant bears the burden of proof in instances where a party, “[w]hen the Department denies a license, permit, approval or certification.” ACHD Rules

and Regulations Article XI “Hearings and Appeals” §1105(C)(7)(b)(i)(“Article XI”). Therefore, because this matter concerns the Department certifying a unit fit for human habitation under Article VI, Appellant has the burden to prove by preponderance of the evidence that the Department improperly certified the unit and thus improperly disbursed the escrow funds to the landlord. The preponderance of evidence standard “is tantamount to a ‘more likely than not’ standard.” *Agostino v. Twp. of Collier*, 968 A.2d 258, 269 (Pa. Cmwlth. Ct. 2009) (citing *Commonwealth v. McJett*, 811 A.2d 104, 110 (Pa. Cmwlth. Ct. 2002)).

B. Standard for Being “Unfit for Human Habitation”

A unit is classified as unfit for human habitation when there is one “Class 1” violation as defined under ACHD Rules and Regulations Article VI—Housing and Community Environment (“Article VI”). *See* Article VI § 615(A); H.T. at 10. Circumstances where there is no heat in a dwelling unit during the heating season is classified as both an emergency and “Class 1” violation. Article VI, § 615(B)(1.4); H.T. at 10. When a dwelling unit is certified as unfit for human habitation, the tenant has the option to open an escrow account pursuant to the City Rent Withholding Act (“RWA”). *See* 68 P.S. § 1700-1; H.T. at 9. ACHD’s Article VI is Allegheny County’s mechanism of local RWA enforcement. (*Id.*).

C. Determinations of Follow-up Inspections

The ACHD conducted several inspections of the Property. At the initial inspection on January 28, 2021, ACHD Environmental Health Specialist Sandy Spira-Fischer (“Ms. Spira-Fischer”) found that the Property had inadequate heat.

(Ex. D1; H.T. at 86). Ms. Spira-Fischer then conducted a re-inspection on February 3, 2021, which also found inadequate heat. (Ex. D5). This February 3rd inspection triggered the beginning of the rent withholding period. (Ex. D3). Ms. Spira-Fischer then inspected the Property on February 12, 2021 and determined that the inadequate heat had been abated, and that the Property was fit for human habitation. (Ex. D6; H.T. at 50-51).

Appellant contends that it was improper for the Department to determine that the Property was fit for human habitation based off the observations from the February 12th follow-up inspection, given that there were “other inspections” that reported inadequate heating. (*Appellant’s Brief* at 5). Appellant argues that “consideration of multiple inspections is required to gain an accurate and complete understanding of the heat being provided to Ms. Diggs’ rental unit during the ‘heating season.’” (*Id.* at 6).

The Department responds that the “other inspections” to which Appellant alludes, occurred before the rent withholding period began. (*ACHD Brief* at 5; Exs. D1, D3, D5). The Department therefore argues that these previous inspections are irrelevant to whether the Property was fit for human habitation.

This tribunal finds that the Department has the stronger argument here. The rent withholding period began after the February 3rd inspection, when the emergency violations remained, during which the Property was deemed “unfit for human habitation” under Article VI. (Exs. D3, D5).

Furthermore, the Department found at the February 12th follow-up inspection that the inadequate heating—the only violation that qualified the Property as being unfit for human habitation—had been abated. (Ex. D6). At the hearing, the Department presented invoices from Mr. Williams indicating that the repairs had been made, and that the violation had been corrected. (Ex. D2). This tribunal therefore finds that the ACHD properly deemed the Property fit for human habitation on February 12, 2021.

D. Propriety of the May 14, 2021 Inspection

When Ms. Spira-Fischer inspected the Property on May 14, 2021, she initially found the thermostat set to 54 degrees. (Ex. A2). She then set the thermostat to 70 degrees, and found that after a few minutes, the temperature did indeed rise to 70 degrees. (*Id.*).

Appellant argues that Ms. Spira-Fischer's actions were improper for two reasons. First, that adjusting the thermostat “created an artificial environment in which to conduct a test.” (*Appellant's Brief* at 4). Second, that by “intervening into the situation, the [Department] loses its neutrality and thus its authority.” (*Id.*).

The ACHD counters that Appellant does not cite to any law or policy to support its position that adjusting the thermostat was improper. (*ACHD Brief* at 6-7). The ACHD also points out that Ms. Spira-Fischer observed that the lockbox was ripped off and the thermostat was set to 54 degrees Fahrenheit. In order to properly determine if the heat was operable, she merely adjusted the temperature to 70 degrees, and the temperatures registered in Ms. Diggs's unit. (*Id.*).

This tribunal finds that the ACHD has the better argument. Appellant does not cite any law or policy to support its arguments that the thermostat created an artificial environment, or that the Department violated its neutrality. The goal of Ms. Spira-Fischer's inspection was to determine if the heating system was adequate, not whether the initial temperature upon entering the Property was 68 degrees or above. And Ms. Spira-Fischer's mere turning of the thermostat dial indicated that on May 14, 2021, the heating system was indeed working properly. Appellant points to no policy or law indicating that the ACHD's actions during the May 14, 2021 inspection were improper.

V. CONCLUSION

Based on the evidence and testimony presented at the hearing, as well as the relevant Rules and Regulations, this tribunal finds that that Ms. Diggs failed to prove by a preponderance of the evidence that the ACHD improperly certified the Property as fit for human habitation. Ms. Diggs's appeal is therefore dismissed. This administrative decision may be appealed to the Court of Common Pleas of Allegheny County, Pennsylvania.

Max Slater
Administrative Hearing Officer
Allegheny County Health Department

Dated: